Foundem's Response (Redacted)

to

The Commission's

3 June 2014 Letter

CASE COMP/C-3/39.740 – Google vs. Foundem and Others

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CONFIDENTIAL

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Preface

The following has been written under extreme time pressure. The short timescale granted to us to respond was especially challenging in light of the extraordinary volume of fundamentally inaccurate or entirely baseless assertions contained in the Commission's Letter. There are, frankly, too many errors, omissions, and inconsistencies to address in the allotted time. Out of necessity, therefore, our Response only deals with some of the more glaring and important examples. We reserve the right to make further submissions during the course of the summer.

Introduction

Our November 2009 Complaint triggered the Commission's competition investigation into Google, and we are the lead Complainant in this case. For the avoidance of doubt, we are maintaining our Complaint and strongly disagree with any suggestion that it is addressed or mitigated by Google's Commitment Proposals. If the Commission proceeds on the basis set out in its Letter of 3 June 2014 (hereafter referred to as the *Letter*) it would have catastrophic consequences for the European Digital Economy and we (and no doubt many others) would appeal the decision.

Given that the Commission's Letter provided our first opportunity to see, let alone respond to, the Commission's basis and reasoning for wanting to adopt Google's Commitment proposals, it is remarkable that the Commission chose to provide us just four weeks to respond. That it required the intervention of the Hearing Officer to restore some of the ten days that it took the Commission to decline our request for a modest extension and to provide the Preliminary Assessment on which so many of its assertions rely, renders the Commission's approach all the more unreasonable. We can't help but note that the gratuitously brief period Complainants have been granted to respond is in stark contrast to the seemingly endless extensions and amended deadlines the Commission has granted to Google over the last five years. This inequity is particularly troubling because Google has exploited every delay to entrench, extend, and escalate its abuse.

Throughout the last two years of settlement negotiations, the Commission has repeatedly refused to provide us with any insight into its reasoning or thinking, either through informal dialogue or through the provision of documents such as the Commission's *Preliminary Assessment* or any of Google's submissions. Our Response therefore addresses a multiplicity of points that we have not previously had any opportunity to see or respond to. As a result, it contains significant new arguments and evidence that the Commission will need to consider and address before reaching a final decision.

In contrast to the Commission's near-total lack of transparency with Complainants regarding the arguments and submissions Google was making behind closed doors, the Commission's Letter and supporting documents reveal that the Commission has exercised its powers of discretion to provide Google with an extraordinary degree of access to documents during the settlement negotiations. This appears to have included handing over responses to the Commission's 2010 market survey and 2013 Market Tests without so much as anonymising the company names. Given the fear of retaliation expressed repeatedly by Complainants and third parties throughout this investigation, this extraordinarily one-sided transparency seems particularly reckless and fails to exercise any duty of care to the participants in the Commission's process.

Crucially, by providing Google with all relevant submissions while denying Complainants any reciprocal ability to see or respond to the propaganda Google was generating in response, the Commission has significantly undermined the process.

As we pointed out more than a year ago in our May 2013 letter to Commissioner Almunia:

> *"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."*

It is now clear that it was this consistent asymmetry of dialogue that led us all to the extraordinary position we now find ourselves in, where the Commission is poised to allow what is arguably the world's most powerful monopoly to settle its competition case and avoid prosecution by substantially increasing the immensely damaging, anti-competitive abuse it had been instructed to remedy.

The Commission's Letter makes clear that it has upheld both halves of our search manipulation Complaint—anti-competitive demotions and self-preferencing—and that its sole grounds for rejection are that Google's proposals adequately address these concerns. But, as we demonstrate below, the Commission's stated rationale and key arguments for adopting Google's proposals are erroneous and directly contradict the fundamental conclusions of its own March 2013 *Preliminary Assessment*. It is now apparent that many of the spurious arguments the Commission has been making in defence of Google's proposals were adopted wholesale from Google arguments and submissions that the Commission seems to have made no attempt to validate. Had the Commission done so, the fatal flaws in the Commission's arguments and analysis would have been revealed some time ago.

1. The Commission's Letter Directly Contradicts its own *Preliminary Assessment*

We are pleased to note that the Commission has upheld both halves of our Complaint regarding search manipulation, namely:

> *"...the allegation in Foundem's complaint that mirrors the [Commission's] competition concern with regard to the first business practice, namely Foundem's allegation that Google manipulates the ranking of its general search results to the detriment of competing specialised search services by artificially promoting its own specialised search services and by demoting its competitors".*
>
> The Commission's Letter, Paragraph 31

We also note that the Commission is proposing to reject our Complaint regarding search manipulation solely on the grounds that the Commission believes Google's proposals to be capable of addressing these concerns:

> *"The proposed commitments address adequately the concern that Google displays more prominently links to Google's own specialised search services in Google's General Search Results Page than links to competing specialised search services. This is irrespective of whether the greater visibility of Google's specialised search services is caused by the prominent placement of Google's specialised search services on Google's General Search Results Page or the demotion of links to competing specialised search services."*
>
> The Commission's Letter, Paragraph 100

We demonstrate below that the Commission cannot reject our Complaint on this basis, because all of the Commission's stated reasons for suggesting that Google's proposals are capable of addressing these concerns are erroneous.

The Commission's Letter reveals that, after two years of talking almost exclusively to Google on the substance of this topic, the Commission has lost sight of the problem it was trying to solve in the first place. This case 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.

Indeed, the Commission's *Preliminary Assessment* demonstrates that in March 2013, after more than three years of investigation, the Commission understood this crucial point:

> *"The Commission takes the preliminary view that Google's more favourable ranking and display in horizontal web search results of pages from its own vertical web search services is capable of foreclosing or likely to foreclose competition in the EEA. By diverting traffic away from competing vertical web search services, Google creates an advantage for its own vertical web search services. That advantage protects Google's own vertical web search services from the competitive threat posed by competing vertical web search services, thereby allowing Google to strengthen its competitive position vis-à-vis competing vertical web search services and to maintain its dominant position in the markets for horizontal web search services and in online search advertising."*
>
> The Commission's March 2013 *Preliminary Assessment*, Paragraph 89

The Commission's *Preliminary Assessment* also makes clear that the Commission understands that horizontal and vertical search are distinct markets, that natural search is a critical source of traffic for vertical search services, that Google's search manipulation practices divert substantial volumes of this vital traffic, and that this unavoidable dependence on natural search traffic from Google is unlikely to change in the foreseeable future[1]:

> *"First, user traffic is important for vertical web search services to be able to viably compete...*
>
> *Second, Google's horizontal web search services are an important source of user traffic for vertical web search services. [REDACTED]. Google's practice of ranking and displaying its vertical web search services more favourably in its natural search results can therefore have a large effect on the overall volume of traffic competing vertical web search services receive...*

[1] Note that Google's own vertical and other specialised services are no less dependent on this Google traffic than anyone else's—despite sharing one of the World's best known and most respected brand names.

