



Google's Anti-Competitive Search Manipulation Practices

A Timeline of the European Commission,
U.S. FTC, DOJ, and State AG
Antitrust Probes, Prohibition Decisions & Lawsuits

By Adam Raff and Shivaun Raff
Co-founders of [Foundem](#) and [SearchNeutrality.org](#)

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1 Introduction

Foundem was the lead Complainant in the European Commission's *Google Search* investigation. As the company that first brought Google's search manipulation practices to the attention of the European Commission and the U.S. Department of Justice and Federal Trade Commission (FTC), Foundem is uniquely placed to shed light on the background and context of these Google antitrust investigations and subsequent Judgments.

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 compelling 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. The Commission's investigation culminated in a Prohibition Decision in September 2017.

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 related 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.

2 Timeline of Events

September 1998

Google launches its search engine.

23 October 2000

Google launches **AdWords**, its self-service, search-advertising programme.

At this time, AdWords ads were sold on a cost-per-impression (CPM) basis, in which advertisers paid each time their ad appeared, regardless of whether a user clicked on it.

6 August 2001

Eric Schmidt is appointed Google CEO, taking over from co-founder Larry Page.

20 February 2002

After Google's CPM model proves unpopular with advertisers, Google transitions its AdWords program to an auction-based, 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."*¹

May 2002

Google signs a distribution deal with AOL and Netscape for both search and search advertising.

¹ Sergey Brin and Larry Page, *Anatomy of a Search Engine*, April 1998 <http://infolab.stanford.edu/~backrub/google.html>

This was probably the moment at which Google became the dominant *search* and *search advertising* provider globally, a position it has now held and consolidated for nearly two decades.

12 December 2002

Google launches a comparison shopping service (CSS), **Froogle** (which it later re-brands **Google Product Search** followed by **Google Shopping**).

18 August 2004

Google's **IPO**. 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.*"²

September 2004

In an interview³, 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.

January 2006

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, 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, it quickly became one of the world's broadest vertical search services, covering comparison shopping, 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 since become commonplace, including search-form auto-suggestions, dynamic contextual filters, and price-history graphs that show fluctuations in product prices over time.

² <http://news.cnet.com/2100-1030-5321813.html>

³ <http://www.sec.gov/Archives/edgar/data/1288776/000119312504139655/ds1a.htm>

26 June 2006 – Foundem’s Google Search Penalty Begins

Within hours or days of the fully-fledged, search-engine crawlable version of its website Foundem is struck by a site-wide, **algorithmic Google Search Penalty**, which systematically excludes Foundem’s pages from Google’s search results, irrespective of their relevance to users’ search terms.

This extreme penalty excluded Foundem’s pages from all search results for both broad and highly-specific searches. For example, Foundem was excluded from all searches where it would have been one of many potentially relevant results, such as “price comparison” or “comparison shopping”, but it was also excluded from highly specific searches where Foundem would have been one of the few or even the only truly relevant result, such as “compare prices shoei xr-1000”.

29 June 2006

Foundem files the first of many **Reconsideration Requests** to Google, all of which Google ignored.

Reconsideration Requests (formerly known as Re-inclusion Requests) were (and to a certain extent still are) Google’s official channel for websites to appeal penalties. But, despite acknowledging that its penalty algorithms “are not infallible”⁴, 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.⁵

1 August 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 had to bid for its ads to be eligible for display in Google AdWords) rose by a prohibitive 10,000% (from around 5 pence per click to around £5 per click).

2 August 2006

By this point, Foundem had been excluded from Google’s natural and paid search results, both of which are essential channels to market for any internet-based business.⁶

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.

Foundem embarked on what would turn out to be a three-year long effort to have Google lift these crippling and unjustified site-wide penalties.

⁴ See [Google’s September 2011 written response to the US Senate Antitrust Subcommittee’s Questions](#)

⁵ http://www.theregister.co.uk/2011/02/18/google_on_manual_search_penalties/

⁶ 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. Note that Google’s own specialised services are no less dependent on this Google search traffic than anyone else’s.

2 August 2006

Following another unanswered Reconsideration Request, Foundem emails Google's Head of Search Quality, Matt Cutts, about its Google search penalty.

Mr Cutts was one of the Google employees most likely to be aware of the rationale behind Google's various penalty algorithms, and the most empowered to override them. Foundem explained that it was 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 passed Foundem's email on to his colleague, Adam Lasnik, with instructions to explain to Foundem that "other search engines aren't always what [Google] want to return".⁷

August 2006

Foundem contacts Google's AdWords support team and requests the first of many "manual reviews" of its algorithmic AdWords penalty.

24 August 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."

13 September 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 it 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 override this penalty. Yet, Mr Lasnik's email to Foundem simply (and falsely) claimed that he had no "specific insights to offer".

9 October 2006

Google acquires YouTube.

October 2006

IPC Media (the UK's largest magazine publisher) selects Foundem to power content-integrated comparison shopping for its websites—starting with *Ideal Home Magazine*.

14 February 2007

Future Publishing's T3 (the UK's leading gadget magazine) selects Foundem to provide content-integrated comparison shopping for its website.

13 April 2007

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

⁷ Google's 3 May 2010 Reply to Foundem's EC Competition Complaint

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."*⁸

Competitors to Google's digital mapping service, who had been successfully competing and growing alongside Google Maps for more than two years, saw their traffic and revenues plummet overnight.⁹

16 July 2007

Foundem is named *The Sunday Times* Website of the Week.¹⁰

16 August 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 a Senior Google AdWords "Evangelist", Fred Vallaes.

During a conference call with Foundem, Mr Vallaes concedes that Foundem is labouring under an algorithmic Google penalty designed to target sites with "little original content". He notes that comparison shopping 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, Mr Vallaes agrees to champion Foundem through what he calls the "**whitelisting**" process (Google's mechanism for manually overriding algorithmic penalties).

25 September 2007

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 explained that it had 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.

9 October 2007

Foundem files another *Reconsideration Request* to Google regarding its search penalty.

This time, Foundem highlighted the fact that Google's AdWords support team had just whitelisted Foundem out of the AdWords equivalent of the same penalty. Again, Google did not respond.

21 November 2007

The Times newspaper names Foundem one of the UK's Top Travel Sites.¹¹

December 2007

On 13 December 2007, CNN Money comments on how badly Google's CSS, Google Product Search, is doing:

⁸ <http://searchengineland.com/google-20-google-universal-search-11232>

⁹ <http://www.experian.com/blogs/marketing-forward/2009/02/11/google-maps-edges-closer-to-mapquest/>

¹⁰ <http://www.thetimes.co.uk/tto/travel/article1732499.ece>

¹¹ <http://www.thetimes.co.uk/tto/travel/article1732612.ece>

"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 Shoppers¹²

And 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."¹³

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 CSS:

"[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." InstantROI¹⁴, 26 November 2008

January 2008

Bauer (Europe's largest independent magazine publisher) selects Foundem as its exclusive vertical search partner.

1 February 2008

Foundem begins powering content-integrated comparison shopping for *Photo Answers* magazine.

13 February 2008

In a Public Policy blog post arguing for network neutrality, Google makes clear that it understands 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."¹⁵

August 2008

In partnership with MCN (the UK's leading Motorcycle Magazine), Foundem and MCN launch the world's first CSS for motorcycle parts and accessories.¹⁶ This service was made possible by Foundem's unique ability to integrate complex product data extracted directly from merchant databases.

¹² <http://news.investors.com/technology/121307-440795-googles-pitch-so-far-failing-with-shoppers.htm>

¹³ <http://www.guardian.co.uk/technology/blog/2007/dec/23/googlesgrowthbycomscorenum>

¹⁴ <http://instantroi.com/index.php/2008/11/26/google-product-search-shopping-optimization/>

¹⁵ <http://googlepublicpolicy.blogspot.com/2008/02/rep-markeys-net-neutrality-legislation.html>

¹⁶ <http://www.mediaweek.co.uk/news/836320/Bauer-offers-online-shopping-portal-around-MCN-title/>

16 September 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 September 2008

Foundem emails Fred Vallaey (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 September 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 September 2008

Google's Fred Vallaey responds to Foundem's 19 September email, informing Foundem that he had 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 September 2008

At Fred Vallaey's suggestion, Foundem files yet another *Reconsideration Request* to Google regarding its search penalty, this time highlighting Mr Vallaey's opinion that Foundem should not be penalised. As on every previous occasion, Google does not respond.

1 October 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 November 2008

Having had no response to its earlier emails, nor any acknowledgement that Fred Vallaey's 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 addressed 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 properly consider, rather than continue to ignore, the issue:

"... Since June 2006, Foundem has been suffering from a new class of Google penalty 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 whitelisted 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 December 2008

Channel 5's *The Gadget Show* (the UK's leading technology television program) names Foundem the UK's best comparison shopping 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."*¹⁷

16 December 2008

Foundem emails the same selection of senior Google managers as before, highlighting the recent 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 December 2008

Google's Adam Lasnik responds to Foundem's 16 December email. But instead of addressing Foundem's site-wide algorithmic Google penalty, Mr Lasnik again ignores it, just as he had done two years earlier: *"we aren't able to offer private support regarding search issues"*.

18 December 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 December 2008

Mr Lasnik responds. Once again, he refuses to address or even 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 Competition Complaint to the European Commission.

¹⁷ <http://gadgetshow.channel5.com/gadget-show/videos/news/christmas-shopping>

June 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.

8 July 2009

Foundem has its first meeting with the **European Commission** and begins preparing a Competition Complaint under Article 102.

Foundem's Complaint was 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 anti-competitive penalties). Foundem's Complaint made clear that Foundem's experience was just an example of anti-competitive practices that can lay waste to entire classes of competitors in virtually any sector where Google chooses to deploy them.

9 July 2009

From an internal 9 July 2009 Google email quoted in the Commission's June 2017 Prohibition Decision¹⁸:

"Here is what we all agreed to: the P[roduct] S[earch] onebox [the Universal Search insert for Google's CSS] should trigger at the top any time the top [natural search] result is from another comparison shopping engine (shopping.com, pricegrabber, nexttag, etc.)"

14 July 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 suddenly begins to appear in Google's search results for a small number of search terms.¹⁹

This change made no material difference to the traffic Foundem received from Google, but it did muddy the waters, making it more difficult to describe what had previously been a blanket, site-wide exclusion.

17 August 2009

The Guardian publishes an article²⁰ about Foundem's case.

Unfortunately, following threats of legal action from Google, the Guardian article was watered down and eviscerated of most of the salient details. Looking back, this article is a poignant reminder of a time when it was virtually inconceivable to question Google's behaviour or motives.

October 2009

Which? (the UK's leading consumer organisation) publishes its survey of the UK's 12 leading flight search engines, placing Foundem 3rd, Kayak (the U.S.'s leading travel search player) 8th, and Kelkoo 9th.

7 October 2009

During meetings with policymakers and regulators in Europe it becomes clear that, while there is considerable public awareness and concern about the discriminatory power of network providers, there is little or no public awareness or concern about the discriminatory power of search engines.

Foundem realised that framing its concerns under the apt label of "**search neutrality**" might allow it to harness some of the considerable educational efforts that Google and others had already invested in the strikingly similar concerns of "network neutrality".

¹⁸ Paragraph 390 of the [Prohibition Decision](#)

¹⁹ http://www.foundem.co.uk/Foundem_Penalty_Scattergrams.pdf

²⁰ <http://www.guardian.co.uk/business/2009/aug/17/google-search-baffles-internet-firm>

Foundem registered the domain name searchneutrality.org on the train back from Brussels.

12 October 2009

Foundem's co-founder and CEO, Shivaun Raff, attends a talk by Google's Chief Legal Officer, David Drummond. Afterwards, she approaches Mr Drummond, explains Foundem's position and proposes a dialogue.

14 October 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 culminated in Foundem being whitelisted out of its three-and-a-half-year Google search penalty on 1 December 2009.

15 October 2009

Foundem has a conference call with Google's Head of Search Quality, Matt Cutts.

During the one hour call, Mr Cutts highlights a small number of minor typographical anomalies on Foundem's site. Foundem explains that these anomalies are all derived from the sites that Foundem searches and that, as such, they would be equally prevalent on all CSSs, including Google's own.

16 October 2009

Foundem emails Mr Cutts with several illustrating that exactly the same anomalies Mr Cutts had highlighted during the previous day's call were equally common on competing comparison shopping 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 October 2009 – Foundem Calls for Search Neutrality

In the [inaugural article](#) of SearchNeutrality.org, Foundem proposes and defines **Search Neutrality** as the principle that search results should be driven solely 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 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."*²¹

30 October 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". Mr Barron tells Foundem that "whitelisting is on the table" of available options but that Google would prefer to find a more general "engineering solution".

Google asked for a month to come up with this solution. Foundem asked if Google's deliberations could be expedited, explaining that there were developments in the pipeline that might be difficult to delay for longer than a week or so.

²¹ <http://www.searchneutrality.org/search-neutrality>

31 October 2009

New York Times Columnist, Joe Nocera, refers to Foundem's case in his column²²:

"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 November 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 November 2009

Aware that the European Commission might be reluctant or unwilling to wait the further month or more required for Google to complete its internal deliberations, Foundem submits the formal Competition Complaint it had begun preparing several months earlier.

3 November 2009

The New York Times invites Foundem to write an Op-Ed explaining the need for search neutrality.

19 November 2009

The Register publishes an article about Foundem's case, entitled "When Algorithms Attack, does Google Hear You Scream?"²³

20 November 2009

Following a telephone call from Google's Peter Barron indicating that a response from Matt Cutts is on its way, Mr Cutts emails Foundem.

Instead of simply 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' email listed a small number 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 a similar frequency on all comparison shopping services, including Google's own.²⁴

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's failure to lift Foundem's unjustified, lack-of-original-content penalty years earlier.

21 November 2009

Foundem addresses all of Mr Cutts' "issues".

²² <http://www.nytimes.com/2009/10/31/business/31nocera.html>

²³ http://www.theregister.co.uk/2009/11/19/google_hand_of_god/

²⁴ http://www.foundem.co.uk/23_November_2009_Email_with_Added_Screenshots.pdf

Monday 23 November 2009

Foundem emails Mr Cutts to inform him that all of the “issues” raised in his 20 November email have been addressed.

Foundem’s also demonstrated, with multiple examples, that all of Mr Cutts’ so-called “issues” occurred with equal frequency on all comparison shopping services, including Google’s own.

1 December 2009 – Google “whitelists” Foundem

Having had no 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 informs Foundem by telephone that he “can’t be more specific” but that “things are afoot”.

Within hours of Mr Barron’s call, Google manually “whitelists” Foundem from its algorithmic Search penalty. Foundem’s Google search rankings across tens of thousands of pages and hundreds of thousands of keywords are instantly restored to something vaguely approaching “normal” and Foundem’s traffic from Google increases by around 10,000%.

17 December 2009

The new and insurmountable barrier to fair competition posed by Google’s recently introduced Universal Search mechanism, coupled with Foundem’s mounting evidence that its Google search rankings had not yet been restored to anything approaching a level playing field, 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.

28 December 2009

Foundem co-founder Adam Raff’s Op-Ed for the New York Times, [*Search, But you May Not Find*](#),²⁵ is published:

“...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?...”

2 February 2010

Foundem files an **updated and augmented** version of its November 2009 **EC Competition Complaint** against Google’s search manipulation practices.

At this time, complaints by the French legal search engine, eJustice.fr, and the Microsoft-owned, European CSS, 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 echoing many of Foundem’s search manipulation concerns (see 22 February 2011).

²⁵ <http://www.nytimes.com/2009/12/28/opinion/28raff.html>

10 February 2010

The European Commission notifies Google about Foundem, Ciao, and eJustice's Complaints.²⁶

12 February 2010

Google publishes its 2009 Annual Report²⁷, which includes Google's first public declaration that it 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 drew 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 February 2010

After receiving enquiries from journalists indicating that Google was preparing to publicly announce Foundem's European Competition Complaint, Foundem publishes some of the preferencing data and arguments from its EC Complaint:²⁸

"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 February 2010

Google publicly 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, omitted 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 denied the existence of either penalties or whitelisting: *"we don't whitelist or blacklist anyone."*²⁹

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 public 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 Register³⁰, 11 March 2011

²⁶ https://investor.google.com/pdf/20120930_google_10Q.pdf

²⁷ <http://www.sec.gov/Archives/edgar/data/1288776/000119312510030774/d10k.htm>

²⁸ http://www.foundem.co.uk/FCC_Comments.pdf

²⁹ <http://www.ft.com/cms/s/2/2e16bd92-2209-11df-98dd-00144feab49a.html#axzz1e9MjO400>

³⁰ http://www.theregister.co.uk/2011/03/11/google_admits_search_algorithm_whitelists/

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**.

As in Europe, Foundem was the first to highlight to U.S. regulators that Google had begun leveraging its dominance of search and search advertising to promote its own services (through mechanisms such as Universal Search), while simultaneously demoting or excluding those of its competitors (through anti-competitively targeted algorithmic penalties).

3 May 2010

Google submits its formal Reply to Foundem's EC Competition Complaint.

10 June 2010

The European Commission sends Google's Reply to Foundem for comment.

August 2010

The **Texas Attorney General** opens an antitrust investigation into the issues raised by Foundem's case and contacts Foundem for further details.

29 August 2010

Foundem submits its formal Response to Google's May 2010 Reply, deconstructing and rebutting Google's extraordinarily misleading submission. Foundem understands that its Response contributed significantly to the Commission's decision to move to a Formal Investigation of Google in November 2010.

3 September 2010

Google publicly announces that the Texas Attorney General has launched an Antitrust Investigation into Google, citing Foundem's case.³¹

September 2010

Foundem learns of a presentation that Google's Senior Competition Counsel for EMEA, Julia Holtz, is due to deliver at the International Bar Association (IBA) conference the following week.

This presentation included many false or misleading assertions about the issues at the centre of Foundem's Competition Complaint against Google and included several highly misleading and defamatory slides about Foundem.

Friday 17 September 2010

On the morning of Ms Holtz's presentation to the IBA's antitrust conference in Florence, Foundem [emails](#)³² Ms Holtz (CC'd to several of the panellists and moderators at the conference), with a rebuttal to some of the misleading information contained in her presentation.

The following is a brief extract from Foundem's email:

"...In February, your blog post urged people to read what you called an 'independent analysis of Foundem's ranking issues'. As you know, for three and a half years Foundem laboured under an algorithmic Google search penalty so extreme that none of its pages would appear in Google's search results for any queries, no matter how specific or relevant. As you also know, Google finally intervened to manually remove this penalty in December 2009. But the blog post you were urging people to read—being ignorant of Google's penalty policies and manual overrides—had drawn its

³¹ <http://www.nytimes.com/2010/09/04/technology/04google.html>

³² http://www.foundem.co.uk/Foundem_Letter_to_Julia_Holtz.pdf

own, entirely inaccurate, conclusions. Why urge people to read an analysis which you know to be fundamentally inaccurate in every material detail?..."

Melanie Sabo (the Assistant Director of the Anticompetitive Practices Division of the FTC) was also on this panel. Her presentation described Foundem's case and included an overview of the anti-competitive leveraging/bundling issues it raised.

Tuesday 21 September 2010

One working day after Foundem's open letter to Ms Holtz, Foundem is abruptly re-penalised (de-whitelisted) in Google's search results.

Foundem emails Google:

"...As of the early hours of this morning, Foundem has been re-penalised (or un-whitelisted) in Google search. Foundem's Google search rankings have plummeted to around the 30 November 2009 penalised...levels...We need to establish as a matter of urgency whether this significant change is an error or an act of retaliation. And in either case, we request that Google immediately remove the demotion."

22 September 2010

24 hours after being de-whitelisted, Foundem is re-whitelisted. All of Foundem's Google rankings immediately returned to their former, more "normal", post-whitelisting levels.

Google's Peter Barron replied 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."

26 October 2010

VfT (the German Association of Independent Phone Book Publishers) submits an EC Competition Complaint against Google.

26 October 2010

The **FairSearch** coalition launches in the U.S.³³

30 November 2010

The European Commission announces the transition of its Google Investigation from Informal to Formal.

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..."*³⁴

13 December 2010

Foundem joins FairSearch.

³³ http://www.fairsearch.org/wp-content/uploads/2010/10/FairSearch.org-Coalition-Urges-DOJ-To-Challenge-Google-ITA-Deal_10-26-10.pdf

³⁴ http://europa.eu/rapid/press-release_IP-10-1624_en.htm?locale=en

14 December 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 German online mapping companies, **Euro-Cities** and **Hot Maps**, over to the European Commission.³⁵ Google had already seen and commented on the BDZV/VDZ and Euro-Cities complaints. The Hot Maps complaint, which Google had not yet seen, was sent to Google on 1 April 2011.

5 January 2011

The U.S. FTC opens an antitrust investigation into Google and contacts Foundem for more details about its European Competition Complaint.

Days later, following a dispute with the DOJ over jurisdiction, the FTC's investigation was put on hold pending a decision by the DOJ on whether to challenge Google's planned acquisition of ITA Software.³⁶

17 January 2011

The Italian Competition Authority (AGCM) transfers a complaint against Google from **nntp.it** to the European Commission.³⁷

20 January 2011

Google announces that co-founder Larry Page will replace Eric Schmidt as CEO of the company, effective 4 April 2011.

28 January 2011 - Google's Panda Update

Google's Head of Search Quality, Matt Cutts, writes a blog post³⁸ describing a major 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 January 2011

Elf B.V. lodges a complaint against Google with the European Commission.

31 January 2011

In a [blog post](#)³⁹, Foundem raises concerns about the anti-competitive intent and impact of Panda, several weeks before Panda was first deployed:

"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'. 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?"

That Foundem anticipated the anti-competitive intent and effect of Panda simply from the manner and language Google used to pre-position it, substantially undermines any Google argument that the

³⁵ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

³⁶ <http://www.bloomberg.com/news/2011-04-05/google-said-to-be-possible-target-of-antitrust-probe-after-ita-acquisition.html> and http://www.businessweek.com/magazine/content/11_19/b4227027693933.htm

³⁷ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

³⁸ <http://www.mattcutts.com/blog/algorithm-change-launched/>

³⁹ <http://www.searchneutrality.org/foundem/original-content>

considerable harm Panda caused to Google's comparison-shopping rivals was unexpected, accidental, or collateral.

We do not know (and, for the purposes of European competition law, it is not necessary to know) the extent to which Foundem's June 2006 search penalty or Google's repeated failures to lift it were anti-competitively motivated. But we do know that, more than a year into the Commission's investigation, Google substantially escalated this kind of penalty when it introduced Panda and its various follow-on algorithmic updates.

21 February 2011

The New York Times reports⁴⁰ 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 February 2011

eJustice.fr's parent company, **1plusV**, files a supplementary competition Complaint with the European Commission, echoing many of Foundem's search manipulation concerns.⁴¹

24 February 2011

Google deploys its Panda update (at this stage only in the U.S.). Just as Foundem had anticipated, many of the U.S.'s leading CSSs plummet in Google's search rankings.

25 February 2011

Foundem raises its concerns about Google's Panda update with the European Commission.

Foundem noted that Panda appeared 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 noted that it expected the European roll-out of Panda to have a devastating anti-competitive impact on Google's European vertical-search rivals (including Foundem).

1 March 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 March 2011

Google's Peter Barron responds to Foundem's email but declines to comment.

⁴⁰ http://www.nytimes.com/2011/02/21/business/global/21google.html?pagewanted=all&_r=0

⁴¹ <http://www.nytimes.com/2011/02/23/technology/23google.html>

7 March 2011

Google acquires BeatThatQuote, a small, UK-based financial CSS.

The UK's Office of Fair Trading (OFT) considered referring the acquisition to the UK's Competition Commission but decided not to, publishing the full text of its decision on 11 August 2011.⁴²

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. Google's subsequent 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) demonstrates the folly of the OFT's conclusion.

11 March 2011

Google publicly admits to manual whitelisting—a practice it had until now publicly denied.⁴³

31 March 2011

Microsoft files an EC Competition Complaint against Google.⁴⁴

11 April 2011

Google deploys its Panda update in the UK. As Foundem had anticipated and warned in February, many of the UK's leading vertical search services, including Foundem, plummet in Google's search rankings.

13 April 2011

Foundem informs the Commission that, as anticipated, Panda had had a devastating impact on Google's comparison shopping competitors (including Foundem).

21 April 2011

Foundem participates in a Roundtable discussion with the Competition Commission of India (CCI), organised and hosted by the CUTS Institute for Regulation & Competition in New Delhi.⁴⁵

28 April 2011 – Launch of the FTC Investigation

The official start of the FTC's Antitrust Investigation into Google.

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 contacted Foundem to follow-up on its earlier request for more details about Foundem's case and European Competition Complaint.

17 May 2011

Foundem presents the European Commission with evidence of the devastating anti-competitive impact of Google's Panda update and explains why this increases the urgency for the Commission to conclude its investigation and take effective action. Foundem also raised the possibility of requesting Interim Measures.

16 June 2011

Foundem meets with the FTC to explain why Panda is a substantial escalation of the anti-competitively targeted Google penalties the FTC was now investigating and to present evidence of the devastating anti-competitive impact of Panda on U.S. CSSs.

⁴² http://www.oft.gov.uk/shared_of/mergers_ea02/2011/Google-BeatThatQuote.pdf

⁴³ http://www.theregister.co.uk/2011/03/11/google_admits_search_algorithm_whitelists/

⁴⁴ <http://www.bbc.co.uk/news/technology-12918059>

⁴⁵ <http://www.hindustantimes.com/columnsbusiness/has-the-time-come-to-regulate-google-search/article1-714115.aspx>

23 June 2011

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..."*⁴⁶

24 June 2011

Google publicly confirms that the FTC has launched a formal investigation into its search and search advertising business practices.⁴⁷

27 June 2011

Twenga (a European CSS) applies to become an Interested Third Party in the Google investigation. This application was granted on 11 July 2011.

8 July 2011

Google Executive Chairman Eric Schmidt yields to pressure from the U.S. Senate Antitrust Subcommittee, and agrees to testify at the upcoming Senate hearing into Google's dominance of the Internet search industry.⁴⁸

12 August 2011

Google's Panda update is rolled out to the rest of Europe (including Germany, France, Italy, Spain, and Austria).⁴⁹

16 August 2011

Foundem meets with the Australian Competition and Consumer Commission (ACCC) in Canberra.

31 August 2011

Foundem publishes a paper entitled [*Penalties, Self-Preferencing, and Panda*](#)⁵⁰:

"... 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..."

⁴⁶ <http://www.bloomberg.com/news/2011-06-22/google-faces-senate-subpoena-threats-to-get-testimony-from-page-schmidt.html>

⁴⁷ <http://googleblog.blogspot.co.uk/2011/06/supporting-choice-ensuring-economic.html>

⁴⁸ <http://www.bloomberg.com/news/2011-07-08/google-will-let-schmidt-testify-in-senate.html>

⁴⁹ <http://searchenginewatch.com/article/2103234/Google-Panda-Update-Hits-Europe-Which-Sites-Rose-Fell-in-Germany-France-Austria>

⁵⁰ http://www.foundem.co.uk/Google_Conflict_of_Interest.pdf

15 September 2011

The U.S. Senate Antitrust Subcommittee asks Foundem for further details of its April 2011 [study of Google's U.S. search rankings](#)⁵¹, which the Subcommittee plans to use in its upcoming hearing.

From Foundem's response:

"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."

21 September 2011

The U.S. Senate Antitrust Subcommittee holds its hearing into Google's business practices: *"The Power of Google: Serving Consumers or Threatening Competition?"*

The Committee's ranking Republican, Senator Lee, questioned 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.

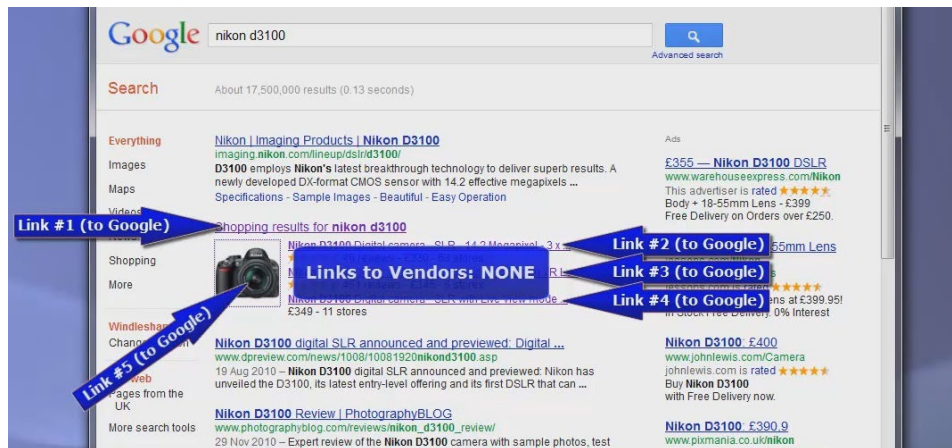
Mr Schmidt was repeatedly asked whether Google's search algorithms hold Google's own vertical search services to the same standards as everyone else's. After Mr Schmidt appeared to deny that Google gives its own services any special treatment in its search results, he was shown one of Foundem's scattergrams and [asked to explain](#)⁵² the preferential treatment of Google's own price comparison service clearly illustrated by the study. Mr Schmidt repeatedly ducked 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 [revised his answer](#)⁵³, 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 claimed 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 was being asked about), all of the inserted links point to Google's own service, not to vendors:

⁵¹ http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedies.pdf, page 2

⁵² <http://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1&t=6m23s>

⁵³ <http://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1&t=19m34s>



A screenshot from Foundem's 2011 [YouTube video](#) deconstructing Mr Schmidt's testimony

Note: As we'll see below, in February 2013 some of Mr Schmidt's claims about these links did become somewhat true, but not in a good way.⁵⁴

31 October 2011

Foundem publishes a short [video](#) 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 was uniquely placed to shed light on Mr Schmidt's obfuscatory answers.

1 December 2011

In Hamburg, Foundem gives a presentation to the German Association of Online Travel Agents (VIR), whose members include Expedia, Opodo, and eBookers.

Foundem's presentation included evidence of the devastation that Google's anti-competitive search manipulation practices had already wrought on the comparison shopping market, and highlighted that travel search was one of Google's most likely next targets.

1 December 2011

The Financial Times reports⁵⁵ that the European Commission has drafted a formal Statement of Objections⁵⁶:

"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."

19 December 2011

The Spanish Association of Daily Newspaper Publishers (**AEDE**) lodge a complaint against Google with the European Commission.

21 December 2011

Microsoft sells Ciao to LeGuide, but retains control of Ciao's European Competition Complaint.

⁵⁴ See section 4.2 of our [December 2016 Reply](#) to Google's Public Response to the EC's SSO for further details.

⁵⁵ <http://www.ft.com/cms/s/2/a6065478-1c6e-11e1-9b41-00144feabdc0.html#axzz1fMnfljhn>

⁵⁶ The formal charge sheet, setting out the Commission's preliminary findings of infringement.

23 January 2012

Twenga lodges a complaint against Google with the European Commission.

3 February 2012

Foundem has its first meeting with BEUC, the European Consumer Organisation representing 45 independent consumer organisations from 32 European countries. BEUC was quick to grasp the critical importance of the Google Search investigation for European consumers.

20 February 2012

Company E, “a company wishing to remain anonymous”⁵⁷, applies to become an Interested Third Party in the EC’s Google investigation. This application was rejected by the EC’s Hearing Officer on 28 February 2012.

19 March 2012

BEUC writes an open letter⁵⁸ to Commissioner Almunia in support of search neutrality and the other concerns Foundem had raised:

“...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 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...”

26 March 2012

Yelp Inc. applies to be admitted as an Interested Third Party in the EC’s Google investigation “*in the event that the Commission issues a statement of objections*”.⁵⁹

24 March 2012

Foundem suspends major 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...”

29 March 2012

Streetmap lodges a complaint against Google with the European Commission.

⁵⁷ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

⁵⁸ <http://www.beuc.eu/publications/2012-00210-01-e.pdf>

⁵⁹ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

30 March 2012

Expedia Inc. lodges a complaint against Google with the European Commission.

April 2012

The European Commission merges Cases 39.740 (Foundem), 39.768 (Ciao), 39.775 (eJustice/1PlusV), 39.845 (VfT), 39.863 (BDZV/VDZ), 39.866 (Elfvoetbal), 39.867 (Euro-Cities/HotMaps), 39.875 (nntp.it), 39.897 (Microsoft) and 39.975 (Twenga) into a single file, to become Case **COMP/C-3/39.740 – Google versus Foundem and others**.

1 April 2012

Odigeo Group (owners of eDreams and Opodo) lodges a complaint against Google with the European Commission.

2 April 2012

TripAdvisor Inc. lodges a complaint against Google with the European Commission.

9 April 2012

Amadeus, the world's leading GDS provider, and ETTSA, the European Technology and Travel Services Association⁶⁰, 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."*⁶¹

12 April 2012

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.'"*⁶²

26 April 2012

The Competition Commission of India (CCI) launches an investigation into Google's discriminatory practices.⁶³

30 April 2012

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.

⁶⁰ <http://www.etsa.eu/about-us/our-members>

⁶¹ <http://www.travelagentcentral.com/technology/amadeus-supports-expedia-complaint-against-google-34530>

⁶² <http://money.cnn.com/2012/04/12/technology/google-earnings/index.htm>

⁶³ <http://www.hindustantimes.com/sectorsinfotech/matrimony-com-takes-google-to-cci/article1-846700.aspx>

21 May 2012

The European Commission announces its preliminary conclusion that Google is infringing European Competition rules. Competition Commissioner Almunia's statement⁶⁴ outlines four areas of concern, citing search manipulation as the first of those concerns.

But, instead of issuing the Statement of Objections the Commission was reported⁶⁵ to have written in December, Commissioner Almunia offered Google an opportunity to settle the case, just as Google's Eric Schmidt had reportedly⁶⁶ asked him to do in Davos the previous year. Commissioner Almunia offered 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*.⁶⁷

"...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."

30 May 2012

At a *State-of-Play Meeting* between Google and the European Commission, Google reaffirms its preference to resolve the Commission's preliminary concerns "*quickly and amicably, so as to avoid the need for drawn-out adversarial proceedings*".

31 May 2012

Google publicly announces that it is "*starting to transition*" its CSS—the service at the epicentre of the EC's competition concerns—"*to a purely commercial [pay-for-placement] model*."⁶⁸

Couched innocuously (and some might say cynically) as a means of giving merchants "*greater control over where their products appear on Google Shopping*", Google was in fact signalling the wholesale transformation of its CSS from user-oriented price comparison service to profit-oriented advertising platform. By prioritising the highest bidding merchants over those offering users the best deals, this transition to a pay-for-placement auction would inevitably lead to Google's users paying more for products than they needed to.

In retrospect, the timing of this announcement—coming just ten days after Google was offered "a matter of weeks" to propose remedies for its anti-competitive practices and several months before Google would actually roll out the change—was suspicious. We now know that, whether by accident or design, this transition from links to ads served two further purposes: first, it paved the way (or

⁶⁴ http://europa.eu/rapid/press-release_SPEECH-12-372_en.htm?locale=en

⁶⁵ <http://www.ft.com/cms/s/2/a6065478-1c6e-11e1-9b41-00144feabdc0.html#axzz1fMnfljhn>

⁶⁶ <http://www.nytimes.com/2011/02/21/business/global/21google.html?pagewanted=all&r=0>

⁶⁷ <http://zine.openrightsgroup.org/features/2012/would-the-real-search-neutrality-please-stand-up>

⁶⁸ <https://www.chicagotribune.com/business/ct-xpm-2012-05-31-chi-google-shopping-switching-to-payforplacement-model-20120531-story.html>

perhaps more accurately set the trap) for years of additional anti-competitive conduct introduced in the guise of "remedy" proposals. And second, it muddled the waters around the *traffic-diversion* metric by which regulators could most readily measure the effects of Google's anti-competitive conduct (see [7 September 2012](#) for details).

19 June 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](#) for Google's search manipulation practices:

"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.*

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

*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')."*⁶⁹

22 June 2012 – Foundem's Civil Claim

Foundem files a civil claim for damages against Google in the UK High Court.

27 June 2012

Nextag Inc. lodges a complaint against Google with the European Commission.

28 June 2012

Google presents the FTC with details of the plan it had announced four weeks earlier, to transition its CSS to a pay-for-placement model.

30 June 2012

Google privately sends the EC a "Discussion Paper" outlining a "Proposed Solution" to the "EC's Preliminary [Competition] Concerns".

In this paper, which only recently came to light through a FOI request, Google described a proposed remedy that would select and place up to three rival comparison shopping or local search services alongside Google's own, based solely on their algorithmically determined relevance to the user's search query:

"Google proposes to display up to three, algorithmically selected links to rival "vertical" search sites within Google's Product and Local Universal Results...These links will lead, to the extent possible, directly to result pages of the alternative vertical search site for the query that the user entered on Google...for each relevant query, Google will algorithmically select for display three qualifying sites based on their Web Search rank for that query...