Third, it is unlikely that the dependence of vertical web search services on traffic from Google's horizontal web search services will change in the foreseeable future..."

The Commission's March 2013 *Preliminary Assessment*, Paragraphs 90-93

Most importantly, the Commission's *Preliminary Assessment* also demonstrates that the Commission understands that a paid auction **cannot be a substitute** for the natural search traffic Google is illegally diverting:

"Fourth, it is unlikely that any of the existing alternative sources of traffic to vertical web search sites will replace natural search traffic from Google's horizontal web search services in the foreseeable future. Evidence in the Commission's file shows that the most important alternative sources are currently direct traffic and paid search traffic. However, direct traffic represents, in most instances, only a fraction of traffic from Google's horizontal web search services, even for vertical web search services which have a well-known brand. As for paid search traffic, while it can be a significant source of traffic to vertical web search services, it cannot be a substitute for natural search traffic from Google's horizontal web search services."

The Commission's March 2013 *Preliminary Assessment*, Paragraph 94 (Emphasis added)

According to Google's own description, "the proposed Rival Links Auction is closely modelled on the AdWords auction"[2]. That is, by Google's own admission, its proposed remedy for the illegal diversion of natural search traffic is to substitute it with precisely the kind of "paid search traffic" the Commission had already concluded could not be a substitute for that traffic.

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

After spending so much of the last two years refusing to discuss or validate any of its rationale or thinking with anyone other than Google, it is now painfully clear that the Commission has allowed itself to be deftly manoeuvred into a position that is unsustainable. While there may have been some room for confusion in Google's first set of proposals, since the second and third iterations it has been absolutely clear that the only so-called concession regarding search manipulation was the introduction of additional paid search links. That is, in response to the Commission's assertion that paid search "cannot be a substitute" for natural search, Google and the Commission are proposing to do precisely that.

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

[2] From Google's January 15 2014 submission

2. Fundamental Errors in the Commission's Analysis of Google's Proposals

In this section, we tackle some of the most important of the Commission's misunderstandings about Google's proposals, as well as the misrepresentations that Google seems to have employed to foster them. We sincerely hope that even at this late stage our analysis will receive a fair hearing and finally lay to rest the Commission's misplaced faith in Google's proposals.

Notably, the Commission's Letter makes no attempt to explain how Google's proposals would do anything to address the problem the Commission was trying to solve in the first place—namely, the inability of rivals to compete against the insurmountable anti-competitive advantages Google affords its own services. Instead, for no apparent reason, the Commission devotes much of its Letter to explaining how Google's proposals might allow rivals to compete amongst themselves for the opportunity to hand Google a sizeable proportion of their profits. Remarkably, even these modest and largely irrelevant claims are wrong and appear to have been lifted wholesale from misleading Google arguments and submissions that the Commission seems to have made no attempt to validate (see below).

In fact, the Commission's Letter 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, natural search traffic that has always been the lifeblood of the Internet. Google's competitors would still have to contend with the systematic self-preferencing and anti-competitive demotions and exclusions that the Commission instructed Google to remedy, but they would now also have to contend with a devastating new form of abuse that would force them to bid away the majority of their profits to Google.

The four paragraphs of the Letter (paragraphs 52-55) that the Commission does devote to explaining why it believes the proposed commitments could adequately address its search manipulation concerns are confused, self-contradictory, and erroneous. For example:

- They betray a fundamental confusion about the difference between *links to Google's specialised services* and monetised *links to specialised results* derived from those specialised services (see Figures 1 and 2 below),
- They are based on the pretence that natural search traffic and paid search traffic are interchangeable (in direct contradiction to the conclusions of the Commission's own *Preliminary Assessment*), and
- They claim that the volume of traffic competing services will receive from Paid Rival Links will depend on the "quality of their offering", rather than on their ability to pay (but this erroneous claim is based on the Commission's persistent misunderstanding about the intent and capabilities of Google's *predicted click-through-rate* metric, see section 2.5 below).

Moreover, in what might be the Commission's single most inexplicable claim, the Commission's Letter states that:

"the proposed commitments enhance the ability of competing specialised search services to attract user traffic through Google Search, thus enabling them to compete with Google's specialised search services on the merits."

The Commission's Letter, Paragraph 54

The Commission must surely be aware that the truth is the exact opposite:

The Commission's Claim	The Reality
...the proposed commitments enhance the ability of competing specialised search services to attract user traffic through Google Search, thus enabling them to compete with Google's specialised search services on the merits.	*...the proposed commitments oblige competing specialised search services to purchase user traffic through Google Advertisements, thus handing Google a substantial proportion of any anticipated profits and creating a substantial additional barrier to their ability to compete with Google's specialised search services on the merits.*

2.1. The Commission Confuses "Comparable Appearance" with "Comparable Display"

Put simply, an advertisement is not comparable to a free, natural search link. Nor is an advertisement that *costs* you money comparable to an advertisement that *earns* you money. This remains true whether or not they *look* roughly the same.

In the last year or so, the Commission has somehow become confused about this fundamental point:

"...Links to competing specialised search services will be displayed in a way that is comparable to how Google displays its own specialised search results."

The Commission's Letter, Paragraph 52

Figure 1 shows a typical product price comparison Universal Insert before the introduction of Google's "remedies" and before Google introduced a pay-for-placement model.