Because rival sites will be selected algorithmically different sites can appear for different types of queries...and new sites may surface as they gain in relevance."

⁶⁹ http://www.foundem.co.uk/Foundem_Remedies_Proposals.pdf

The relevance-based rival-links outlined in this Google proposal could have served as the starting point for an effective remedy. While not without flaws, its commitment to deliver “*algorithmically selected*” links to the most relevant pages of the most relevant rivals, based solely “*on their Web Search rank for [each] query*” meant that it had the potential to restore the vital natural search traffic that Google was unlawfully hijacking via its anti-competitive practices.

However, as we will see below, in the weeks and months that followed Google performed the mother of all bait-and-switches. By the time its official proposals were submitted in May 2013, Google’s promised links to rival services had morphed from helpful, relevance-based search results, into positively harmful, pay-for-placement advertisements via a new and spectacularly anti-competitive auction.

17 July 2012

MoneySupermarket is approved as an Interested Third Party in the EC’s Google Investigation.

7 August 2012

William Alsup, the Judge in the *Oracle versus Google* patent and copyright trial, orders Google and Oracle to provide details of any bloggers, academics, or journalists that have commented on the trial and with whom they have a financial relationship.

Oracle’s 17 August submission to Judge Alsup⁷⁰ stated:

“...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.”

8 August 2012

The FTC investigators submit their internal report, setting out the final conclusions of their 18-month investigation.

Two years later, the even-numbered pages of this damning report⁷¹ were inadvertently disclosed to the Wall Street Journal and made public (see [19 March 2015](#)).

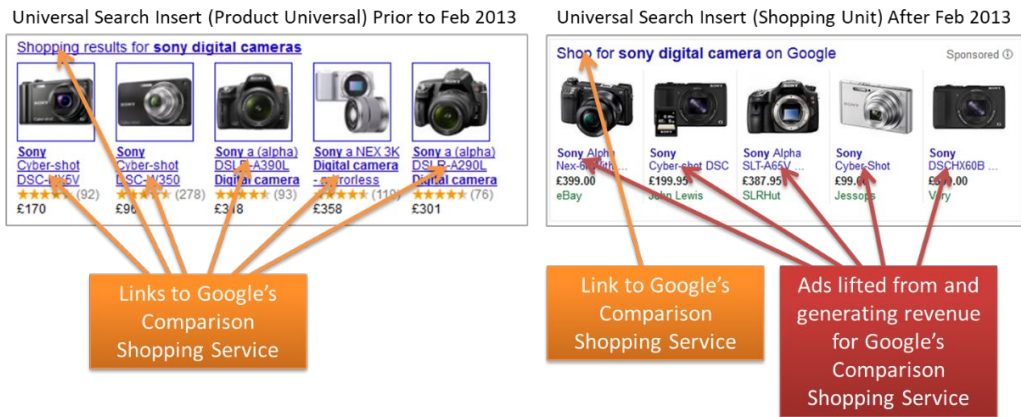
7 September 2012

Further to Google’s 31st May 2012 public announcement of its plan to transition its CSS to a pay-for-placement model, Google privately informs the European Commission of its further intention to replace “most” link-based Universal inserts with ad-based “Commercial Units”.

In particular, Google’s September 2012 *Commercial Unit Update* informed the Commission of Google’s imminent plan in the U.S. to replace CSS Product Universals with CSS Commercial Units (aka “Shopping Units”) and of its intention to do the same in several European countries during the early months of 2013.

⁷⁰ <http://www.guardian.co.uk/technology/2012/aug/20/oracle-google-oracle-patent-trial>

⁷¹ <http://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf>



An example of a pre-February 2013 Product Universal and a post-February 2013 Shopping Unit

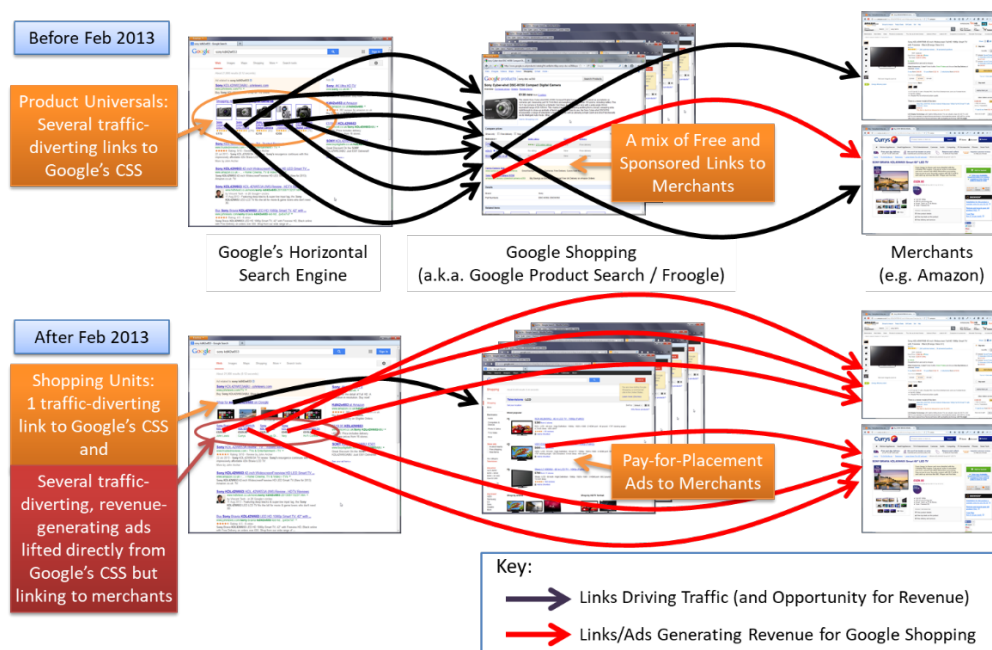
What Google's submission presumably failed to mention is that Google would soon use this innocuously presented transformation (from the links of Product Universals to the links and ads of Shopping Units) as justification for reneging on the relevance-based "remedy" proposals it had outlined to the Commission in [June](#).

As we wrote in our July 2014 [Response to the Commission's Pre-Rejection Letter](#):

*"...Google informed the Commission of its intention to introduce these "Commercial Units" on 7 September 2012 (i.e. four months into its settlement negotiations with the Commission, and four months after having been given "a matter of weeks" to propose suitable remedies or face formal charges). Not only did the Commission fail to notice that Google was informing it of its intention to introduce a significant escalation of one of the primary abusive practices it was ostensibly negotiating to end, it also failed to notice that, in doing so, Google was paving the way (or, more accurately, setting the trap) for introducing Paid Rival Links, a highly lucrative new paid search auction, under the guise of a "remedy"."*⁷²

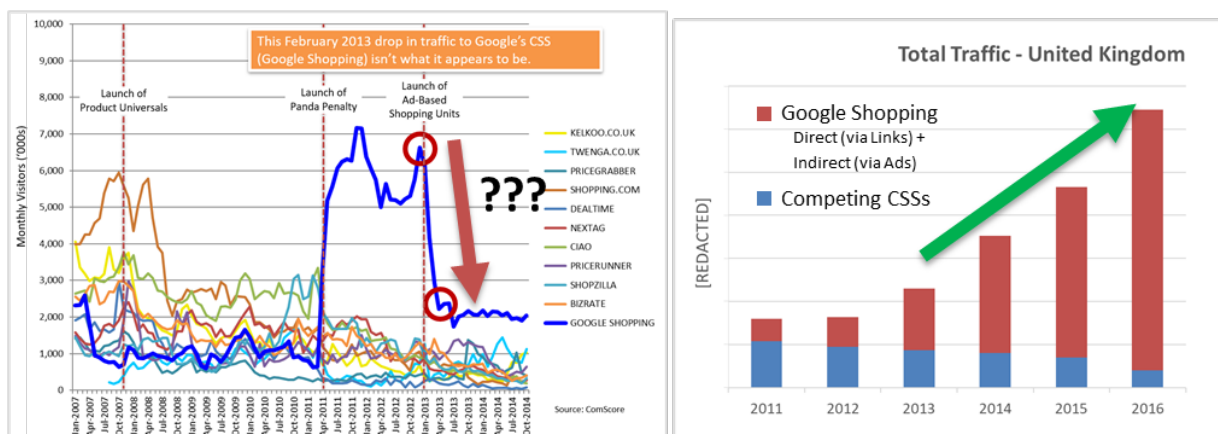
It is troubling that Google announced and introduced this fundamental change to the CSS Product Universals at the epicentre of the EC's investigation in the midst of what were supposed to be good faith settlement negotiations. Particularly, as the ramifications of this February 2013 change did not end with Google's bait-and-switch on remedies. The change from prominently positioned links to Google's CSS to prominently positioned pay-for-placement ads lifted directly from Google's CSS also helped Google to muddy the waters around the important anti-competitive metric of *traffic-diversion*. While the change from links to ads made no difference to the traffic Google was anti-competitively diverting away from rival services, it did make a substantial difference to where and how that traffic was diverted:

⁷² http://www.foundem.co.uk/Foundem_Response_to_Commission_Letter_July_2014.pdf



Product Universals (Pre February 2013) featured multiple links that led users to Google's CSS. Shopping Units (Post February 2013) featured one link that led users to Google's CSS and multiple ads lifted from Google's CSS that led users directly to Google's CSS's merchants and generated revenue for Google's CSS.

As one would expect, replacing most of the anti-competitive links to Google Shopping with anti-competitive, revenue-generating links to Google Shopping's merchants inevitably caused a precipitous drop in the traffic to Google Shopping. But, crucially from an anti-competitive perspective, this drop in traffic was more than compensated for by a corresponding increase in the revenues generated by clicks on these ads:



Left: ComScore traffic data showing the apparent drop in traffic to Google's CSS following the introduction of Shopping Units. Right: Graph 53 from the EC's June 2017 Prohibition Decision showing the actual traffic to Google's CSS when clicks on revenue-generating CSS ads are properly accounted for.

As we will see, the February 2013 change to the mechanics of Google's anti-competitive self-preferencing conduct—from the straightforward traffic-diversion of Product Universals, to the somewhat less straightforward, but even more harmful, traffic-and-revenue-diversion of Shopping Units—posed an additional challenge to the Commission. But, as we explained in a November 2019 [presentation](#), the EC's solution was to follow the money. The finding at recital 630 of the EC's June 2017 Prohibition Decision deals with Google's transition to Shopping Units by simply and appropriately⁷³ counting any clicks on these Google Shopping advertisements as traffic to Google Shopping.

⁷³ http://www.foundem.co.uk/fmedia/Foundem_Google_CSS_Auction_Revenue_Counts_As_Traffic_Nov_2019/

10 September 2012

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.

11 September 2012

Foundem meets with the Canadian Competition Bureau (CCB) in Ottawa.

21 September 2012

Commissioner Almunia announces that, so far, Google's proposed remedy concessions have not gone far enough:

*"...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 that – in the absence of satisfactory proposals in the short term – I will be obliged to continue with our formal proceedings."*⁷⁴

October 2012 - Google Transitions its CSS to pay-for-placement in the U.S.

Having spent more than a decade railing against the harmful impact of pay-for-placement on consumers, Google transitions its U.S. CSS to just such a model.⁷⁵

This adoption of a pay-for-placement model represented a substantial departure from several of Google's founding principles, including the "clear, large wall between the objective search results and the ads",⁷⁶ and the promise that, "at Google, search results cannot be bought or paid for".⁷⁷ Indeed, the May 2012 announcement of this change prompted headlines such as "How Evil Are Google's New Paid Shopping Search Results?"⁷⁸ and "Google product search results get a commercial bias".⁷⁹

30 October - 2 November 2012

Foundem has a series of individual meetings with the FTC's Chairman and Commissioners.

The prevailing view among FTC observers at the time was that the FTC was on the verge of taking strong action against Google. But, just weeks before the Commissioners were due to vote on the matter, Foundem was alarmed to discover that the Commissioners did not seem well informed about the search manipulation issues at the core of the FTC's investigation.

Given how hard the FTC had fought the DOJ for jurisdiction over Google, it was particularly surprising to hear FTC Chairman Leibowitz express the view that taking any action against Google under U.S. antitrust law might be difficult. Most alarmingly, Mr Leibowitz also expressed the erroneous view that, on the whole, complainants were more concerned about Google's "scraping" practices than its search manipulation practices.

16 November 2012

In a rare one-to-one meeting between Foundem and EC Competition Commissioner Almunia, Commissioner Almunia expresses a strong preference for future-proofed, principle-based remedies.

⁷⁴<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/629&format=HTML&aged=0&language=EN&guiLanguage=en>

⁷⁵ See section 3 of Foundem's December 2016 [Response to Google's Reply to the SSO](#)

⁷⁶ Sergey Brin, April 2004 [Interview with Playboy Magazine](#)

⁷⁷ Ibid.

⁷⁸ [Forbes](#), May 31 2012

⁷⁹ [Venture Beat](#), May 31 2012

3 December 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 December 2012

Following on from its 3 December letter, and in response to mounting media reports that the FTC is preparing 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 January 2013

The FTC closes its investigation into Google's business practices without taking meaningful action on any of the substantive issues that had triggered the investigation.

At the FTC's press conference, Chairman Leibowitz confirmed 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. For example, Mr Leibowitz cited a much-publicised incident from 2011, in which Google had manually and temporarily penalised JCPenney for allegedly gaming Google's algorithms.⁸⁰ But this kind of legitimate, anti-spam/anti-cheating penalty was 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 artificially 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.

⁸⁰ <http://www.nytimes.com/2011/02/13/business/13search.html?pagewanted=all>

3 January 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."*⁸¹

From an interview with FTC Commissioner Thomas Rosch in 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."*⁸²

Four weeks later, after Chairman Leibowitz announced his intention to leave the FTC by mid-February, Politico's post-mortem of Leibowitz's tenure as FTC Chairman ended 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. The following 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"*⁸³

*"FTC report recommended suing Google for anti-competitive practices"*⁸⁴

*"FTC: All-powerful Google ABUSED rivals. So we did NOTHING"*⁸⁵

*"Federal Trade Commission: Google Manipulated Search Results"*⁸⁶

*"FTC Report Details How Google Manipulated Results to Hurt Competitors"*⁸⁷

*"Google fixes search results says FTC"*⁸⁸

10 January 2013

The *Financial Times* publishes an interview with Commissioner Almunia:

"We are still investigating, but my conviction is [Google] are diverting traffic,' Mr Almunia told the Financial Times, referring to Google's preferential treatment of its own vertical search

⁸¹ <http://www.bloomberg.com/news/2013-01-03/the-ftc-s-missed-opportunity-on-google.html>

⁸² http://www.politico.com/story/2013/01/how-google-beat-the-feds-85743_Page2.html#ixzz2KEjBqp4O

⁸³ <http://www.wsj.com/articles/how-google-skewed-search-results-1426793553>

⁸⁴ <http://www.theguardian.com/technology/2015/mar/20/google-anti-competitive-ftc-report>

⁸⁵ http://www.theregister.co.uk/2015/03/20/ftc_we_thought_google_was_a_monopoly_and_we_did_nothing/

⁸⁶ <http://thenextdigit.com/19062/federal-trade-commission-google-manipulated-search-results/>

⁸⁷ <http://www.macobserver.com/tmo/article/ftc-report-details-how-google-manipulated-results-to-hurt-competitors>

⁸⁸ <http://www.electronicweekly.com/news/business/google-fixes-search-results-says-ftc-2015-03/>

services... 'They are monetising this kind of business, the strong position they have in the general search market and this is not only a dominant position, I think - I fear - there is an abuse of this dominant position,' Europe's antitrust enforcer said... While Mr Almunia said Google showed a more constructive approach at a crunch meeting in December, he warned that he would be 'obliged' to issue formal charges if its proposal - expected this month - is unsatisfactory."⁸⁹

11 January 2013

Visual Meta, a German-owned European CSS, files an EC Competition Complaint against Google.

21 January 2013

In response to enquiries from the European Commission about what a remedy to Google's anti-competitive penalty/demotion algorithms might look like, Foundem follows up on its June 2012 Remedy Proposals with a proposed [mechanism](#)⁹⁰ for making the critical distinction between the lawful (anti-spam) and unlawful (anti-competitive) application of algorithmic search penalties.

This paper also included the first proposal and definition of the future-proofed, principle-based *equal-treatment* remedy later endorsed by Complainants, consumer groups, interested third parties, and ultimately the European Commission. The EC's June 2017 Prohibition Decision explicitly mandates this equal-treatment remedy. The following is an extract from Foundem's white paper:

"Many of our detailed remedy proposals can be summarised by a single principle:

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.

Adherence to this principle would immediately end Google's ability to systematically favour its own services through the preferential placement and display formats of Universal Search. Adherence to this principle would also end Google's ability to systematically penalise, demote or exclude its competitors."

30 January 2013

ICOMP lodges a complaint against Google with the European Commission.⁹¹

31 January 2013

Following a week of face-to-face negotiations between Google and the European Commission in Brussels, MLex report that Google has "*sent the European Commission a set of concessions aimed at resolving [the Commission's] antitrust probe.*"⁹²

It now appears that this report was premature and that this may have actually been the point at which the outline of Google's proposal was agreed in principle.

February 2013

It is revealed that Google spent more money lobbying Washington in 2012 than any other tech firm. Google spent \$18 million in 2012, nearly double its 2011 spend and nearly four times its 2010 spend⁹³:

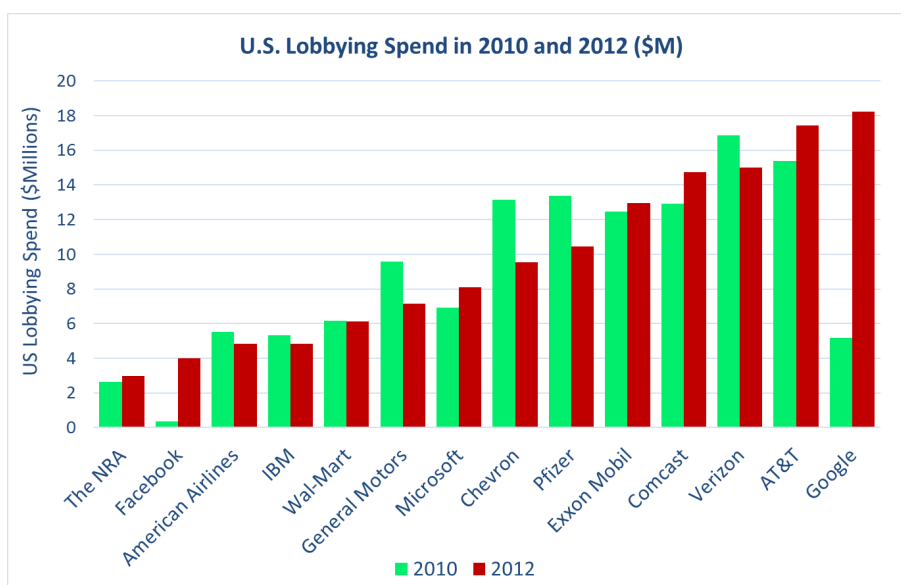
⁸⁹ <http://www.ft.com/cms/s/0/2b5bead6-5b3c-11e2-8d06-00144feab49a.html#axzz2JdzUSNSw>

⁹⁰ http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf

⁹¹ <http://newsroom.i-comp.org/icompl-files-article-101-complaint/>

⁹² <http://www.mlex.com/EU/Content.aspx?ID=314156>

⁹³ <http://tech.fortune.cnn.com/2013/02/18/apple-google-lobbying-washington/>



Data Source: The Center for Responsive Politics at OpenSecrets.org⁹⁴

13 February 2013 - Google Transitions its CSS to pay-for-placement in Europe

Google completes the transition of its CSS from relevance-based placement to auction-based pay-for-placement that it had announced in [May 2012](#). It is notable that Google did this several months after it began settlement negotiations with the European Commission, and just seven weeks before submitting the auction-based “remedy” proposals that would rely on it for justification.