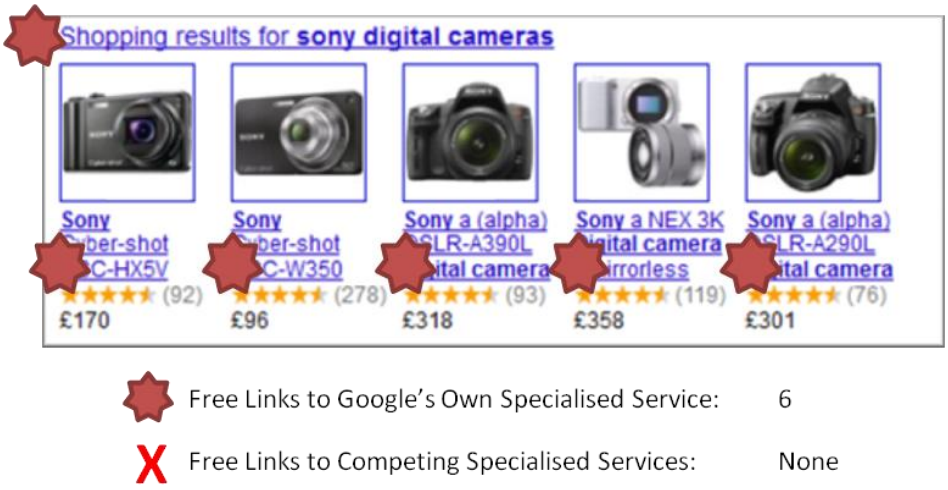

Figure 1: A Typical Universal Insert prior to Spring 2013

This kind of Insert, which Google typically inserted at or near the top of all product- or product-price-comparison-related search results, contained six free links, all of which took users directly to Google's own product price comparison service.

Figure 2 shows what a similar product price comparison Universal Insert would look like under Google's proposals.

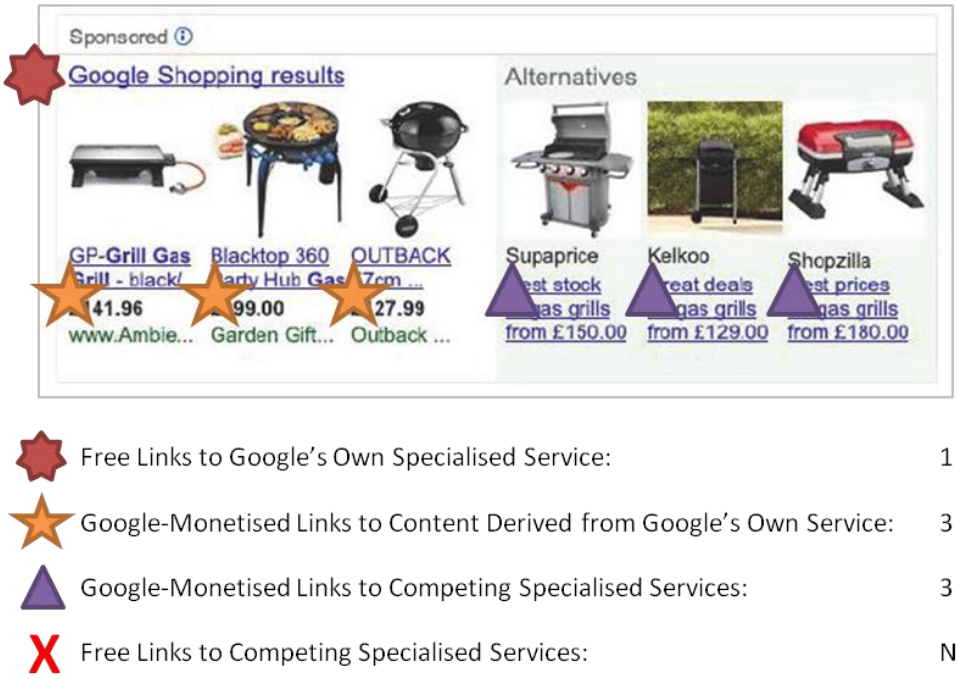

Figure 2: A Similar Universal Insert under Google's Remedy Proposals

As can be seen, under Google's third iteration of proposals, Google gives itself one free link to its own service and three revenue-bearing links to merchant sites derived from its own service. To this highly profitable mix, and under the guise of a "remedy", Google now adds three additional revenue-bearing links in the form of Paid Rival Links. Given that Google is the main beneficiary of any profits derived from all seven of these links (see section 2.3 below), and that Google's own specialised service is the only service granted a prominent, free link, it is difficult to understand what the Commission means when it suggests that competing specialised services will have links "displayed in a way that is comparable" to Google's own.

Moreover, given how many of the Commission's claims and assumptions about Google's proposals hinge on the fact that Google now employs a pay-for-placement model within many of its own vertical search offerings, it is important to bear in mind that Google only introduced this fundamental change several months after it began settlement negotiations with the Commission and only just before it submitted its first set of remedy proposals[3]. Indeed, prior to introducing pay-for-placement, Google had spent more than a decade railing against the many obvious shortcomings of such models for consumers.

The Commission's *Preliminary Assessment* reveals that 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

[3] Settlement negotiations commenced in May 2012, and Google introduced pay-for-placement in the U.S. and Europe in October 2012 and February 2013 respectively.

primary abusive practices it was ostensibly negotiating to end (see Figure 3), 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" (see section 2.6 below).

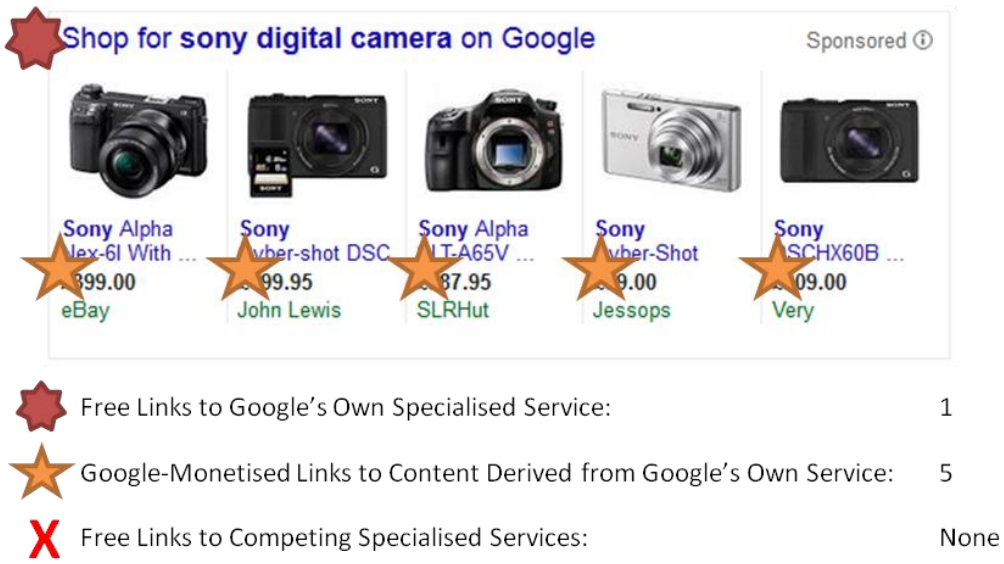

Figure 3: A Typical Universal Insert ("Commercial Unit"), as introduced in Europe in Spring 2013. In these "Commercial Units", Google is not only anti-competitively promoting prominent links to its own specialised services, it is now also promoting revenue-bearing merchant advertisements *derived* from those services. In effect, Google is cutting out the middle man: rather than simply diverting traffic to its own specialised services, it is now also diverting traffic directly to revenue-bearing content derived from those services.

In the following sections we refute the other most important points raised in the Commission's Letter or in the Google submissions that it clearly relies on. We should point out, however, that the fact that these Commission assertions are wrong should not distract anyone from the crucial point that they are also irrelevant. Many of these assertions would only be relevant in a context where Google's own services were being subjected to the same treatment as its competitors.

2.2. Debunking Google's January 15 2014 Submission

Having reviewed the Commission's Letter and associated documents, it is now 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.

Given Google's track record in this case, it is not surprising that, once again, this Google submission seems to have been intended more to mislead than to enlighten. What is surprising is that the Commission seems to have relied on Google's submissions without putting them out for timely comment or displaying any of the healthy scepticism it would normally show to "evidence" provided by a defendant.

As the lead Complainant, and one with a proven track record[4] 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.

2.3. The Claim that Paid Rival Links Will Not Consume the Majority of Rivals' Profits is Erroneous

> *"... the claim that competing specialised search services will have to hand Google the majority of any profit generated from clicks on Paid Rival Links is erroneous"*
>
> The Commission's Letter, Paragraph 69

Google's January 15 submission cites and heavily relies on a 2009 paper[5] by Google's Chief Economist, Hal Varian. Google's submission misappropriates this paper to suggest that Google AdWords advertisers typically attain a "surplus" of between 2 and 2.3 times their total expenditure.

Can it have escaped the Commission's attention that, even if true, this rate of return equates to a 43% to 50% share for Google? Moreover, Google's January 15 submission neglects to mention that Hal Varian's 2009 paper went on to explain that this "surplus" figure is inflated compared to the actual "profit" because it excludes the advertisers', often substantial, fixed costs. Most importantly, Google also neglects to mention that the 2009 paper also explained that this "surplus" will be substantially lower in cases where the auction is fully-subscribed. Given that Google is only offering three Paid Rival Links, compared to the twelve or so it offers for AdWords, it is likely that the Paid Rival Link auction would be substantially over-subscribed in nearly all cases.

Clearly, taking Google's self-serving omissions into account substantially increases Google's claimed 43% to 50% share. Even if we take the conservative view that these additional factors would only increase Google's claimed share by 10% (i.e. to 53%-60%), it is clear that Hal Varian's 2009 paper confirms rather than refutes our repeated assertions that Google will be the "main beneficiary" of any profits derived from Paid Rival Links—in other words, it will consume the "majority" or "lion's share" of its competitors' profits from these links.

It might also be worth pausing for a moment to apply some simple common sense. If the Commission truly believes that advertisers stand to make more than double what they spend, and it accepts the fact that there are dozens of advertisers chasing each available ad slot, why does the Commission imagine that they would not decide to sacrifice more than 50% of their profits in order to win the auction? After all, a smaller percentage of something is worth considerably more than a

[4] For some examples see here, here, here, here, here, and here

[5] http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.99.2.430

larger percentage of nothing. The answer of course, as Google well knows, is that common sense prevails, and the auction functions exactly as we and other market participants have always said it does. In a fully- or over-subscribed auction such as that proposed for Paid Rival Links, advertisers will, if they want to appear, be required to bid away the majority of their profits. And, for highly-competitive, high-volume keywords, this will usually extend to a level that consumes the vast majority of their profits[6].

Looking at this from another angle, Hal Varian's 2009 study appears to have examined a cross-section of keywords and, by comparing the advertisers' spend to the generated return, computed a typical "surplus". While this may have been an appropriate calculation for the purpose of the study, it is an inappropriate calculation for the purpose at hand. In order to calculate what surplus advertisers actually enjoy on average, you would need to adjust the calculation to take account of the number of times an Ad is actually displayed and clicked on. That is, you need to weight each "surplus" by volume. By way of a crude, but illustrative, example, if an advertiser makes €100 (and a 90% surplus) every time someone clicks on his Ad for the long-tail, low-volume keywords "electron microscope", but makes just €1 (and a 20% surplus) every time someone clicks on his Ad for the highly competitive, high-volume keywords "apple iphone", one could conclude that on average the advertiser makes around €50 per click (retaining 55% of his surplus). But this would be misleading. In practice, far more people see and click on his Ad for apple iphones than see and click on his Ad for electron microscopes. So, if you weight his average spend and return by the number of times each Ad is actually displayed and clicked on, his typical (average) surplus would be something in the region of €1.01 (and a 20.01% surplus). We cannot know what the actual typical surplus would be if Google properly weighted its data by volume. But what we can say is that its claim that advertisers retain 50-57% of their surplus (i.e. between 2 and 2.3 times their total expenditure) is patently false. A reasonable guesstimate for the "typical" split might be somewhere in the region of 10-25% for the advertiser and 75-90% for Google.