As part of this transition, the mechanics of the self-preferencing half of Google’s anti-competitive conduct morphed from the link-based, traffic-diversion of Product Universals to the ad-based, traffic-and-revenue diversion of Shopping Units (see [7 September 2012](#)).

15 February 2013

FTC Chairman Jon Leibowitz leaves the FTC.

6 March 2013

BEUC applies to become an Interested Third Party in the EC’s Google Investigation. This application was granted on 26 March 2012.

13 March 2013

The European Commission adopts a *Preliminary Assessment*—a formal summary of the Commission’s preliminary conclusions about Google’s anti-competitive business practices.

The Preliminary Assessment outlined four Google business practices that may infringe European Antitrust law, listing Foundem’s search manipulation allegations as the first of those practices:

“ ...

- *The favourable treatment, within Google’s general search results pages, of links to Google’s own specialised search services as compared to links to competing specialised search services (“first business practice”);*
- *The copying and use by Google without consent of original content from third party websites in its own specialised search services (“second business practice”);*

⁹⁴ <http://www.opensecrets.org/lobby/top.php?showYear=2012&indexType=s>

- *Agreements that de jure or de facto oblige websites owned by third parties (referred to in the industry as “publishers”) to obtain all or most of their online search advertisement requirements from Google (“third business practice”); and*
- *Contractual restrictions on the management and transferability of online search advertising campaigns across online search advertising platforms (“fourth business practice”).”⁹⁵*

21 March 2013

Foundem sends an [open letter](#) to Commissioner Almunia signed by 11 of the, then 15, Complainants (Foundem, the Federation of German Newspaper Publishers (BDZV), Euro-Cities, Expedia, Hot Maps, Streetmap, TripAdvisor, Twenga, the German Federation of Magazine Publishers (VDZ), the German Association of Independent Directory Publishers (VfT), and Visual Meta).

Foundem’s letter highlighted the necessity to explicitly deal with both aspects of Google’s search manipulation practices (preferencing and penalties), and endorsed the even-handed (equal-treatment) remedy:⁹⁶

“...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:

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 March 2013

The European consumer organisation, BEUC, publishes a [position paper](#)⁹⁷ endorsing the *even-handed*, equal-treatment remedy and echoing the need for explicit commitments to end both aspects of Google’s search manipulation practices (i.e., self-preferencing and anti-competitive penalties).

3 April 2013 - Google’s First Remedy/Commitments Proposals

Ten months after Commissioner Almunia gave Google a “matter of weeks” to propose remedies capable of addressing the EC’s Competition concerns, Google privately submits its detailed remedy proposals.

As discussed above, Google’s auction-based proposals were a significant departure from the relevance-based proposals Google had used to lure the Commission into a settlement negotiation in the first place (see [30 June 2012](#)). But, more importantly, in contrast to the proposals Google had dangled in June, these were a world away from anything that could ever serve as a remedy.

Remarkably, as we will see below, Google’s users and competitors are still suffering the consequences of this bait-and-switch even today. After Competition Commissioner Almunia spent years chasing minor cosmetic tweaks to a succession of worse-than-useless auction-based settlement proposals, current Competition Commissioner Vestager is now doing much the same. Despite slapping Google with three Prohibition Decisions and several billion dollars’ worth of fines, as at the time of writing (in

⁹⁵ Paragraph 63 of the [Prohibition Decision](#)

⁹⁶ <http://www.searchneutrality.org/google/open-letter-to-almunia>

⁹⁷ <http://docshare.beuc.org/Common/GetFile.asp?ID=44729&mfd=off&LogonName=Guesten>

February 2021), the EC is still “evaluating” the worse-than-useless and [brazenly non-compliant](#) CSS Auction Google introduced in the guise of a Compliance Mechanism in September 2017.

9 April 2013

Despite repeated assurances from the EC 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 practice⁹⁸, Commissioner Almunia began to reveal details of Google’s proposals to the press.⁹⁹ 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.”¹⁰⁰

9 April 2013 – FairSearch’s Android Competition Complaint to the EC

FairSearch files an EC Competition Complaint regarding Google’s Android Mobile Phone platform.¹⁰¹

11 April 2013

Commissioner Almunia’s spokesman confirms Google’s formal submission of commitment/remedy 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.”¹⁰²

26 April 2013

The Commission commences a formal Market Test of Google's remedy proposals, allowing Complainants and other interested third parties one month to submit comments.

The 26 May deadline was subsequently extended by a month, after several Complainants requested more time to allow them to conduct empirical studies of Google's proposals.

⁹⁸ 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.”*

⁹⁹ http://www.nytimes.com/2013/04/10/technology/eu-competition-chief-texting-with-the-enemy.html?_r=0

¹⁰⁰ <http://www.ft.com/cms/s/0/c308b656-a124-11e2-bae1-00144feabdc0.html?siteedition=uk#axzz2Q3Unl188>

¹⁰¹ <http://www.fairsearch.org/fairsearch-announces-complaint-in-eu-on-googles-anti-competitive-mobile-strategy/>

¹⁰² http://www.theregister.co.uk/2013/04/11/google_submits_package_of_concessions_to_brussels/

1 May 2013

The Canadian Competition Bureau opens an investigation into Google's search and search advertising practices.¹⁰³

1 May 2013

Just 3 working days after Google's remedy proposals are published, Foundem writes to Commissioner Almunia explaining that, by compelling rivals to bid away the majority of their profits, Google's proposals represented a substantial escalation of the abusive practices they purported to remedy:

"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."

12 May 2013

Foundem submits its [Initial Analysis of Google's Proposals](#) to the Commission.

This document, published¹⁰⁴ and distributed well before the end of the Market Test, proved to be very influential—persuading multiple eminent lawyers to endorse the radical sounding (but in this case entirely accurate) view that Google's remedy proposals were "worse than doing nothing".

In addition to exposing the fatal flaws in these Google proposals, Foundem's Analysis also correctly anticipated Google's next step—replacing the comically unworkable bidding system of these proposals with one modelled on Google's existing and immensely lucrative AdWords system. The following is an extract from Foundem's *Initial Analysis*:

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

But even if we assume that, in any revised version of this proposal, Paid Rival Links would be populated by a variant of Google's existing AdWords bidding system, this would do nothing to

¹⁰³ <http://www.slideshare.net/gesterling/commissioner-ofcompetitionvgooglecanadacorp>

¹⁰⁴ Published on 14 May 2013

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."

Just 16 days into the Market Test, Foundem had exposed the fatal flaw in Google's first proposals and correctly anticipated, and pre-emptively exposed the fatal flaw in the next two iterations of Google's proposals.

21 May 2013

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

28 May 2013

With many Complainants yet to respond, Commissioner Almunia informs the European Parliament that Google's first proposals are not good enough and that Google is likely to be asked to improve them:¹⁰⁵

"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 June 2013

At a press conference in Brussels, a panel of Complainants unanimously dismissed 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."*¹⁰⁶

28 June 2013

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

9 July 2013

Commissioner Almunia privately informs Google that it needs to "significantly improve" its proposals.¹⁰⁷

1 October 2013

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

In a [speech](#)¹⁰⁸ at the opening of this event, Commissioner Almunia acknowledges the negative feedback from Google's first proposals and claims 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

¹⁰⁵ <http://www.telegraph.co.uk/technology/google/10083905/EU-competition-watchdogs-to-press-Google-for-more-concessions.html>

¹⁰⁶ <http://www.eubusiness.com/news-eu/competition-company.pev>

¹⁰⁷ http://europa.eu/rapid/press-release_SPEECH-13-768_en.pdf

¹⁰⁸ http://europa.eu/rapid/press-release_SPEECH-13-768_en.pdf

have the possibility to 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, to the best of our knowledge, Google never supplied the promised "empirical data" showing the impact of its revised proposals.

21 October 2013 - Google's 2nd Commitment Proposals

Google submits its Revised Commitment Proposals to the Commission.

28 October 2013

Rather than conducting a full Market Test of Google's second remedy proposals, the Commission opted for a more limited (and significantly less transparent) assessment.

Complainants and other respondents to the first Market Test are sent confidential copies of Google's Revised Commitments together with a Request-for-Information (RFI) containing a set of tightly constrained, and largely misdirected, questions.

6 November 2013

Google's Revised Proposals leak 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."*¹⁰⁹

8 November 2013

CEPIC (the Association of European Picture Agencies) submits a Competition Complaint to the European Commission regarding Google's use of third-party images.¹¹⁰

21 November 2013

Foundem submits its [Comments on Google's Revised Proposals](#), which demonstrate that Google's latest proposals are not an improvement over its original proposals. As we noted, any "improvement" in the "visibility" of Rival Links is immaterial as long as these links remain paid advertisements rather than free, natural search results. The following is an extract from Foundem's Comments:

"Unfortunately, all of the RFI's questions around 'visibility', 'click through rates'... and 'eligibility criteria' are entirely irrelevant as long as the proposed Rival Links remain Paid Rival Links. This is because Google, not its rivals, would be the main beneficiary of any profits derived from these links. We disagree with any suggestion that Google's revised proposals are an improvement over Google's previous proposals, let alone a 'substantial improvement'. Google's revised proposals remain fundamentally unaltered, and, if anything, the few alterations there are tend to make the proposals worse rather than better. For example, the proposal of an AdWords-based bidding process for Paid

¹⁰⁹ <http://www.pcworld.com/article/2061420/googles-secret-proposals-leaked-as-dismay-over-eu-antitrust-inquiry-grows.html>

¹¹⁰ http://www.theregister.co.uk/2013/11/15/google_hit_with_eu_competition_complaint_over_images/

Rival Links simply increases the efficiency with which Google would extract revenues from its competitors, and, in a further blow to consumers, it would also remove the last vestige of relevance-based placement.

The Paid Rival Links element of Google's first proposals was such a patently unjustifiable escalation of the abuse Google had been instructed to remedy that few of us expected it 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..."¹¹¹

Once again, Foundem's Comments—which were published and distributed widely amongst Complainants and interested third parties well in advance of anyone's deadline to respond—helped to ensure a unified and fact-based rejection of Google's positively harmful proposals.

December 2013

Following meetings with the Commission, Foundem and a number of other Complainants concluded that the Commission intended to reject Google's revised proposals and that the notion of an auction-based remedy (which could never be viewed as anything other than an escalation of Google's anti-competitive conduct) was now firmly off the table.

19 December 2013

Commissioner Almunia writes to Google to reject its revised proposals, stating that:

"...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."

20 December 2013

In an interview on Spanish Radio, Commissioner Almunia publicly rejects Google's revised proposals, describing them as "not acceptable".¹¹²

15 January 2014

In response to Commissioner Almunia's 19 December letter, Google submits a paper to the Commission purporting to demonstrate that the objections to its Paid Rival Links auction are unfounded.

Unfortunately, many of the false or misleading Google arguments in this paper were subsequently adopted wholesale by the Commission and became the cornerstone of Commissioner Almunia's rationale for adopting Google's third set of proposals.

¹¹¹ http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf

¹¹² <http://www.theguardian.com/technology/2013/dec/20/european-commission-rejects-google-proposals-antitrust-case>

25 January 2014

At the annual World Economic Forum in Davos, Commissioner Almunia meets privately with Eric Schmidt, David Drummond, Kent Walker, and two other Google Executives, and agrees to get a Commitment Decision adopted before the end of his term as Competition Commissioner¹¹³:

*"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 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."*¹¹⁴

29 January 2014

Two days before Google submits an unprecedented third set of proposals, Commissioner Almunia begins to trail to the media that he is "close to settling" with Google and that "a deal" would be announced in a few days. Reuters quotes¹¹⁵ an unnamed Commission "official" stating that Google's latest proposal is "much better" than the previous "unacceptable" iteration.

31 January 2014 - Google's 3rd Remedy Proposals

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 "unacceptable" iterations. The following is an extract from Foundem's 5 February 2014 *Initial Response to Google's Third Set of Commitment Proposals*:

"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 February 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 Minutes¹¹⁶ 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."

¹¹³ <http://www.bloomberg.com/news/features/2015-08-06/google-s-6-billion-miscalculation-on-the-eu>

¹¹⁴ <http://www.bloomberg.com/news/features/2015-08-06/google-s-6-billion-miscalculation-on-the-eu>

¹¹⁵ <http://www.reuters.com/article/2014/01/29/eu-google-antitrust-idUSL5N0L242V20140129>

¹¹⁶ <http://ec.europa.eu/transparency/regdoc/rep/10061/2014/EN/10061-2014-2074-EN-F1-1.Pdf>

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 February 2014

At a press briefing¹¹⁷, 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 would 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.

This February 2014 announcement by Commissioner Almunia is widely interpreted and reported as the closure of the European Commission's Google Search case.

12 February 2014

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

14 February 2014

Google publishes¹¹⁸ 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."*¹¹⁹

Remarkably, the positively harmful auction element of Google's proposals was both present and almost entirely unchanged.

18 February 2014

MEPs Ramon Tremosa and Andreas Schwab write¹²⁰ 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 February 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.

¹¹⁷ <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I086129>

¹¹⁸ https://drive.google.com/file/d/0Bw8Krj_Q8UaETUkxamxfMk02TUK/edit?usp=sharing

¹¹⁹ <http://googlepolicyeurope.blogspot.co.uk/2014/02/settlement-with-european-commission.html>

¹²⁰ http://regmedia.co.uk/2014/02/20/google_case_almunia.pdf

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.”¹²¹

11 March 2014

Following publication of the minutes¹²² of the 12 February meeting of the College of Commissioners, Foundem writes an [open letter](#)¹²³ to Commissioner Almunia, CC'd to Commission President Barroso and the College of Commissioners.

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

“As anyone who has studied Google's proposals could readily confirm, Google's services are not subject to ‘the same arrangements’ as those of its competitors. As you must be aware, under Google's proposals, only Google's rivals would pay for placement...Google would pay nothing; it would continue to insert links to its own services (together with monetised links derived from those services) in prime positions and entirely free of charge in all cases. In other words, Google would remain the sole beneficiary of the traffic it anti-competitively diverts from rivals, and would now also become the main beneficiary of any traffic it sends to them...

Google's proposals offer nothing to...restore competition to the vertical search domains that these anti-competitive practices have already devastated, such as product price comparison. But, remarkably, Google's proposed transition from free, relevance-based listings to pay-for-placement listings for all services except Google's own introduces an entirely new form of abuse that [would] directly destroy competition in many verticals that have not yet been devastated, such as travel search, financial search, property search, and job search....That most of these businesses are currently unaware of the damage that is about to be inflicted on them is not surprising; who could have anticipated that the Commission might allow a dominant company to settle a competition case by substantially increasing the anti-competitive abuse it had been instructed to remedy?

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.”

11 March 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 erroneous arguments he is 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,

¹²¹ <http://blogs.wsj.com/brussels/2014/02/20/pressure-grows-on-almunia-over-eu-google-settlement/>

¹²² <http://ec.europa.eu/transparency/regdoc/rep/10061/2014/EN/10061-2014-2075-EN-F1-1.Pdf>

¹²³ <http://www.searchneutrality.org/google/letter-to-almunia-and-college-of-commissioners>

Foundem received a copy of the Commissioner's 11 March *Key Points Position Paper*, which allowed Foundem to produce and distribute a rebuttal (see 12 June 2014).¹²⁴

31 March 2014

The European Consumer Organisation, **BEUC**, submits a formal EC Competition Complaint against Google.¹²⁵

*"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."*¹²⁶

This was the first time in BEUC's fifty-year history that it had become a formal Complainant in a European Commission investigation.

13 April 2014

The Washington Post publishes an [exposé](#) of Google's behind-the-scenes lobbying efforts in 2012 regarding the FTC investigation:¹²⁷

"The behind-the-scenes machinations demonstrate how Google — once a lobbying weakling — has come to master a new method of operating in modern-day Washington, where spending on traditional lobbying is rivalled by other, less visible forms of influence. That system includes financing sympathetic research at universities and think tanks, investing in non-profit advocacy groups across the political spectrum and funding pro-business coalitions cast as public-interest projects."

15 April 2014

The **Open Internet Project** (OIP)—a newly formed coalition of 400 French and German start-ups, online publishers, consumer associations, and digital rights groups—lodges a complaint against Google with 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."*¹²⁸

16 May 2014

Deutsche Telekom lodges a complaint against Google with the European Commission.

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 concerns about the Commission's plans to adopt Google's proposed settlement without any form of meaningful market test.¹²⁹ 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

¹²⁴ http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf

¹²⁵ <http://news.yahoo.com/european-consumer-group-joins-case-against-google-144210170.html>

¹²⁶ http://www.beuc.eu/publications/beuc-pr-2014-010_eu_google_investigation-beuc_complaint.pdf

¹²⁷ https://www.washingtonpost.com/politics/how-google-is-transforming-power-and-politicsgoogle-once-disdainful-of-lobbying-now-a-master-of-washington-influence/2014/04/12/51648b92-b4d3-11e3-8cb6-284052554d74_story.html

¹²⁸ <http://www.openinternetproject.net/about-the-project>

¹²⁹ http://www.nytimes.com/2014/05/21/business/international/eu-antitrust-chief-casts-doubt-on-google-deal-over-rivals-links.html?_r=0

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 responds¹³⁰ 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*.¹³¹

22 May 2014

Foundem has its formal State-of-Play Meeting with the European Commission.