It is all the more galling that the Commission fell for this ruse, because it is precisely the kind of "real-world" statistical shenanigans that we predicted eight months ago in our November 2013 formal response to Google's second set of proposals[7]:

> *"Unfortunately, we once again find ourselves having to guess at what specific false or misleading arguments Google might have used to impair or distort the Commission's understanding of the implications of Paid Rival Links. One possibility is that Google might have presented the Commission with real-world but misleading data designed to create the false impression that the costs of Paid Rival Links would be nominal—somewhere in the region of the maximum reserve price, for example.*

[6] The Commission's Letter reveals that, in addition to its persistent misunderstandings about Google's revenue maximisation formula (discussed in detail in section 2.5 below), it has also attached a disproportionate significance to a number of other factors with respect to the proposed auction mechanism. These include the inevitable variations in the efficiency of different advertisers and the fact that, in a generalised second-price auction, the winner of the auction pays the price offered by the next highest bidder rather than what they themselves bid. But, as Google could readily confirm, when an auction is substantially over-subscribed all of these factors become negligible.

[7] http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf

Google might, for example, have shown the Commission AdWords data derived from several million real-world price-comparison-related keywords and highlighted that the average CPC (cost-per-click) for each of these keywords was low (something approaching the reserve price, for example). Google might then have pointed out that the average CPC across all of these keywords was somewhat higher but still reasonably low. To the uninitiated, this might sound like compelling evidence that Google's Paid Rival Links charges would indeed be nominal. But it would be highly misleading, because it deftly ignores the fact that the vast majority of these keywords would be "long tail" queries that are rarely searched for or clicked on. To get an accurate measure of what advertisers actually end up paying, each keyword must be weighted by volume (i.e. by the number of times it is searched for and clicked on). In other words, Google would need to provide the average CPC that advertisers actually end up paying across all of the keywords they bid on. This will be substantially higher than any reserve bid price and will typically reach a value that hands Google most of the anticipated profit. Put simply, in an over-subscribed auction, where there are considerably more advertisers than available ad slots, if you're not prepared to hand over the majority of your profits to Google, the next rival will be."

Google's January 15 paper cites a single example (drawn from the Market Test responses that the Commission handed to Google) to suggest that a particular well-known UK Financial Price Comparison service achieves an average AdWords surplus of between 50-60%. Without access to the underlying data this company provided, we cannot comment on the legitimacy of Google's assertion, but we can point out that, if true, this single isolated example contradicts the findings of Google's own Chief Economist and the following recent statement from the UK's leading Financial Price Comparison service:

"MoneySupermarket hire the brightest and best digital marketers who spend in the region of £40M a year with Google. Every day, the MoneySupermarket team bid on more than 8 million different terms through complex and sophisticated bid management systems. As such, every day we adjust and flex our spend based on efficiency and profitability. ***Paid search is a difficult marketing tool for businesses to make profitable because of its auction-based methodology; it contributes very little to our overall profitability.****"*

MoneySupermarket CEO Peter Plumb*, Insurance Times*[8]*,* 1 February 2013 (emphasis added)

It is remarkable that, on such an important point, the Commission seems to have accepted Google's plainly distorted claims at face value, without making any attempt to validate them with Complainants or other market participants.

2.4. The Claim that a Reduced Pool of Bidders will make Paid Rival Links Less Expensive than AdWords is Erroneous

"Participation in pools of specialised search services that will be eligible to be displayed as Rival Links ("Vertical Sites Pools") will be limited to specialised search services. Specialised search services are therefore likely to have to pay less to appear as Paid Rival Links than in AdWords paid search results for the same queries."

The Commission's Letter, Paragraph 73

[8] http://www.insurancetimes.co.uk/moneysupermarket-boss-on-the-impact-of-google/1400819.article

And:

> *"Only specialised search services are eligible to bid in the auction - merchants are not. This will reduce the pool of bidders and lower the price that has to be paid"*
>
> Commissioner Almunia's March 2014 Key Points Position Paper.

Over the course of the recent Market Tests, the Commission's growing realisation that it had been duped into introducing a new and highly lucrative advertising channel for Google under the guise of a remedy has forced it to drastically downgrade its ambitions. Instead of claiming that Paid Rival Links will do anything to address the insurmountable advantages Google illegally grants its own services, the Commission has quietly retreated to the considerably more modest claim that these Ads will at least be somewhat cheaper than those already available in AdWords. But even this modest claim is erroneous and, we now know, is based on vastly exaggerated claims about the scale and effect of the reduction in the number of bidders.

Google's January 2014 submission contains a substantial distortion of the scale and effect of the reduction in the number of bidders that would follow the exclusion of merchants from the Paid Rival Links bidding pool. As with so many of Google's other claims, this would have unravelled long ago if the Commission had subjected it to the slightest expert scrutiny.

To arrive at a meaningful estimate of this reduction, Google could have looked at a representative sample of keywords and, for each combination of keywords, compared the number of merchants and price comparison services bidding <u>for those keywords</u>. But this is not what Google did. Instead, it decided to sum all of the merchants bidding across all of the keywords that trigger a Google Shopping insert ("the total bidder universe") and compare this total number of merchants to the total number of price comparison services bidding across all of these same keywords. But this disingenuous method counts as significant the exclusion of every single merchant, whether or not they are likely to bid. It ignores the fact that most merchants only cover a small subset of products, and the fact that most vertical-search-related search terms are of little or no interest to the vast majority of merchants. For example, Google's method counts as significant that tens of thousands of garden centres, shoe shops, opticians, and other uninterested online retailers would be excluded from bidding in the Paid Rival Links auction for the keywords "compare prices playstation 4" even though none of these clearly irrelevant retailers would ever have bid on those keywords. But this is patently ridiculous and inevitably results in a vastly exaggerated figure.

In its January 15 submission, Google deployed this cynical metric to claim that its rivals would benefit from a "99%" reduction in the "universe of potential bidders" compared to their AdWords counterparts. Google then exploited this vastly inflated figure to claim that the resultant "significant reduction in auction [pricing] pressure" would be likely to lead to "much larger" profit margins for its rivals. A reasonable, common sense, guesstimate for the actual reduction in the number of bidders might be somewhere in the region of 70% to 90% for generic product keywords (like "sony tv") and somewhere in the region of 10% to 20% for vertical-search specific keywords (such as "compare sony tv prices").