June-July 2014

The Commission sends pre-rejection letters to the (then) 21 Complainants: Foundem, Microsoft, TripAdvisor, Elf, Vft, Nextag, 1PlusV, AEDE, nntp.it, Odigeo, Twenga, Visual Meta, BDZV/VDZ, BEUC, Euro-Cities, Expedia, Hot Maps, Streetmap, Deutsche Telekom, ICOMP, and Ciao.

As Streetmap and nntp did not submit written responses to their letters within the time limit, their complaints were deemed to have been withdrawn.¹³²

2 June 2014

Yelp lodges a complaint against Google with the European Commission.¹³³

3 June 2014 – The EC's Pre-Rejection Letters: a Key Turning Point

Foundem receives its formal Pre-Rejection Letter, which explains that the Commission intends to reject Foundem's Complaint on the basis that Google's 3rd Commitment Proposals would address the issues it raised. Foundem is given four weeks to respond.

Remarkably, these Pre-Rejection Letters were Complainants' first opportunity to see or comment on the arguments Google had deployed behind the scenes to persuade the Commission to adopt such positively harmful proposals. It was easy to understand why Google was pursuing a settlement that would generate billions of dollars of additional revenue while allowing it to continue its anti-competitive practices unabated, but it remained a mystery why the Commission was even entertaining it. In particular, what could explain the Commission's striking shift in position between December 2013 and February 2014?

Among the supporting documents provided to Foundem was a 15 January 2014 Google submission that seemed to provide the answer. This persuasive, but immensely misleading, document appeared to be the basis for many of the erroneous arguments the Commission was now using to try to justify the adoption of Google's proposals.

Foundem understands that it is one of just two Complainants that had the opportunity to see, let alone rebut, this pivotal 15 January Google submission.

6 June 2014

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"*:

¹³⁰ <http://www.slideshare.net/lesechos2/reply-letter-vp-to-ministers-gabriel-and-montebourg>

¹³¹ http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf

¹³² See paragraph 72 of the [Prohibition Decision](#)

¹³³ <http://www.nytimes.com/2014/07/09/technology/yelp-joins-critics-of-european-union-settlement-with-google.html>

*"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."*¹³⁴

10 June 2014

Foundem emails the European Commission 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."

11 June 2014

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*.

12 June 2014

Foundem writes to President Barroso and the College of Commissioners with [A Brief Response to Commissioner Almunia's March 2014 Key Points Position Paper](#).¹³⁵

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 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..."

Friday 20 June 2014

Having received no reply to its 10 June email to the European Commission, Foundem politely requests a response.

¹³⁴ <http://tremosa.cat/noticies/ramon-tremosa-catalonia-and-andreas-schwab-germany-call-ec-meet-complainant-companies-against-google>

¹³⁵ http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf

20 June 2014

With less than two weeks of Foundem's allotted four-week deadline remaining, the Commission responds with a copy of the requested Preliminary Assessment but declines Foundem's request for an extension to its July 3rd deadline.

Although several Complainants were ultimately provided with the Commission's March 2013 *Preliminary Assessment*, it was Foundem that recognised the seismic implications of one of its fundamental conclusions, as described in this extract from [Foundem's Response to the Pre-Rejection Letter](#).¹³⁶

*"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:*

'... 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 added)

According to Google's own description, 'the proposed Rival Links Auction is closely modelled on the AdWords auction'.¹³⁷ 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."

23 June 2014

Foundem appeals to the EC Hearing Officer for an extension to its deadline.

24 June 2014

The Hearing Officer grants Foundem an eight-day extension to its deadline (i.e., to 11 July).

Foundem understands that similar requests for additional documents and deadline extensions by other Complainants were also declined by the European Commission and required the Hearing Officer's intervention.

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 provided to Foundem and one other Complainant. All subsequent requests by other Complainants for this document were declined.

11 July 2014

Foundem submits its formal [Response to the Commission's Pre-Rejection Letter](#).¹³⁸

In addition to the revelation that adopting Google's Commitment Proposals would be in direct contradiction to the fundamental conclusions of the Commission's own Preliminary Assessment, Foundem's Response also unequivocally debunks all of the Commission's key arguments for adopting Google's Proposals. The following is an extract from Foundem's Response:

"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..."

¹³⁶ http://www.foundem.co.uk/Foundem_Response_to_Commission_Letter_July_2014.pdf

¹³⁷ From Google's January 15 2014 submission

¹³⁸ http://www.foundem.co.uk/Foundem_Response_to_Commission_Letter_July_2014.pdf

Debunking Google's January 15 2014 Submission

It is clear that the arguments contained in Google's January 15 2014 submission—a defence of its proposed Paid Rival Link auction mechanism—have played a decisive role in the Commission's continued determination to adopt Google's proposals despite the overwhelming evidence and opposition from Complainants, consumer groups, and market participants...

As the lead Complainant, and one with a proven track record¹³⁹ of deconstructing and debunking Google's previous submissions and assertions, we are surprised and disappointed that the Commission elected not to offer us (or anyone else) an earlier opportunity to review and comment on this pivotal January 15 submission (or on any of the fallacious arguments or misappropriated "evidence" it contains). This is a particularly serious oversight because, in the intervening months, the Commission has taken several of Google's false or misleading assertions and inferences and adopted them as its own. Indeed, several of the paper's most disingenuous claims have become the cornerstone of the Commission's defence of Google's proposals.

As we demonstrate below, when properly explained, contextualised, and stripped of false inferences Google's January 15 submission actually serves to confirm our assertions rather than refute them...

[For example,] whether there are twenty bidders or twenty-thousand bidders chasing the three available Paid Rival Link ad slots is unlikely to make any difference to the price that will have to be paid: a Paid Search auction becomes over-subscribed, and therefore of marginal value to advertisers and substantial value to Google, as soon as there are more bidders than available ad slots.

And whether the Commission wrongly believes that Paid Rival Links will hand Google 40-50% of its rivals' profits or correctly understands that this will be more like 60-90% is also largely irrelevant.

The Commission cannot believe that the introduction of an additional anti-competitive barrier—which transforms free, relevance-based traffic into paid, pay-for-placement traffic for all services but Google's own—will do anything other than catastrophically escalate the inability of these services to compete against Google's services in the face of Google's search manipulation practices. Particularly as, in an anti-competitive double-whammy, the company these rivals will be forced to hand their profits to will also be Google..."

While any one of the revelations in Foundem's Response would have made it difficult for the Commission to proceed with an Article 9 Commitments Decision, taken together, they left the Commission with little choice but to reject Google's proposals.

In light of this, between the 14th and 15th of July, Foundem distributed its Response to the Commission's Legal Services and DG Comp hierarchy, and to select Complainants, Commissioners, and MEPs. Foundem understands that its Response had a transformative effect on the Commission.

Anyone doubting that it was [Foundem's Response](#) that was primarily responsible for the Commission's unprecedented (and at the time unthinkable) U-turn should take the time to read it.

22 July 2014

At an invitation-only, off-the-record briefing with journalists—and with most Complainants yet to submit their replies—Commissioner Almunia signals his intention to U-turn, given the "valid" concerns already raised by Complainants.

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..."¹⁴⁰

¹³⁹ For some examples see [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#)

¹⁴⁰ <http://online.wsj.com/articles/eu-may-revise-googles-antitrust-settlement-says-source-1406046253>

Note that this contemporaneous account of the Commission's fact-driven U-turn pre-dates later attempts to recast it as a response to political pressure.

While there was undoubtedly some political pressure, this pressure was focused on ensuring that the Commission conduct a meaningful market test; not on whether the Commission should accept or reject Google's proposals.

The plain but uncomfortable truth is that Commissioner Almunia's unwavering determination to pursue a settlement agreement without ever issuing formal charges left him struggling to extract effective remedy proposals from a company that had little or no incentive to proffer them. As we wrote in our [March 2013 open letter](#) to Commissioner Almunia:

"We will respectfully withhold judgement on Google's proposed commitments until we have seen them, but Google's past behaviour suggests that it is unlikely to volunteer effective, future-proof remedies without being formally charged with infringement."

24 July 2014

HolidayCheck lodges a complaint against Google with the European Commission.

2 September 2014

In a last-ditch effort to save the Commitments deal before the new Commission takes office at the beginning of November, Google Executive Chairman Eric Schmidt writes to European Commission President Barroso.

In the letter¹⁴¹, Mr Schmidt asks Mr Barroso to "*encourage [his] fellow Commissioners to approve the Commitments*", warning that to not do so would "*undermine the credibility*" of the Commission. Mr Schmidt also reassured Mr Barroso that if the Commission were to go ahead with the deal, Google's public statements would support rather than challenge the view that the Commission had achieved something important:

"As you know, we are now reaching a crucial stage in the process, and I am writing to express my full support for the Commitments that Vice President Almunia obtained earlier this year. I strongly believe that resolving these proceedings on this basis, rather than entering into drawn-out litigation, is the best outcome for consumers. The Commitments are far-reaching and unprecedented proposals that positively promote competition by displaying rivals in prominent Google space. Rivals will be able to compete with Google, not only in the market, but directly on Google's own site. We have reviewed the latest submissions we received over the summer and will explain to Vice President Almunia and his team why we conclude that there are no new facts or evidence that justify further changes. We believe that ongoing disputes will help no one and that abandoning the Commitments will undermine the credibility of our and your team's hard work, and that of the institutions. Our teams have invested substantial time in designing an elegant solution to a complex problem, and it would be a loss if that effort now came to nothing.

I hope you will be able to add your support and encourage your fellow Commissioners to approve the Commitments. On our part, as Larry Page confirmed during your visit to Mountain View, I assure you we will implement these Commitments in good faith, and support what Vice President Almunia and your Commission have achieved, including in my and the company's public statements. We are confident that this solution represents a timely, positive, and constructive step."

4 September 2014

The Commission notifies Google that it is rejecting Google's third proposals.

¹⁴¹ <https://assets.documentcloud.org/documents/2837279/EC-s-12.pdf>

8 September 2014

The *Financial Times* reports¹⁴² 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 Joaquín 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 September 2014

European 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 September 2014

At his final appearance before the European Parliament's ECON Committee, Commissioner Almunia officially rejects Google's third set of proposals. Remarkably, Almunia 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 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."*¹⁴³

2 October 2014

Ms Vestager's nomination as Competition Commissioner is unanimously endorsed by the European Parliament.

1 November 2014

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

27 November 2014

The European Parliament votes overwhelmingly in favour of a non-binding resolution "supporting consumer rights in the digital single market".¹⁴⁴

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:

¹⁴² <http://on.ft.com/YqxGKZ>

¹⁴³ http://europa.eu/rapid/press-release_SPEECH-14-615_en.htm

¹⁴⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2014-0286+0+DOC+XML+V0//EN>

“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/equal-treatment principle¹⁴⁵ as the over-arching remedy to anti-competitive search practices:

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

December 2014

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

December 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 comparison shopping, travel search, and digital mapping companies.

12 January 2015

Foundem has its first one-to-one meeting with Commissioner Vestager.

26 January 2015

Trivago lodges a complaint against Google with the European Commission.

19 March 2015

The Wall Street Journal reveals that the FTC Commissioners might have acted against the advice of the FTC investigators when closing the Google investigation in January 2013.¹⁴⁶

“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 March 2015

The FTC contacts Foundem to confirm and apologise for the accidental release of the even-numbered-pages of the FTC’s 160-page internal report.

¹⁴⁵ <http://www.searchneutrality.org/google/open-letter-to-almunia>

¹⁴⁶ <http://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274>

23 March 2015

Google's Director of Public Policy, Johanna Shelton, privately emails the FTC's chief of staff, Heather Hipsley, urging the FTC to issue a public statement.¹⁴⁷

"...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."*¹⁴⁸

24 March 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.¹⁴⁹

"...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.

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 released, even-numbered, pages from the FTC's 160-page report.¹⁵⁰

¹⁴⁷ <http://www.buzzfeed.com/williamalden/how-googles-lobbyists-get-things-done-in-washington#.pdrmygeg4>

¹⁴⁸ <https://s3.amazonaws.com/s3.documentcloud.org/documents/2082181/shelton-email.pdf>

¹⁴⁹ <http://www.wsj.com/articles/google-makes-most-of-close-ties-to-white-house-1427242076?tesla=y>

¹⁵⁰ <http://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf>

25 March 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."*¹⁵¹

7 April 2015

Charles Arthur of *The Guardian* newspaper writes about the inadvertently released FTC report:¹⁵²

"...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.'*

...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...

...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 etailers], 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.

¹⁵¹ <https://www.ftc.gov/news-events/press-releases/2015/03/statement-chairwoman-edith-ramirez-commissioners-julie-brill>

¹⁵² <https://theoverspill.wordpress.com/2015/04/07/why-googles-struggles-with-the-ec-and-ftc-matter/>

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."

13 April 2015

Company AC, "a company that wishes to remain anonymous"¹⁵³ applies to become an Interested Third Party in the EC's Google case. This application was granted on 21 April 2015, as was Company AC's request for anonymity.

15 April 2015 – The Statement of Objections (SO)

The European Commission formally charges Google for abusing its dominant position.¹⁵⁴

Having previously outlined four areas of concern regarding Google's conduct, the Commission's **Statement of Objections (SO)** focuses exclusively on the search manipulation concerns first raised by Foundem's Complaint.

The Commission explains that it is continuing to investigate the other three areas of concern (scraping, advertising exclusivity, and advertiser restrictions). The Commission also explains that the current SO is focussed exclusively on the effects of Google's search manipulation practices on the product price comparison vertical, with a view to setting a precedent that can then be applied to other verticals.

The Commission makes clear that its SO upholds both halves of Foundem's search manipulation allegations—self-preferencing and anti-competitive penalties.¹⁵⁵ The Commission also makes clear

¹⁵³ Paragraph 75 of the [Prohibition Decision](#)

¹⁵⁴ http://europa.eu/rapid/press-release_IP-15-4780_en.htm

¹⁵⁵ http://europa.eu/rapid/press-release_MEMO-15-4781_en.htm

that it intends to pursue a remedy based on the non-discrimination/even-handed principle now widely endorsed by complainants, interested third parties, and consumer groups.

Google is given ten weeks to respond to the formal charges.

15 April 2015

News Corp lodges a complaint against Google with the European Commission.

15 April 2015

Google publicly responds to the European Commission's Statement of Objections with a blog post entitled *The Search for Harm*.¹⁵⁶ This post, by Google Senior VP of Search, Amit Singhal, purports to show that competition is "thriving" and that the European Commission's charges are therefore unfounded.

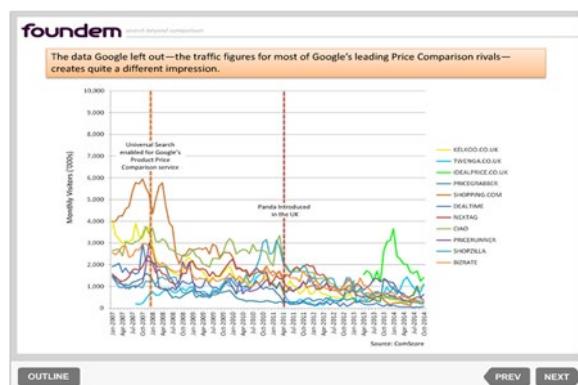
April to July 2015

The following companies and industry associations apply to become Interested Third Parties:

	Applied	Granted
FairSearch Europe	24 April 2015	8 May 2015
Acheter Moins Cher	8 May 2015	11 May 2015
LeGuide	20 May 2015	26 May 2015
Kelkoo	21 May 2015	26 May 2015
Getty Images	1 June 2015	18 June 2015
Myriad International Holdings	10 June 2015	18 June 2015
ETTSA	22 July 2015	23 July 2015

10 June 2015

Foundem publishes an [online presentation](http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis)¹⁵⁷ rebutting Google's 15 April public response to the European Commission's SO:



Foundem's rebuttal eviscerates what has, until now, been a surprisingly effective (if extraordinarily misleading) public defence by Google:

"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

¹⁵⁶ <http://googleblog.blogspot.co.uk/2015/04/the-search-for-harm.html>

¹⁵⁷ http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis

about “shopping” but the EC’s Statement of Objections is about “price comparison”. Because misdirection works.)”¹⁵⁸

18 June 2015

Complainants are invited to comment on the Commission’s Statement of Objections.

2 July 2015

TradeComet lodges a complaint against Google with the European Commission.

29 July 2015

Foundem submits its formal Comments on the Commission’s Statement of Objections.

10 August 2015

Google announces its *Alphabet* restructuring.

20 August 2015

VG Media lodges a complaint against Google with the European Commission.

27 August 2015

Google submits its formal Response to the Commission’s April 2015 Statement of Objections. Tellingly, Google does not exercise its right to request an oral hearing.

2 October 2015

As part of Google’s Alphabet restructuring, Sundar Pichai takes over from Larry Page as Google’s CEO.

October-November 2015

Complainants are invited to comment on Google’s Response to the Statement of Objections.

4-16 November 2015

The Streetmap trial takes place in the UK High Court.

24 November 2015

Salon publishes an exposé of some of Google’s academia-based lobbying tactics¹⁵⁹:

“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 suggested speakers and invitees.

¹⁵⁸ <https://theoverspill.wordpress.com/2016/11/04/start-up-googles-endless-ec-case-here-comes-usb-c-mobo-no-go-south-koreas-weird-scandal-and-more/>

¹⁵⁹ http://www.salon.com/2015/11/24/googles_insidious_shadow_lobbying_how_the_internet_giant_is_bankrolling_friendly_academics_and_skirting_federal_investigations/

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 December 2015

During the second half of 2015, Microsoft and Google privately reach an entente cordiale. As part of this agreement, 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 as before, 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.¹⁶⁰

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 voted by a narrow majority to abstain from competition issues and thereby retain Microsoft sponsorship. Foundem resigned 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..."¹⁶¹

10 December 2015

The fifth Case Management Conference (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 December 2015

The Guardian publishes an exposé of some of Google's European lobbying tactics¹⁶²:

"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..."

¹⁶⁰ <http://www.politico.eu/pro/icom-p-drops-google-fight/>

¹⁶¹ From Foundem's 2 December 2015 resignation letter to ICOMP members

¹⁶² <http://www.theguardian.com/world/2015/dec/17/google-lobbyists-congress-antitrust-brussels-eu>

24 December 2015

Foundem submits its formal Reply 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 February 2016

Streetmap loses its civil claim against Google in the UK High Court (Streetmap.eu vs Google, Claim No. HC-2013-000090).¹⁶³

Google likes to point to its success in the StreetMap trial at every available opportunity. But the StreetMap case is not nearly as helpful to Google's current legal battles as Google likes to suggest:

First, under European Law, national courts are prohibited from reaching judgments that risk conflicting with Decisions of the European Commission. For the Streetmap trial to proceed (rather than be stayed pending the outcome of the EC investigation), both Google and Streetmap had to agree that there was no overlap between the issues to be tried at trial and those under investigation by the Commission.

Second, unlike the double-sided search manipulation practices at the centre of the EC's Decision (and Foundem's Civil Claim), the StreetMap dispute only concerned one half of Google's anti-competitive conduct—the systematic *promotion* of Google's own mapping service. Crucially, the StreetMap trial did not involve any allegations about the systematic *demotion* of rival mapping services through anti-competitively applied penalty algorithms. As a result, Google never had to defend what is ultimately an indefensible position—namely, that it somehow makes objective sense for Google to artificially promote its own mapping service while simultaneously, and completely separately, going out of its way to artificially demote those of rivals.

Third, unlike Product Universals and Shopping Units, the user benefits of Mapping Universals are clear. An appropriately centred and scaled map within a user's search results can serve both as a standalone "answer" (imparting useful information without necessarily requiring any further clicks) and as a convenient interface on which to place other, geographically sensitive, search results. These benefits contrast sharply with the marginal, mostly cosmetic, benefits of other Universal inserts such as Product Universals, which often impart little useful information on their own and typically require further clicks to achieve anything meaningful. And of course, now that Google has replaced the relevance-based product listings of Product Universals with the pay-for-placement advertisements of Shopping Units, these inserts are even more harmful to users.

Fourth, while arguments about pro-competitive or less anti-competitive alternative implementations for Mapping inserts did feature in the StreetMap trial, Google did not face the insurmountable hurdle to an objective justification defence that it faces in comparison shopping and other verticals—where pro-competitive alternative implementations would be both straightforward and objectively better for users.¹⁶⁴ For example, StreetMap conceded during the trial that any alternative implementation for mapping inserts would likely require Google to query rival mapping services in real-time, potentially introducing delays measured in seconds rather than the milliseconds required for such an implementation to be practical.

And fifth, StreetMap dropped the ball on what should have been the least controversial element of its case. When Google began to insert large colourful Mapping Universals at the top of location-related search results, common sense tells us that this will have resulted in an increase in traffic to Google's mapping service and a decrease in traffic to rival mapping services. But Google presented the results

¹⁶³ <http://www.theguardian.com/technology/2016/feb/12/streetmap-loses-google-anticompetitive-search-abuse-case>

¹⁶⁴ For example, see http://www.foundem.co.uk/Foundem_Google_Search_Remedies_March_2017.pdf

of a 2006 “live experiment” that seemed to suggest otherwise. Google insisted that this contemporaneous experiment had found that the traffic to Google’s own mapping service and those of rivals was essentially unaffected by the presence or absence of Mapping Universals. But, as we explained in our April 2016 [Analysis of the Pivotal Evidence in the Streetmap Trial](#)¹⁶⁵, in truth Google’s experiment showed nothing of the sort.

Regrettably, neither Streetmap nor its experts spotted the fundamental flaw in Google’s interpretation of its “live experiment”, and, as a result, this immensely misleading data went unchallenged. On the pivotal question of the impact of Mapping Universals on traffic, Mr Justice Roth’s March 2016 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.”

1-2 March 2016

At the first ICOMP council meeting following the 2 December 2015 vote, Microsoft tables a resolution that ICOMP withdraw its EC Competition Complaint. After Microsoft is the only member to vote in favour of this resolution, Microsoft resigns from ICOMP.

20 April 2016 – Android SO

The European Commission issues a Statement of Objections to Google for various practices related to its Android mobile operating system.

21 April 2016

Presumably in accordance with the terms of Microsoft’s entente cordiale agreement with Google, Microsoft informs the Commission that it is withdrawing its and Ciao’s Competition Complaints against Google.¹⁶⁶

26 April 2016

Getty Images lodges a complaint against Google with the European Commission.

4 May 2016

Prompt lodges a complaint against Google with the European Commission.

14 July 2016 – Supplementary Statement of Objections (SSO)

The European Commission issues a Supplementary Statement of Objections (SSO) in the Google Search case, reinforcing its original charges with additional evidence and data.¹⁶⁷

The Commission also issues a Statement of Objections to Google regarding its AdWords Terms and Conditions.

19 July 2016

The Google Transparency Project publishes an analysis of some of Google’s academia-based lobbying activities:¹⁶⁸

“Google’s influence machine extends beyond its courtship of politicians and government officials. A new analysis by Campaign for Accountability shows academics and experts funded by Google have played a major role at academic and government conferences, debating some of the company’s

¹⁶⁵ http://www.foundem.co.uk/Streetmap_vs_Google_Analysis.pdf

¹⁶⁶ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

¹⁶⁷ http://europa.eu/rapid/press-release_IP-16-2532_en.htm

¹⁶⁸ <https://www.googletransparencyproject.org/articles/google-funded-speakers-dominate-policy-conferences>

core issues, such as privacy and antitrust laws. Nearly all of them failed to disclose their financial ties to conference attendees...”

14 October 2016

Kelkoo acquires the LeGuide group¹⁶⁹, comprised of LeGuide, Ciao, and Dooyoo.

19 October 2016

Foundem submits its formal Comments on the Commission’s SSO.

3 November 2016

Google submits its formal Response to the Commission’s 14 July SSO and publishes a public response in the form of a [blog post](#).¹⁷⁰

The prevailing view is that Google’s blog post is a straightforward rehash of its previous public arguments. But Foundem’s view is that it is, in fact, Google’s first tentative segue into a major new line of argument—one based on the false premise that the Commission’s formal anti-trust charges were about ads rather than search results and on the false notion that these two things are interchangeable.

A few hours later, Foundem distributes a brief public response to Google’s highly misleading blog post:

“...We are disappointed that Google continues to publicly defend its anti-competitive search manipulation practices by misrepresenting both the charges it faces and the important differences between “shopping” and “shopping comparison”.

Unfortunately for Google, its continuing protestations about the flourishing fortunes of Amazon and eBay remain the red herrings they have always been. Google does not (yet) have an eCommerce, auction, or merchant-platform service that competes with Amazon or eBay. Therefore, Google does not (yet) have any incentive to anti-competitively penalise Amazon or eBay in its natural search results, and it does not (yet) have any competing service of its own to anti-competitively favour.

Our June 2015 interactive presentation directly rebuts many of the key points in Google’s latest blog post.”

5 November 2016

From Charles Arthur’s response¹⁷¹ to Google’s 3 November Blog Post:

“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.) Could the EC just get on and determine its response now? This really has dragged on long enough.”

3 December 2016

Foundem temporarily suspends the remaining parts of its service¹⁷²:

“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.”

¹⁶⁹ <https://www.kelkoogroup.com/kelkoo-acquires-leguide-group/>

¹⁷⁰ <https://blog.google/topics/google-europe/improving-quality-isnt-anti-competitive-part-ii/>

¹⁷¹ <https://theoverspill.wordpress.com/2016/11/04/start-up-googles-endless-ec-case-here-comes-usb-c-mobo-no-go-south-koreas-weird-scandal-and-more/>

¹⁷² http://www.foundem.co.uk/hygiene/Temporary_Announcement_2016.jsp

12 December 2016

Suspecting that Google might deploy the arguments set out in its 3 November blog post as a core component of its public response to the (then widely anticipated) Prohibition Decision, Foundem publishes a paragraph-by-paragraph [deconstruction](#) of these arguments:¹⁷³

"[In what] is probably the most important paragraph of Google's blog post...Google seeks to gloss over the unpalatable truth at the centre of the Google Search case...if you're looking to buy something, Google has become increasingly particular about exactly how it wants to "connect you" to "merchants who sell [it]". That is, Google increasingly wants to connect you to merchants through paid advertisements or via its own price comparison service (either of which generate substantial revenues for Google). But, crucially, Google increasingly does not want to connect you to merchants through organic links or via a competing price comparison service (neither of which generate any revenues for Google)..."

Google's seemingly throwaway line about wanting to connect users to merchants "whether that's through organic links or ads" is, in fact, anything but throwaway. Google is inviting the reader to be nonchalant about whether Google uses natural (organic) search results or paid ads to connect users to merchants, as though the two things are interchangeable. But, as we saw...above, they are not...

Moreover, given how much of Google's latest blog post hinges on the fact that Google now employs a pay-for-placement model within its own price comparison service and associated Commercial Units, it is important to bear in mind that Google only introduced this fundamental change more than two years into the Commission's formal investigation¹⁷⁴. It is particularly ironic that Google is now using this transition from relevance-based placement to pay-for-placement as a defensive smokescreen for its anti-competitive practices, because this transition substantially and directly increased the consumer harm resulting from these practices. Indeed, prior to introducing pay-for-placement for its price comparison service, Google had spent more than a decade railing against the many obvious shortcomings of such models for users...

Before Google began anti-competitively demoting price comparison services within its search results, shopping via price comparison services was one of the most common ways that users shopped online... With just one click on one of [Google's] natural search results, users would be taken to the selected price comparison service and presented with a comprehensive survey of prices and availability for their chosen product from all or most of the leading online retailers (usually including Amazon and its various Marketplace Merchants). And, with just one more click, users would be delivered directly to the appropriate page on the website of their chosen merchant from where they could then complete a purchase.

In other words, prior to the introduction of Google's anti-competitive search manipulation practices, consumers were rarely more than two clicks away from buying their chosen product based on a comprehensive survey of the market. By contrast, following the introduction of Google's anti-competitive practices, consumers are now either several clicks away from a cursory survey of the market (which they must now conduct manually themselves) or just one click away from almost certainly paying more than they need to via one of Google's prominently positioned, pay-for-placement, Google-Shopping-derived advertisements."

19 December 2016

A Google Product Manager files an anonymous, John Doe suit against Google for its "draconian" and allegedly "illegal" confidentiality policies:¹⁷⁵

"Google's Efforts to Prevent Whistleblowing

¹⁷³ http://www.foundem.co.uk/Foundem_Response_to_Google_Nov_2016_Blog_Post.pdf

¹⁷⁴ Google introduced pay-for-placement in the U.S. and Europe in October 2012 and February 2013 respectively.

¹⁷⁵ <https://www.ibtimes.co.uk/google-sued-over-claims-running-secretive-internal-spy-programme-employees-1597600>

45. Google engages in a concerted effort to prevent both internal and external whistleblowing. Specifically, Google restricts what Googlers say internally in order to conceal potentially illegal conduct. It instructs employees in its training programs to do the following:

“Don’t send an e-mail that says ‘I think we broke the law’ or ‘I think we violated this contract.’”

The training program also advises employees that they should not be candid when speaking with Google’s attorneys about dangerous products or violations of the law. The program advises Googlers that some jurisdictions do not recognize the attorney-client privilege, and “Inside the U.S., government agencies often pressure companies to waive the privilege.” Google advises Googlers that they “should write e-mails with the assumption that somebody outside of Google, who may not be friendly to us, will get to read it.”

46. Indeed, a second training program entitled “You Said What?” specifically states that Googlers must “avoid communications that conclude, or appear to conclude, that Google or Googlers are acting ‘illegally’ or ‘negligently,’ have ‘violated the law,’ should or would be ‘liable’ for anything, or otherwise convey legal meaning.” It other words, Googlers are prohibited from communicating concerns about illegal conduct within Google.

47. As an example, in Google’s “You Said What?” training program, Google instructs Googlers to suppress information about dangerous products. Google also specifically advises Googlers to delete paragraphs from emails that suggest there are serious flaws in Google technology, that Google may be sued, or that there may be product liability damages. Googlers are also instructed to delete written communications that suggest Google might have breached any contracts.”

31 March 2017

As the company that proposed, advocated, and organised the broad [consensus](#) around the [Search Neutrality](#) and [Even-Handed](#) principles on which the Commission’s required *Equal Treatment* remedy would be based, Foundem publishes a paper discussing the available options for [Implementing and Monitoring](#) such a remedy.¹⁷⁶

The paper explains that Google has a range of implementation options available to it, falling into two broad categories. One option would preserve Universal Search, while finding a way to incorporate competing services alongside Google’s own. The other option would abandon Universal Search and instead entrust the selection and ranking of appropriate specialised services to Google’s core crawling and ranking algorithms (minus anti-competitive penalties). The second option is by far the more straightforward to implement and could easily replicate all of the functionality and visual enhancements of Universal Search, but in a way that would be both pro-competitive and more desirable for users. Given that this straightforward option would rely on Google’s core algorithms (albeit minus the anti-competitive penalties) and on a [meta tag schema](#) that Google has already developed, it should be possible for Google to implement such a remedy in a matter of weeks.

27 June 2017 – The Prohibition Decision and \$2.7 Billion Fine

The Commission adopts a [Prohibition Decision](#)¹⁷⁷ (a guilty verdict) in the Google Search case. Google is fined a record \$2.7 billion (more than doubling the previous record) and is given 90 days to end its illegal, anti-competitive search manipulation practices.¹⁷⁸

Contrary to some reports, the Commission did not leave it to Google to propose a remedy. The Prohibition Decision made clear¹⁷⁹ that the Commission required the principle-based *equal-treatment* remedy widely endorsed by Complainants and consumer groups. It was, however, left to Google to propose precisely how it intended to *implement* this remedy.

¹⁷⁶ http://www.foundem.co.uk/Foundem_Google_Search_Remedies_March_2017.pdf

¹⁷⁷ A redacted version of the Prohibition Decision was published on 18 December:

http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

¹⁷⁸ http://europa.eu/rapid/press-release_IP-17-1784_en.htm

¹⁷⁹ http://europa.eu/rapid/press-release_IP-17-1784_en.htm and section 12.2 of the [Prohibition Decision](#)

As we wrote in November 2013¹⁸⁰:

“What the even-handed principle would look like in practice would be entirely up to Google. Google would be left free to pursue any and all developments that improve the quality of its search results or enrich or enhance their display. The only difference would be that, under a non-discrimination remedy, the search results afforded these enhancements would be based on their relevance to the users’ query rather than Google’s financial interests.”

30 August 2017

Google privately submits an outline of its remedy/compliance proposals—the changes Google plans to make to its business practices to comply with the equal-treatment requirement set out in the Commission’s Prohibition Decision.

Google could and should have interpreted the June 2017 Prohibition Decision’s demand for equal treatment within Google’s search results pages as a call for a return to the relevance-based search results Google built its reputation and monopoly on. After all, that is what most of Google’s users wrongly assume they are still getting when they use Google. And, as we have demonstrated¹⁸¹, Google’s core search algorithms are more than capable of identifying the most relevant pages from the most relevant websites, and Google could readily apply the same visual enhancements to all CSS results that it currently reserves for its own. But, instead, Google thumbed its nose at both the Commission and its own users by cynically misinterpreting the Commission’s call for equal access to relevance-based search results as a demand for unequal, and positively harmful, access to pay-for-placement advertisements.

September 2017

Google begins privately briefing a number of European CSSs about its proposed “remedy”.

Despite the Prohibition Decision making it clear¹⁸² that pay-for-placement, auction-based traffic cannot be a substitute for the free, natural search traffic Google had been illegally commandeering, Google is once again proposing to do precisely that. The only notable difference between this auction-based proposal and Google’s three previous auction-based proposals, which had all been resoundingly rejected under Commissioner Almunia, was that, this time, Google’s own CSS would also “participate” in the auction.

But, as we would demonstrate over the ensuing weeks and months, Google Shopping’s “participation” in the auction isn’t real; its bids are just meaningless internal accounting, where every purported “cost” has a corresponding and equal “credit”.¹⁸³ Under Google’s so-called “remedy”, rivals would be compelled to bid away the vast majority of their profits (and with it their ability and incentive to innovate and grow), while Google’s own “bids” would cost it nothing.

11 September 2017 – Google’s Appeal of the Google Search (Comparison Shopping) Decision

Google lodges an appeal with the General Court against the EC’s June 2017 Prohibition Decision¹⁸⁴.

A summary of Google’s appeal was published in the [Official Journal of the EU](#) on 30 October 2017¹⁸⁵.

¹⁸⁰ http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf

¹⁸¹ For example, see http://www.foundem.co.uk/Foundem_Search_Remedies_March_2017.pdf

¹⁸² E.g., see paragraphs 544 and 551 of the [Prohibition Decision](#)

¹⁸³ http://www.foundem.co.uk/fmedia/Foundem_Apr_2018_Final_Debunking_of_Google_Auction_Remedy/

¹⁸⁴ <https://www.theguardian.com/technology/2017/sep/11/google-appeals-eu-fine-search-engine-results-shopping-service>

¹⁸⁵ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.369.01.0037.01.ENG&toc=OJ:C:2017:369:TOC

14 September 2017

Following a fresh wave of revelations about Google's extensive and often clandestine network of academic influencers¹⁸⁶, Foundem publishes some thoughts on this topic:

"We accept that many of the academics and other professionals within Google's extensive network of influencers sincerely believe that their pro-Google opinions are their own and are not influenced by their (or their institution's) financial ties to Google. However, it is noteworthy how often these opinions are underpinned by an eerily consistent misrepresentation of the basic facts of the Google case that belies, at the very least, a failure to treat Google's representations of the case with the healthy scepticism one would normally reserve for a defendant.

The criticisms of the EC's Google Search verdict by Google-funded academics and think tanks have tended to rely on and mirror many of the same fundamental misrepresentations and omissions that Google's own criticisms of the verdict rely on. For example:

- *They tend to focus exclusively on Google's anti-competitive promotion of its own services (through Universal Search), while ignoring Google's anti-competitive demotions and exclusions of competing services (through anti-competitive penalties)...*
- *They neglect to point out that pay-for-placement advertisements are not a substitute for the relevance-based search results they are anti-competitively replacing...[and]*
- *They ignore the inconvenient yet immutable fact that Google only introduced these pay-for-placement advertisements (which underpin all of Google's misleading ad-based arguments) in February 2013—at least 7 years after the introduction of Google's anti-competitive practices, 3 years after the start of the EC's investigation, and 11 months after the commencement of "settlement" negotiations with Commissioner Almunia..."¹⁸⁷*

18 September 2017

Reuters [breaks the story](#)¹⁸⁸ that Google's proposed remedy/compliance-mechanism in response to the Commission's June 2017 Prohibition Decision is based on yet another version of a pay-for-placement auction. Foundem responds to the news with a blog post, [The Return of the Undead Auction](#), which explains (once again) why a pay-for-placement auction cannot replace the free, relevance-based traffic that Google has spent more than a decade illegally commandeering and that all vertical search services (including Google's own) rely on:

"Google's three previous remedy proposals under Commissioner Almunia—[were all] resoundingly rejected precisely because they were auction-based (see our deconstructions of Google's [first](#), [second](#), and [third](#) commitment proposals to see why).