Moreover, as Google must be aware, any reduction in pricing pressure stemming from the smaller pool of bidders is likely to be more than counteracted by the increase in pricing pressure stemming from the smaller number of available ad slots (just three Paid Rival Link slots compared to the twelve

or so for AdWords—a 75% reduction). Notably, Google's paper completely ignores this substantial countervailing pricing pressure and, tellingly, so does the Commission.

Once again, the Commission seems to have accepted Google's plainly distorted claims at face value without making any attempt to validate them with Complainants or other market participants.

2.5. The Claim that the Paid Rival Link Auction will be based on Quality or Relevance is Erroneous

> *"The volume of the traffic that competing specialised search services may acquire [through Paid Rival Links] will depend on the quality of their offering."*
>
> The Commission's Letter, Paragraph 55

And:

> *"The two parameters that will be used for selecting and ranking Rival Links displayed pursuant to paragraph 2, namely the pCTR and the level of the bid, will both be indicative of the relevance of Rival Links, especially when considered in combination."*
>
> The Commission's Letter, Paragraph 80

And most recently (and most misleadingly), Commissioner Almunia's 11 June 2014 letter to the College of Commissioners misstates and misrepresents Google's revenue-maximisation formula:

> *"...when merchants would pay Google to appear in that space - an auction mechanism will select the three rivals on the basis of bid price and relevance."*

We are at a loss to understand why the Commission remains so determined to misunderstand and misrepresent both Google's *pCTR* metric and the revenue-maximisation, *bid multiplied by pCTR,* formula it appears in.

The predicted-click-through-rate (pCTR) of an Ad is exactly what it says it is: the (position-independent) probability that an Ad will be clicked on if it is displayed. Most of the time, this value is based on the Ad's historical, real-world, performance. But for new Ads, or for Ads with new or amended wording, which therefore have little or no historical performance data, the predicted-click-through-rate will be estimated (i.e. *predicted*) based on the historical performance of other similarly worded Ads. Whatever minor role the underlying "relevance" or "quality" of an advertiser's page plays in determining an Ad's pCTR, it pales in comparison to the role played by the chosen wording of the Ad text. This is clear from the fact that differently worded Ad texts pointing to exactly the same landing page can have wildly different predicted-click-through-rates. For example, one can readily appreciate why an Ad worded "iPhone 5 Available Here" might have a much lower click-through-rate, and hence pCTR, than an Ad worded "Amazing iPhone 5 Deals. Hurry! Limited Stock", even though both Ads deliver users to the same page on the same site.

As we have explained previously, the combination of bid and pCTR is designed to ensure that the Rival Links likely to generate the most revenue for Google will be displayed. For example, from our November 2013 *Analysis of Google's Second Proposals*[9]:

[9] http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf

"The whole point about Paid Rival Links is that their selection and placement is based primarily on payment not relevance. Paid Rival Links are a significant and immensely damaging departure from relevance- or merit-based organic search results.

Under Google's proposals, the selection and ranking of Paid Rival Links would be based on the keywords that advertisers choose to bid on, the amount advertisers are willing to pay, and the predicted efficacy of the related ad text...

...This [Bid multiplied by pCTR] formula tells Google how much money it can expect to make by displaying each particular ad. By Google's own admission, it selects the three most likely to earn Google the most money. Not the three most relevant and not the three highest quality."

Once again, the 2009 Hal Varian paper brought to light by Google's January 15 submission categorically confirms our assertions and refutes the Commission's. In the words of Google's own Chief Economist, Hal Varian (emphasis added)[10]:

"The expected revenue received by the search engine is the price per click times the expected number of clicks. In general, the search engine would like to sell the most prominent positions—those most likely to receive clicks—to those ads that have the highest expected revenue. To accomplish this, the ads are ranked by bid times expected clickthrough rates, and those ads with the highest expected revenue are shown in the most prominent positions."

2.6. The Claim that Paid Rival Links will not Generate Additional Revenue for Google is Erroneous

While the Commission does not raise this particular misapprehension in its Letter, it is a point that Commissioner Almunia repeats whenever he is trying to persuade an audience of the merits of Google's proposals. Moreover, he has repeatedly implied that anyone disagreeing with him on this point is mistaken. For example, from Commissioner Almunia's speech to the International Competition Law Forum, 15 May 2014:

"As you can see, the system that would emerge from the concessions would not create any additional earnings for Google. Nobody can say that it does without ignoring what is really on the table."

And from Commissioner Almunia's 11 June 2014 letter to the College of Commissioners:

"Finally, it clearly follows from the above that the mechanism would not generate a new source of revenues for Google - as has been incorrectly claimed."

Despite Commissioner Almunia's increasingly emphatic claims to the contrary, the adoption of Google's proposals most certainly would create a substantial new revenue stream for Google—one that would come directly at the expense of Google's competitors and whose value would approach the total available profits in any vertical and territory where Paid Rival Links are deployed.

If Paid Rival Links did anything to end or mitigate the abusive practices Google was instructed to remedy, the question of whether or not they would generate additional revenue for Google would be largely irrelevant. But, because this new revenue would come at the direct expense of the

[10] http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.99.2.430

competitors the Commission is duty bound to protect[11], to acknowledge this substantial new revenue is to acknowledge the substantial additional harm that Google's proposals would inflict on these competitors.

The only explanation the Commission has ever offered for its assertion that Paid Rival Links will not generate additional revenue for Google is that they are carved out of space that is already used for advertisements. Leaving aside that Google only introduced the "Commercial Unit" advertisements this explanation depends on several months after it began settlement negotiations with the Commission, the Commission's logic is fatally flawed. It relies on two underlying assumptions:

1. That any clicks on Paid Rival Links would come solely at the expense of existing advertisements, and
2. That the costs of any clicks on these Paid Rival Links would be significantly lower than their AdWords counterparts.

But the first assumption is wrong, and the second assumption is, at best, baseless.

We have already demonstrated above that the Commission's claim that Paid Rival Link ads will cost less than their equivalent AdWords ads is based on grossly exaggerated and misrepresented arguments about the scale and effects of the reduced pool of bidders (see section 2.4 above).

As for the assumption that clicks on Paid Rival Links would come at the expense of existing advertisements, we must first highlight that the Commission cannot be relying on clicks that would come at the expense of competitors' existing advertisements, as these cannibalised clicks would not contribute to the effectiveness of the remedy. Therefore, the Commission can only be relying on clicks that come at the expense of existing merchant-specific and other advertisements; either from AdWords or from the same "Commercial Unit" from which the Paid Rival Links are to be carved. But this assumption fails to recognise that for vertical-search-related queries vertical search services will nearly always be significantly more relevant than individual merchant offers. As such, the majority of clicks on the prominent and visually enticing Paid Rival Links will inevitably come at the expense of vertical-search-related natural search results, not the considerably less relevant merchant advertisements the Commission is banking on. This is why we have repeatedly pointed out that Google's proposals would result in the near-wholesale transition from relevance-based free traffic to pay-for-placement paid traffic for all services but Google's.

Importantly, if even just a small fraction of Paid Rival Link clicks come at the expense of organic, natural search clicks, at Internet scale, this would constitute a substantial new revenue stream. But, given that all logic and evidence[12] suggests that the majority of clicks on these vertical-search-related Paid Rival Links would come at the expense of vertical-search-related natural search results, Commissioner Almunia's position is entirely unsustainable.

[11] *"The Commission's role in the context of a case pursuant to Article 102 TFEU is to ensure that efficient competitors are not driven out of the market by abusive conduct of a dominant company."* Commissioner Almunia's 17 March 2014 letter to Foundem

[12] We are aware that other Complainants have submitted substantial, real-world data that amply demonstrates this point.

However confused the Commissioner might be about this crucial point, it is clear that Google cannot be. Google must have estimated the substantial additional revenue and profits it expects to make from Paid Rival Links. Whatever Google might have said verbally to give Commissioner Almunia the confidence to make these mistaken assertions, it seems that Google may have said substantially less in writing. Certainly, the claims Google's January 15 submission makes in this regard are vague and ambiguous and rely heavily on its illegitimate claims about the scale and effect of the "reduced" pool of bidders:

> *"Reserving the Rival Links Auction for qualifying 'vertical' search services therefore means that prices in the Rival Links Auction will result in a significant discount compared to AdWords prices....Far from generating a 'profit' for Google, the Rival Links Auction will therefore, if anything, under-value Google's page real estate."*

There are several additional factors that render the above Google assertion particularly disingenuous and Commissioner Almunia's increasingly vehement assurances particularly misjudged. A full explanation lies beyond the scope of this document, but, in brief, the addition of a vertical-search-related auction alongside the existing merchant-related auction will:

- Allow Google to monetise the many vertical-search-related search terms far more efficiently than a merchant-related auction on its own ever could, and
- Create two auctions, with two separate high-value "top" slots instead of one. As Google well knows, it isn't sacrificing high-value merchant ad slots for these Paid Rival Links at all; on the contrary, it is substituting the lower-value merchant ad slots (slots 4 and 5) for three much higher-value vertical-search ad slots (see Figure 3 and Figure 2 above).

Once again, it is remarkable that, on this pivotal point, Commissioner Almunia seems to have accepted Google's claims at face value without making any attempt to validate them with Complainants or other market participants.

2.7. Why the Commission Cannot Accept Google's Proposals

Having established that all of the Commission's most important assertions about Google's proposals are wrong, we must not allow this to distract us from the far more important point that none of these assertions really matter. What does matter is that not one word of the Commission's Letter attempts to explain why it makes any sense for the Commission to accept proposals that will substantially escalate the abuse the Commission instructed Google to remedy.

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.

Therefore, the Commission can no longer argue that Google's proposals will do anything to end or mitigate the primary problem the Commission was trying to solve in the first place. Indeed, when we strip away the Commission's confusion, there is no escaping the fact that it is currently proposing to adopt a remedy that its own *Preliminary Assessment* has categorically identified as entirely unacceptable:

> ***"**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".*
>
> The Commission's March 2013 *Preliminary Assessment*, Paragraph 94 (Emphasis Added)

3. Failures in the Process

It is clear from all of the above that the Commission has become fundamentally confused, both about the nature of the problem it is trying to solve and about the counterfeit Google remedies it is proposing to adopt.

It is also clear how the Commission got here. It has spent far too much of the last two years in intensive dialogue with Google, and in woefully inadequate consultation with Complainants and other market participants. While there have, of course, been meetings with Complainants, in most of them the Commission claimed to be "in listening mode", unwilling or unable to reveal its thinking or to share anything about what Google was saying. Worse, it now transpires that the Commission has been handing Google many of the significant submissions from Complainants and other third parties, without reciprocation and without informing them that it was doing so. This clandestine and strictly one-sided flow of information allowed Google to tailor its misleading submissions and arguments to the specific points being raised, without any fear of rebuttal.

Moreover, all of our attempts (and those of other lead Complainants) to interject ourselves into the Commission's seemingly endless negotiations with Google, with offers to discuss hypothetical scenarios or proposals for three-way meetings between the Commission, Google, and Complainants, were fended off with a firm and repeated promise that we would be given ample opportunity to comment on any Google proposals well before the Commission would consider subjecting them to a public Market Test. The Commission has never provided any explanation for why it decided to renege on these repeated promises. As far as we are aware, the only briefings the Commission gave anyone about Google's proposals prior to the first Market Test were to media outlets such as the *Financial Times*.

As is clear from the above deconstruction of the Commission's key arguments, had the Commission kept its promise and subjected Google's misleading representations and arguments to expert scrutiny, it would have discovered these glaring issues long before Google's proposals were granted the false credibility of a formal Market Test.

Remarkably, far from learning from this mistake, the Commission now seems determined to repeat it with bells on. It has granted Complainants gratuitously short timescales to respond to its Letters and seems to be refusing all requests for extensions. It is clearly relying on Google's January 15

submission, or at least on the erroneous arguments and evidence it contains, yet it has chosen not to provide this document to most of the other Complainants, and appears to be summarily refusing all subsequent requests for it.

3.1. Misleading the College of Commissioners

It is now apparent that many of the spurious arguments the Commission has been making in defence of Google's proposals have been lifted wholesale from Google arguments and submissions that the Commission made no meaningful attempt to validate.