In our [March 2017 Remedy Paper](#), we set out the various options available to Google for implementing a solution that would be both effective and compliant with the Commission's stated requirements for an equal-treatment remedy. It is no coincidence that none of these options involved a paid auction. We will reserve final judgement until we have seen the details of Google's proposal, but it is difficult to imagine how Google could devise an auction mechanism that would not inflict significant additional consumer harm, both by further restricting competition and by aiding and abetting Google in its long-term goal to substitute unprofitable, relevance-based natural search results with highly-profitable, pay-for-placement¹⁸⁹ advertisements. It is also difficult to

¹⁸⁶ E.g. <http://www.googletransparencyproject.org/articles/google-academics-inc>, <https://www.nytimes.com/2017/08/30/us/politics/eric-schmidt-google-new-america.html>, and <https://www.wsj.com/amp/articles/think-tank-fires-scholar-who-praised-large-antitrust-fine-against-google-1504139004>

¹⁸⁷ Extract from [Google's Influence over its Network of Influencers](#)

¹⁸⁸ <https://uk.reuters.com/article/uk-eu-google-antitrust-exclusive/exclusive-google-offers-to-treat-rivals-equally-via-auction-sources-idUKKCN1BT141>

¹⁸⁹ In a pay-for-placement model, merchants bid for placement and the amount a merchant is willing to pay is a determining factor in where its offers are placed. In such models, product listings are not sorted by price, but instead prioritise offers from merchants willing to pay Google the most money for a click.

imagine how Google could devise an auction that Google's own CSS could meaningfully participate in (without full-blown structural separation), or that would not result in Google's competitors being compelled to bid away the majority of their profits to Google. In other words, it is difficult to imagine how Google could devise an auction-based remedy that does not fall far short of the Commission's stipulated requirements for an equal treatment remedy."

21 September 2017

BEUC writes an [open-letter](#)¹⁹⁰ to Commissioner Vestager urging the Commission to reject Google's auction-based proposal:

"...an auction-based model will not provide European consumers with results based on merit or consumer relevance. On the contrary, such a system would likely have adverse effects on competition and consumer welfare. Similar auction mechanisms were already under discussion and proved to be unsuitable to address the European Commission's concerns. The reasons for rejecting this proposal are still valid today."

28 September 2017 – Google's CSS Auction

Google's auction-based so-called "Compliance Mechanism" (the CSS Auction) goes live.

Foundem publishes an [interactive presentation](#)¹⁹¹ explaining why Google's CSS Auction is brazenly non-compliant with the Decision's required equal treatment standard.

On 7 November, Foundem follows up with a more detailed [second presentation](#)¹⁹² on the same topic.

December 2017

During December 2017, BEUC, Foundem, Connexity, the EFTA, ICOMP, Kelkoo, Consumer Watchdog, Yelp, VDZ, Visual Meta, BDZV, the Federal Republic of Germany, the OIP, Twenga, and FairSearch apply for leave to Intervene in Google's Appeal in support of the Commission. Similarly, Prestige Gifting and the CCIA apply for leave to Intervene in support of Google.

18 December 2017

The Commission publishes a [Non-Confidential Version](#)¹⁹³ of its June 2017 Prohibition Decision.

31 January 2018

The Commission files its *Defence* of the June 2017 Prohibition Decision with the Court.

8 February 2018

Wired Magazine publishes an article on Foundem: [Google's nemesis: meet the British couple who took on a giant, won... and cost it £2.1 billion](#).¹⁹⁴

And here is the accompanying [podcast interview](#).¹⁹⁵

20 February 2018

The New York Times Magazine publishes a cover story on [The Case Against Google](#)¹⁹⁶.

¹⁹⁰ http://www.beuc.eu/publications/beuc-x-2017-098_google_case-consumer_concerns_on_auction-based_model_for_shopping_services.pdf

¹⁹¹ http://www.foundem.co.uk/fmedia/Foundem_Sep_2017_Undead_Auction/

¹⁹² http://www.foundem.co.uk/fmedia/Foundem_Nov_2017_Undead_Auction_Part_2/

¹⁹³ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

¹⁹⁴ <http://www.wired.co.uk/article/fine-google-competition-eu-shivaun-adam-raff>

¹⁹⁵ <http://www.wired.co.uk/article/adam-shivaun-raff-google-competition-case-eu>

¹⁹⁶ <https://www.nytimes.com/2018/02/20/magazine/the-case-against-google.html>

28 February 2018

Foundem writes an [open letter](#)¹⁹⁷ to Commissioner Vestager, signed by 19 companies and associations from across the comparison shopping, travel search, local search, digital mapping, and publishing sectors:

“Google’s current remedy proposal has been in operation for more than four months, and the harm to competition, consumers and innovation caused by the infringement established by the Decision has continued unabated...

In our view, Google’s current remedy proposal is no better than Google’s Commitment proposals under Commissioner Almunia, and in some ways may be worse.

Google’s remedy proposal is, on its face, non-compliant with the Prohibition Decision...and the resultant wholesale replacement of relevance-based search results with pay-for-placement ads has terrible consequences for consumers.”

March 2018

Google’s CSS Auction is such an unattractive, low-margin and ultimately pointless proposition that few rivals have chosen to participate in it. And many of those that have, have done so primarily to gather data demonstrating just how non-compliant Google’s so-called “Compliance Mechanism” is.

In March 2018, Google starts to trial a CSS Partner Programme, offering rivals a 20-30% rebate on their Google auction costs. Presumably, the expectation was that this time-limited offer would, at least temporarily, allow more rivals to win the auctions and thereby create the illusion of a functioning “remedy”.

But, for various reasons¹⁹⁸, Google’s CSS Partner Programme didn’t perform as planned—prompting Google to take even more drastic action (see June 2018 below).

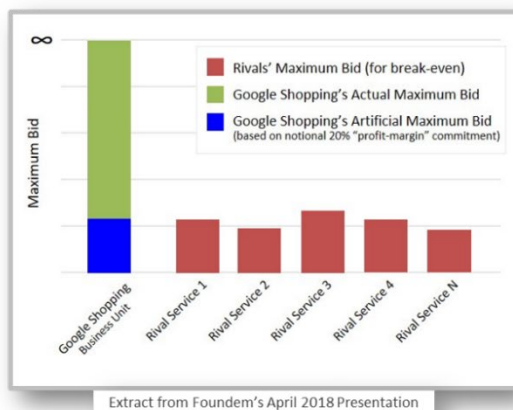
18 April 2018

Foundem publishes an [online presentation](#)¹⁹⁹ demonstrating that Google’s participation in its own CSS Auction—which ostensibly requires Google Shopping to bid for placement like everyone else—is a meaningless façade. While rival CSSs are compelled to bid away their anticipated profit (and with it their incentive and ability to innovate and grow), Google Shopping’s bids cost nothing—they are just meaningless internal accounting, paid from one Google business unit to another. As we demonstrate, the real purpose of Google’s “commitment” to run Google Shopping at a notional profit is to impose an artificial limit on Google’s otherwise unlimited ability to outbid its rivals. Indeed, without this “commitment”, Google Shopping could bid millions of dollars per click without it making any difference at all to Google’s bottom-line. As Google’s accounts would readily verify, for every Google “bid” recorded as a “cost” there is a corresponding and equal credit recorded as “revenue”:

¹⁹⁷ <http://www.searchneutrality.org/google/open-letter-to-commissioner-vestager-feb-2018>

¹⁹⁸ http://www.foundem.co.uk/The_Google_SpendMatch_Debacle.pdf

¹⁹⁹ http://www.foundem.co.uk/fmedia/Foundem_Apr_2018_Final_Debunking_of_Google_Auction_Remedys/



Alphabet Inc. Consolidated Statements of Income Data (in millions)	
Revenues	
Advertising etc.	\$107,000
Google Shopping Advertiser Income	\$1,000
CS Auction Income (from Google Shopping)	\$800
...	
Costs and Expenses	
Total Costs	(\$57,950)
Google Shopping (fixed costs)	(\$50)
Google Shopping (auction bidding costs)	(\$800)
...	
Total Profit	\$50,000
(includes \$950 from Google Shopping and CS Auction)	
Source: Made-Up Data for Illustrative Purposes Only	

Because... Every Google Shopping auction cost has a corresponding Google Inc. auction credit. And the two cancel each other out.

Meaningless...

So... Google Shopping's bids have no impact whatsoever on Google's bottom-line profit.

Extract from Foundem's April 2018 Presentation

7 May 2018

Google files its *Reply* to the Commission's Defence with the General Court in Luxembourg.

June 2018 – The Dawn of the Fake CSSs

After the cash-back incentives of Google's CSS Partner Programme failed to either attract more CSSs or allow them to consistently outbid the meaningless, internal accounting, bids of Google's own CSS, Google began quietly reaching out to Ad Agencies and encouraging them to participate in the CSS Auction by posing as CSSs. By becoming a "Google certified Comparison Shopping Partner" these ad agencies could benefit from the cash-back incentives offered to CSSs, without making any substantial changes to their business model or websites. As one of these Ad Agencies (Croud) explained to its merchant clients:²⁰⁰

"Comparison Shopping Partners are certified CSSs that have completed in-depth training to help businesses make the most of Google Shopping Ads...For shoppers searching for your products, Google Shopping ads will look exactly the same as usual, just with a blue link showing 'By Croud'...If a user clicks on the ad, they will be directed as normal to the product page on your website. If they click on the 'By Croud' link they will be sent through to the product page on Croud's CSS website, from where they then navigate to your website to purchase. Very few people currently click on this link (0.0004% click-through rate); however we'll be monitoring performance very closely over the coming days."

After privately notifying the Commission of this troubling development, Foundem published a [blog post](#)²⁰¹ exposing some of the behind-the-scenes machinations and dire consequences of this secretive process.

18 July 2018 – Android Prohibition Decision

The European Commission adopts a Prohibition Decision²⁰² in the Google Android case, fining Google €4.34 billion for imposing illegal restrictions on Android device manufacturers and mobile network operators to cement its dominant position in general internet search.

20 July 2018

The Commission files its *Rejoinder* to Google's Reply with the General Court in Luxembourg.

²⁰⁰ <https://croud.com/blog/croud/google-comparison-shopping-croud-becomes-first-accredited-uk-agency-partner/>

²⁰¹ http://www.foundem.co.uk/The_Google_SpendMatch_Debacle.pdf

²⁰² https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581

5 October 2018

[Sky News piece](#) on the rise of the Fake CSSs in Google's CSS Auction.²⁰³

22 November 2018

Foundem sends an [open letter](#)²⁰⁴ signed by 14 leading European CSSs urging Commissioner Vestager to commence non-compliance proceedings against Google's CSS Auction. This letter reaffirms that Google's CSS Auction is neither compliant nor effective and highlights the dangers of allowing Google's growing use of Fake CSSs to create the veneer of a functioning comparison shopping market:

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

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

...far from restoring a thriving comparison shopping market, Google's CSS auction all but eradicates it. Pay-for-placement advertisements are the antithesis of relevance-based search results, and, because users who click on them are taken directly to merchants rather than to the CSSs that feature them, there is no opportunity for CSSs or users to add or derive value from the process.

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

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

7 December 2018

The General Court rejects the applications for leave to intervene filed by *Prestige Gifting*, *FairSearch*, *Consumer Watchdog*, *Yelp*, *Connexity*, the *OIP* and *ICOMP* for "failure to establish a sufficient interest".

17 December 2018

The General Court grants leave to intervene to *BEUC*, *Foundem*, *CCIA*, *VDZ*, *BDZV*, *Visual Meta*, *Twenga*, the *EFTA*, *Kelkoo*, and the *Federal Republic of Germany*.

The Interveners receive non-confidential versions of the procedural documents, including the Application, Defence, Reply, and Rejoinder.

²⁰³ https://www.youtube.com/watch?v=9ES8F_idAJI&feature=youtu.be

²⁰⁴ <http://www.searchneutrality.org/google/comparison-shopping-services-open-letter-to-commissioner-vestager>

15 March 2019

Deadline for Interveners in Google's Appeal to submit their Statements in Intervention.

7 May 2019

A [Grant Thornton study](#) commissioned by several of Europe's leading CSSs concludes that European consumers are paying a heavy price for the EC's failure (so far) to enforce its June 2017 Prohibition Decision.

According to the study, prices within Google's CSS Auction were 13.7% higher on average compared to those available from a leading CSS. In some countries this disparity rose to around 30%. The study also found that 23% of the offers featured within Google's CSS Auction were out of date or incorrect compared to just 6% for leading CSSs.

1 June 2019 – Launch of DOJ Antitrust Probe

[CNN](#) and the Wall Street Journal report that the U.S. DOJ has wrested regulatory jurisdiction over Google from the FTC and is planning to open a fresh antitrust investigation into Google/Alphabet, revisiting the issues examined by the failed FTC investigation five years earlier.

3 June 2019

The U.S. House Judiciary Antitrust Subcommittee announces the launch of a bipartisan investigation into the possible anti-competitive conduct of Google, Facebook, Apple, and Amazon.²⁰⁵

21 June 2019

Google and the EC submit their Observations/comments on the intervenors' Statements in Intervention in the Appeal of the EC's June 2017 Prohibition Decision.

9 September 2019

A coalition of 48 U.S. State AGs open an [antitrust probe](#)²⁰⁶ into Google's practices.

10 September 2019

Margrethe Vestager is appointed EC Competition Commissioner for an unprecedented second consecutive term. With an expanded role as an Executive Vice President, Vestager will also oversee the EC's digital policy.

October 2019

Foundem has a series of meetings in Washington to assist with the recently opened DOJ, State AG, and House Judiciary Antitrust Subcommittee investigations into Google's anti-competitive search practices.

In particular, we discussed:

- the critical importance of addressing both halves of Google's double-sided search manipulation practices, and how to distinguish between the lawful (anti-spam) and unlawful (anti-competitive) application of Google's algorithmic search penalties;
- the implications of Google's October 2012 transition from the link-based (traffic-diverting) abuse of Product Universals to the ad-based (traffic-and-revenue-diverting) abuse of Shopping Units;
- the existence of a straightforward, pro-competitive, and objectively better alternative implementation for Google's conduct, and why this terminally undermines any Google claims that its conduct is or was objectively justified. As we explained, a minor tweak to Google's generic

²⁰⁵ <https://www.cnet.com/news/house-democrats-announce-antitrust-probe-of-facebook-google-tech-industry/>

²⁰⁶ <https://www.wsj.com/articles/attorneys-general-launch-probe-of-google-11568055853>

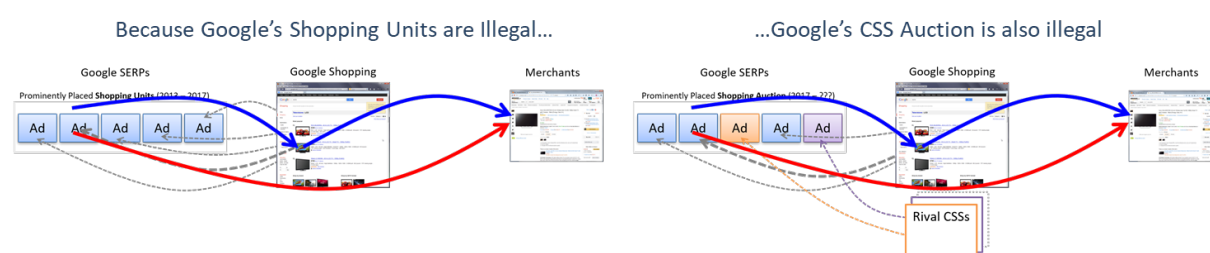
search algorithms would allow Google to reproduce all of the visual enhancements of Universal Search, but in a way that draws results from all vertical search services (not just Google's own).

We also discussed why understanding and properly accounting for these points will be critical for anyone investigating, prosecuting, or legislating against the current and future manifestations of Google's anti-competitive search practices.

1 November 2019

Foundem publishes an [online presentation](#)²⁰⁷ demonstrating that Google's CSS Auction is not only non-compliant with the required equal-treatment standard set out in the EC's Prohibition Decision, but is in fact a direct continuation of the same abuse identified and prohibited by that Decision.

As we demonstrate, the Decision's core 'economic-value-to-traffic' finding shows that Google's CSS Auction inflicts the same anti-competitive harm as the Shopping Units and demotion algorithms it is supposed to be remedying—sending Google *all* of the revenue-derived-traffic for its own product-ads and *nearly all* of the revenue-derived-traffic for its rivals' product-ads.



Google would later confirm this point. At its Appeal Hearing in February 2020, it suited Google's other arguments to acknowledge from the top-down what our presentation had proved from the bottom-up—namely, that Google's CSS Auction offers rival CSSs nothing that wasn't already available to them within Shopping Units.²⁰⁸

28 November 2019

41 European CSS's send an [Open Letter](#) to EC Competition Commissioner Vestager, once again urging the Commission to act on the non-compliance of Google's CSS Auction and to enforce its June 2017 Prohibition Decision.²⁰⁹

29 November 2019

The European Parliament approves the new Commission, and Vice-President Vestager begins her second term as EU Competition Commissioner.

3 December 2019

Google founders Larry Page and Sergey Brin announce that Google CEO Sundar Pichai will soon also become CEO of Google's parent company, Alphabet.²¹⁰

12-14 February 2020 – Google's Appeal Hearing before the General Court in Luxembourg

The 3-day Hearing for Google's Appeal of the EC's June 2017 Prohibition Decision takes place at the General Court in Luxembourg.

²⁰⁷ http://www.foundem.co.uk/fmedia/Foundem_Google_CSS_Auction_Revenue_Counts_As_Traffic_Nov_2019

²⁰⁸ See the entry for 18 September 2020 for more details.

²⁰⁹ <https://www.reuters.com/article/us-eu-alphabet-antitrust/shopping-rivals-urge-eu-to-act-against-google-for-allegedly-favoring-own-service-idUSKBN1Y20W4>

²¹⁰ <https://techcrunch.com/2019/12/03/sundar-pichai-alphabet-ceo/>

Foundem, BEUC, BDZV, Kelkoo, Twenga, VDZ, and Visual Meta intervene in support of the Commission. And the CCIA (the Google-funded²¹¹ *Computer and Communications Industry Association*) intervene in support of Google.

The Appeal Hearing provided the first public glimpse into some of the obfuscatory arguments and credulity-stretching “evidence” Google has been quietly deploying behind-the-scenes ever since its May 2010 Response to Foundem’s February 2010 Competition Complaint.

The following is a crude representation of Google’s key claims during the Appeal Hearing and the house-of-cards interdependencies between them:

1 st Line Defence/Appeal: Deny Everything		2 nd Line Defence/Appeal: Claim Objective Justification	
Claim Product Universals were rarely shown and only inserted when more relevant	Claim Shopping Units are an evolution of Text Ads not Product Universals	Claim conduct had negligible anti-competitive effects	Claim conduct was a product improvement
		Claim anti-competitive penalties are not part of the abuse	Claim no alternative (pro-competitive) implementation

But, as the Commission and intervenors hopefully made clear during the Hearing, none of these Google claims are true.

For example, Google inserted Product Universals whenever there was a reasonable chance they might be relevant, and Google made no attempt to determine whether rival CSSs might be more or less relevant than its own; Shopping Units are not an evolution of text ads, they are an even more anti-competitive evolution of Product Universals, in which traffic-diverting links to Google’s CSS are replaced with traffic-and-revenue diverting advertisements lifted directly from Google’s CSS; and there is and always has been a straightforward alternative to Universal Search that would be both pro-competitive and objectively more beneficial for Google’s users.²¹²

One of the most notable of Google’s false claims is its long-running assertion that the EC does not object to Google’s penalty algorithms or deem them unlawful. This baseless Google claim is also one of the most pivotal because of the extent to which Google’s other false claims rely on it. For example, Google’s evidence-defying claims that its conduct had little or no impact on rival CSSs’ traffic are entirely dependent on cynically overlooking the devastating effect of these penalty algorithms.

On its face, Google’s claim that the Decision did not deem anti-competitive penalties to be unlawful is a strange choice of hill for Google to die on. After all, Google’s anti-competitive penalties are by far the more harmful half of Google’s double-sided unlawful conduct and have always been at the epicentre of the EC’s case. But in truth, short of conceding defeat, Google had little choice but to cleave to its fictional version of the Decision. As we have long pointed out, the double-sided nature of Google’s anti-competitive practices—where one actively *promotes* Google’s own services and the other actively *demotes* those of rivals—makes them difficult or impossible to defend simultaneously; any defence of one practice inevitably undermines (or is undermined by) the defence of the other.

For example, any attempt to justify the artificial promotion of Google’s CSS on the basis that CSSs are what users want would inevitably undermine the attempt to also justify the artificial demotion of rival CSSs on the grounds that CSSs are not what users want—and vice versa. The truth, of course, is that when a user wants a CSS, what they want is not Google’s CSS or a rival’s CSS, but whichever is most relevant to their query.

Of course, it’s one thing to stick doggedly to the false claim that the Decision does not object to penalties when the Commission isn’t there to dispute it. But it is quite another to repeat this false claim when the Commission (the author of that Decision) is in the Courtroom, actively and vehemently refuting it. As a result, Google’s fundamental misrepresentation of the Prohibition Decision finally ran out of road at the Hearing.

²¹¹ <https://www.techtransparencyproject.org/articles/google-funded-speakers-dominate-policy-conferences>

²¹² For example, see http://www.foundem.co.uk/Foundem_Google_Search_Remedies_March_2017.pdf

As the Commission noted in its opening remarks:

“This is a very unusual case...It is unusual because there is a dispute about what’s in dispute. Most competition cases involve disputes about whether the Commission has sufficiently shown that the undertakings concerned did what the Decision finds that they did, and, if so, whether the conduct falls within the scope of the competition rules. Here, although we submit the Decision is very clear in defining the conduct...[Google’s] application doesn’t engage with the conduct but only one element of it.”

The Commission pointed out that Google’s Appeal Application left the Decision’s “findings relating to demotion algorithms unchallenged”, noting that Google’s “reluctance to address the actual conduct impugned by the Decision” was a “distortion of the Decision” “that afflicts Google’s whole approach to the case”. As the Commission wryly noted, “it’s as if Google has applied some sort of ranking algorithm to the Decision and decided that parts of it just aren’t relevant.”

The Commission’s remarks on the afternoon of Day 1 also provide a useful summary of the Decision’s case that cuts through many of Google’s obfuscatory arguments, including Google’s attempts to fundamentally distort the Decision’s appropriately nuanced position on anti-competitive penalties:

*“The Decision does not object as such to the way in which Google shows product results on its search results pages. Google is perfectly entitled to show prominently grouped product results on its search results pages. Google is also perfectly entitled to apply algorithms that lower the visibility of certain results that Google considers to be less relevant. What, however, Google is **not** entitled to do is to leverage its market dominance, its overwhelming dominance in general Internet search, into comparison shopping services in the way that it did. It cannot at the same time promote results from its own service, and embellish them with attractive features, while at the same time applying algorithms that push down the results of rivals and show those rivals without the attractive features that Google’s results have. This behaviour is simply not competition on the merits and is contrary to the EU anti-trust rules.*

While Google may, and I stress may, have improved its general search service by showing grouped product results on its search results pages, Google certainly did not improve its general search service by showing grouped product results only from its own CSS, while making the results of rival CSSs as good as invisible.”

21 April 2020

Google [announces](#) the introduction of a “free listings” option for Google Shopping alongside its pay-for-placement advertisements. Google frames the move as a gesture of goodwill for the many businesses “struggling” as a result of the coronavirus pandemic:

“The retail sector has faced many threats over the years, which have only intensified during the coronavirus pandemic. With physical stores shuttered, digital commerce has become a lifeline for retailers...While this presents an opportunity for struggling businesses to reconnect with consumers, many cannot afford to do so at scale.

In light of these challenges, we’re advancing our plans to make it free for merchants to sell on Google. Beginning next week, search results on the Google Shopping tab will consist primarily of free listings, helping merchants better connect with consumers, regardless of whether they advertise on Google.”²¹³

The first thing to note is that while this move comes amidst a pandemic, it also comes amidst renewed U.S. regulatory scrutiny of Google’s anti-competitive practices, including the preferential treatment and consumer-hostile pay-for-placement business model of Google Shopping.

²¹³ <https://blog.google/products/shopping/its-now-free-to-sell-on-google/>

The second thing to note is the misleading way Google presents these “free listings”, making them sound far more prevalent and significant than they are. Google’s statement that search results on Google Shopping will now “*consist primarily of free listings*”, for example, sounds like a claim that most of the results users will see within Google Shopping from now on will be free listings. But that is not what Google is saying.

In reality, most of the results that users will see following the change will be precisely the same pay-for-placement ads they would have seen before the change. While it might be true that *most* of the merchant offers within Google Shopping will soon be free listings, these will predominantly be for long-tail products that will rarely be searched for or seen.

And on the flip-side, the “struggling” merchants Google is claiming to want to help will continue to only receive significant volumes of traffic if they are prepared to pay Google through the nose for the privilege. While their offers for flare-pins and rechargeable sweater defuzzers might now appear free of charge for a handful of long-tail queries, their high-volume, high-value offers (for popular digital cameras, cell phones, TVs, and so on) will still require them to hand Google the vast majority of their anticipated profit.

This important distinction—between the many low-volume, niche product searches that make up the long-tail and the far fewer high-volume, high-demand product searches that generate most of the profits—brings us to the third and final thing to note about Google’s announcement:

Like all search services, Google needs to perform well for the many millions of long-tail, niche queries in order to cash-in on the much smaller number of commercially-valuable queries for popular products. And this is where the highly lucrative (but, according to Larry Page in 2001, “immoral”²¹⁴) pay-for-placement model of Google Shopping presents Google with a problem. The requirement that merchants hand Google the lion’s share of their anticipated profit in exchange for prominent placement can be an insurmountable barrier to many smaller, independent merchants. But these smaller, and often niche merchants tend to be the source of much of the web’s long-tail product inventory. As a result, whatever other motives Google may have for re-introducing free listings (altruistic or otherwise), one clear motive is that it will help Google to fill the gaps in its long-tail inventory.

And, of course, once these free listings have served their purpose—helping Google to establish direct relationships with tens of thousands of smaller merchants, filling in the long-tail gaps in Google Shopping’s product inventory, and muddying the waters of the various ongoing antitrust probes—will anyone be surprised when Google unceremoniously pulls the plug on these free listings and reverts back to a fully monetised model?

After all, this would not be the first time that Google could be accused of a predatory-pricing bait-and-switch (for example, see Android²¹⁵, Google Maps²¹⁶, Gmail, Google Photos, Google Drive, and even Google Shopping when it transitioned from the free listings of Google Product Search²¹⁷).

18 September 2020

Foundem publishes a [blog post](#)²¹⁸ responding to recent comments²¹⁹ from the new Director-General of the European Commission’s antitrust arm.

In the blog post, we demonstrate that the Commission was wrong to suggest that Google’s CSS Auction had led to “*good, positive developments*”. Indeed, we point out that, at the recent Appeal

²¹⁴ See Page 19 of [http://www.foundem.co.uk/Foundem Response to Google Nov 2016 Blog Post.pdf](http://www.foundem.co.uk/Foundem%20Response%20to%20Google%20Nov%202016%20Blog%20Post.pdf) for Google Founder, Larry Page’s quote from a 2001 interview with Playboy Magazine.

²¹⁵ <https://www.theguardian.com/technology/2013/apr/09/google-faces-complaint-european-regulator-pricing>

²¹⁶ E.g., <https://www.osservatorioantitrust.eu/en/the-court-of-appeal-of-paris-reverses-the-google-judgment-in-the-map-plugin-sector/>

²¹⁷ See 31 May 2012 above

²¹⁸ <http://www.searchneutrality.org/google/google-call-for-enforcement-action>

²¹⁹ See <https://www.bloomberg.com/news/articles/2020-09-16/after-9-billion-in-fines-eu-says-something-nice-about-google>

Hearing in Luxembourg, Google had confirmed from the top-down what our December 2018 [presentation](#) had proven from the bottom-up. Google had acknowledged that its purported CSS Auction “remedy” offers nothing to rival CSSs that wasn’t already available to them under Google’s previous, and demonstrably unlawful, conduct. As Google put it at the Hearing: allowing “[rival CSSs] to place product ads that link to the pages of their advertising partners...is what Google already allowed [rival CSSs] to do before the Decision.”

As our blog post concluded:

“This belated confession by Google should put an end to the EC’s procrastination. It is well past time for the EC to enforce its Decision and issue non-compliance proceedings against Google’s anti-competitive and brazenly non-compliant CSS Auction. This enforcement action would now be supported by (a) the overwhelming evidence from complainants and market-participants, (b) the fundamental findings of the EC’s Prohibition Decision, and (c) Google’s own explicit admissions during the Appeal Hearing”.

4 October 2020

The House Judiciary Antitrust Subcommittee publishes the [Report and Recommendations](#)²²⁰ of its sixteen-month *Competition in Digital Markets* investigation into Google, Facebook, Apple, and Amazon.

The report’s findings regarding Google’s search manipulation practices accord with and support the findings of the EC’s June 2017 Prohibition Decision and the Foundem complaint that spawned it. For example:

“Google maintained its monopoly over general search through a series of anticompetitive tactics. These include an aggressive campaign to undermine vertical search providers, which Google viewed as a significant threat. Documents show that Google used its search monopoly to misappropriate content from third parties and to boost Google’s own inferior vertical offerings, while imposing search penalties to demote third-party vertical providers. Since capturing a monopoly over general search, Google has steadily proliferated its search results page with ads and with Google’s own content, while also blurring the distinction between paid ads and organic results. As a result of these tactics, Google appears to be siphoning off traffic from the rest of the web, while entities seeking to reach users must pay Google steadily increasing sums for ads. Numerous market participants analogized Google to a gatekeeper that is extorting users for access to its critical distribution channel, even as its search page shows users less relevant results...

...Foundem, a UK-based comparison shopping search provider, has noted that Google’s “overwhelming global dominance” of horizontal search creates for most websites an “uncomfortable but unavoidable reliance on Google.” Many other companies described their dependence on Google in similar terms...

According to internal documents, Google executives recognized as early as 2005 that specialized—or “vertical”—search engines could pose a threat to Google’s long-term dominance...[And] Google’s apprehension about vertical search providers persisted. For example, a 2006 strategy memo identifying challenges asked, “How do we deal with the problem of ‘proliferating verticals?’”. Another message noted, “Vertical search is of tremendous strategic importance to Google. Otherwise, the risk is that Google is the go-to place for finding information only in the cases where there is sufficiently low monetization potential that no niche vertical search competitor has filled the space with a better alternative.”...While vertical search providers were complements to Google in the short term, Google recognized their potential for disintermediating Google and therefore viewed them as a major competitive threat. The fact that several of these verticals specialized in commercial queries that were among the most valuable for Google further raised the stakes. Documents show that Google developed a multi-pronged strategy to thwart the threat. Two of

²²⁰ https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

these tactics included: (1) misappropriating third-party content; and (2) privileging Google's own services while demoting those of third parties. Through these practices, Google exploited its dominance to weaken potential rivals and boost its search advertising revenue."

20 October 2020 – U.S. DOJ Files Antitrust Lawsuit Against Google

Under pressure to complete its investigation before the upcoming U.S. Presidential Election in November, the DOJ and 11 State AGs file a lawsuit against Google for illegal monopoly maintenance:

*"The crux of the complaint is that Google has allegedly used its monopoly power to tie up distribution channels for online search and related markets. The Justice Department claims that Google has "foreclosed competition for internet search" through exclusionary agreements that deny rivals the opportunity to achieve the necessary scale to challenge its dominance."*²²¹

The initial, relatively narrow scope of the DOJ's complaint is expected to broaden over the coming months (for example, to include Google's anti-competitive search manipulation practices).

12 November 2020

A group of 165 industry bodies and tech companies send an [Open Letter](#)²²² to EC Competition Commissioner Vestager urging the Commission to enforce its June 2017 Prohibition Decision:

*"The undersigning companies urge the Commission to enforce Google's compliance with the Google Search (Shopping) decision and to take all necessary measures to stop the favouring...of other Google services within its general search results pages."*²²³

16 Dec 2020

Texas and nine other State AGs file an antitrust [complaint](#)²²⁴ against Google.

The lawsuit alleges that Google, together with Facebook (which it names as a "co-conspirator"), harmed competition through an unlawful agreement to rig auctions and fix prices.²²⁵

17 December 2020

One day after the Texas lawsuit, 38 State AGs file an antitrust [complaint](#)²²⁶ against Google led by Colorado, Arizona, Iowa, New York, Nebraska, North Carolina, Tennessee and Utah.

The lawsuit builds on the DOJ's earlier suit, adding a plethora of additional allegations, including that Google manipulates its search results pages to block or demote search results from rival specialized search engines:

"The allegations in this complaint are consistent with, but go beyond, the DOJ Complaint in its related case."

9 March 2021

Mirroring the change to Google Shopping introduced in April the previous year, Google [announces](#) that it will now allow hotels to add free booking links to Google Hotel Finder²²⁷ (one of the other Google vertical search services at the centre of the various ongoing antitrust probes).

As with Google Shopping, Google couched the change as a gesture of goodwill in response to the Covid pandemic. But again, whatever Google's other motives for the change, there is little doubt that

²²¹ <https://www.cnn.com/2020/10/20/doj-antitrust-lawsuit-against-google.html>

²²² <https://www.reuters.com/article/us-eu-alphabet-antitrust-exclusive/exclusive-group-of-165-google-critics-call-for-swift-eu-antitrust-action-letter-idUSKBN27S0YQ?source=techstories.org>

²²³ <https://medium.com/a-world-worth-experiencing/135-tech-companies-call-for-immediate-antitrust-action-against-google-ee4f207a4d4e>

²²⁴ <https://www.courtlistener.com/recap/gov.uscourts.txed.202878/gov.uscourts.txed.202878.1.0.pdf>

²²⁵ <https://www.cnn.com/2020/12/16/texas-leads-new-antitrust-lawsuit-against-google-targeting-ad-tech.html>

²²⁶ <https://coag.gov/app/uploads/2020/12/Colorado-et-al.-v.-Google-PUBLIC-REDACTED-Complaint.pdf>

²²⁷ <https://blog.google/products/flights-hotels/more-choice-travelers-free-hotel-booking-links/>

the (temporary) addition of free listings will help Google to fill in the long tail gaps in its Hotel Finder inventory. And, once Google has used these free listings to build direct relationships with smaller, independent hotels, no one should be surprised when it pulls the plug and reverts to a fully monetised model.

10 November 2021 – The Judgment in Google’s Appeal of the Google Search Decision

The European General Court upholds the Commission’s June 2017 Prohibition Decision and dismisses Google’s appeal.²²⁸

20 January 2022 – Google Appeals the General Court Judgment to the CJEU

Google appeals the General Court’s Judgment to the European Court of Justice.

23 November 2022 – Foundem’s Analysis of the EC’s DMA

Foundem publishes its analysis of the EC’s Digital Markets Act (DMA), [Antitrust 2.0 for the Tech Superpowers](#)²²⁹, due to come into force in Spring 2023:

“Under current EU Competition law, taking action against a company that is abusing its dominant market position requires regulators to define the market, demonstrate that the company is dominant in that market, and finally demonstrate that the practice(s) at issue have appreciably harmed (or had the potential to harm) competition and were not objectively justified.

The DMA streamlines all three of these steps by proactively defining a set of markets (the “core platform services”); establishing rules that pre-determine the broad equivalence of dominance within those markets (“gatekeeper designations”); and codifying a set of “obligations” that recognise that certain business practices should be presumed to harm competition and consumer choice when deployed by a digital gatekeeper.

...In a sense, the DMA provides the broad equivalent of pre-packaged Prohibition Decisions for certain kinds of practices in certain kinds of digital markets, which should allow the Commission to progress rapidly to the cease-and-desist enforcement stage when digital gatekeepers fail to meet their obligations...

Moreover...certain aspects of the DMA might best be viewed as a codification of the concept of anti-competitive leveraging on steroids. For example, many of the gatekeeper obligations reflect the fact that the ability to exert power over a wide array of downstream and/or adjacent markets is often a key feature of these digital platforms.”

19 September 2023 – The Oral Hearing for Google’s Appeal to the CJEU

The one-day oral hearing for Google’s Appeal to the European Court of Justice takes place before the full panel of 15 Judges in Luxembourg.

11 January 2024 – Advocate General Kokott’s Opinion in Google’s CJEU Appeal

Advocate General Kokott delivers her [opinion](#)²³⁰ of Google’s appeal to the European Court of Justice, which is an unequivocal rejection of all of Google’s arguments.

10 September 2024 – The Judgment in Google’s Appeal of the Google Search Decision

The European Court of Justice’s Judgment in Google’s final Appeal of the EC’s June 2017 Prohibition Decision is due to be handed down.

²²⁸ [CURIA - Documents \(europa.eu\)](#)

²²⁹ http://www.foundem.co.uk/Foundem_DMA_Analysis.pdf

²³⁰ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=281162&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4827959>

TO BE CONTINUED...