It is bad enough that the Commission has adopted these fallacious arguments in its recent formal Letters to twenty or so Complainants. It is arguably far worse that the Commission has broadcast these same erroneous arguments to Commissioners and MEPs without being forthcoming about the origin and near-total lack of validation of these arguments. This is particularly troubling because MEPs and the College of Commissioners provide the only oversight and safety-net for what is otherwise a dangerously opaque process.

It is also worth noting that Commissioner Almunia's campaign to persuade his fellow Commissioners to sign-off on this ill-fated settlement got off to an extraordinarily misleading start. The official minutes of the 12 February 2014 meeting of the College of Commissioners, which took place a week after Commissioner Almunia announced his firm intention to adopt Google's third set of proposals without any consultation, record the following:

> *"As regards the importance of ensuring that SMEs could enter specialised online search markets, Mr ALMUNIA cited a number of technical parameters of the auction system which would ensure that this type of company would have access on non-disadvantageous terms and that the same arrangements, with or without fees, would be applied to both Google's services and those of its competitors."*

If these official minutes provide an accurate account of the exchange, then Commissioner Almunia's assertion on this crucial point was profoundly misleading. Clearly, Google's services are not subject to "the same arrangements, with or without fees" as those of its competitors. As Commissioner Almunia must have known, under Google's proposals, only Google's rivals pay for placement; Google's services pay nothing. This is not a minor point. It is transformative. If Google's services were truly subject to "the same arrangements" as those of its competitors no one would be objecting to the proposals.

Despite our writing to Commissioner Almunia on this point, the Commission has never provided us with an explanation of why this deeply misleading comment was made at such a crucial time and to such an important audience. Nor has the Commission provided any information about what steps, if any, the Commission has subsequently taken to correct it.

3.2. The Arguments for Failing to Pursue a Non-Discrimination Remedy are Invalid

Over the last two years, a strong consensus has emerged about the remedies that would be required to end Google's abusive search manipulation practices. The straightforward, principle-based, alternative to Google's proposals is eminently reasonable and would immediately restore the unbiased level-playing field that search engine users expect and that competition and innovation require.

As eleven Complainants wrote in an open letter[13] to Commissioner Almunia in March 2013:

> *"Google's strict adherence to the following overarching principle would ensure an end to both aspects of Google's search manipulation practices:*
>
> ***Google must be even-handed. It must hold all services, including its own, to exactly the same standards, using exactly the same crawling, indexing, ranking, display, and penalty algorithms."***

This even-handed principle (also known as non-discrimination, equal treatment, or search neutrality) has now been endorsed by all or the vast majority of Complainants, by the European consumer organisation, BEUC[14] (now also a Complainant), and by an unprecedented coalition of European Publishers[15].

Remedies that implement this even-handed principle would not only directly address the abusive search manipulation practices the Commission has identified, they would also be straightforward to define, implement, and monitor (for example, see here[16] and here[17]).

In its Letter and various public statements, the Commission has put forward several arguments to try to justify its failure to pursue a non-discrimination-based remedy. But, none of these arguments stand up to scrutiny. And, as before, they all seem to be rooted in (or copied wholesale from) Google representations and submissions that we have been given little or no opportunity to see or rebut.

Everything we know suggests that the real reason the Commission failed to insist on a non-discrimination remedy is that very early on Google misled the Commission by suggesting that this would be technically difficult or even impossible. Some of the arguments we believe Google might have used (although, once again, we will have to make an educated guess until such time as the Commission chooses to share Google's submissions with us) include that Google's own services are generated dynamically and therefore cannot be crawled, and that Google can only provide context-specific, enhanced search results (that include images, prices, star ratings, and so on) when it has direct access to this data from its own services.

It should not surprise anyone to learn that these arguments range from largely fallacious to entirely fallacious. Google's services are no more dynamic or inherently un-crawlable than those of its competitors, and all of the data required for these enhanced display formats could readily be accessed pro-competitively by employing the kind of mark-up-based meta-tags that Google and others have already used elsewhere.

For further details, please see *Assertion 1* and *Assertion 2* of our June 12 2014 *Brief Response to Commissioner Almunia's March 2014 Key Points* paper[18].

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[13] http://www.searchneutrality.org/google/open-letter-to-almunia

[14] http://docshare.beuc.org/Common/GetFile.asp?ID=44729&mfd=off&LogonName=Guesten

[15] http://tinyurl.com/ojltzlx

[16] http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf

[17] http://www.foundem.co.uk/Foundem_Remedy_Proposals.pdf

[18] http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf

3.3. Prohibiting Illegal Practices is the Norm under EU Antitrust Law

It is important to note that no one is asking the Commission to impose a business model on Google or to dictate the layout of Google's pages. But not asking the Commission to impose a business model or layout is entirely different from insisting that the Commission not allow Google to introduce a new and immensely anti-competitive practice under the guise of a remedy.

Moreover, insisting that the Commission prohibit rather than escalate the illegal Google practices the Commission has identified is most certainly not beyond the limits of EU antitrust law:

> *"The Commission's role in the context of a case pursuant to Article 102 TFEU is to ensure that efficient competitors are not driven out of the market by abusive conduct of a dominant company."*
> Commissioner Almunia's 17 March 2014 letter to Foundem

By allowing Google to continue its illegal preferencing and penalty practices unabated, the Commission is guaranteeing that Google will continue to drive efficient competitors out of the market. Worse still, far from mitigating or diluting this abuse, the proposed Paid Rival Links introduce a further abuse that would substantially accelerate the rate at which competitors are driven out of the market. Not only would Google continue to profit from the traffic it illegally diverts from its competitors, but it would now also profit from any traffic it sends to them. If the Commission adopts Google's proposals, it would therefore not only be failing to fulfil its role, it would be unwittingly aiding and abetting the abusive conduct.

It is important to bear in mind that, after five years in which Google has been allowed to significantly entrench and extend its abusive practices, there are now two distinct kinds of competitor that will be affected by Google's proposals:

- Those from sectors that have already been devastated (such as product price comparison and mapping), which Google's proposals will do nothing to resurrect, and
- Those from sectors that have not yet been devastated (such as financial price comparison, travel search, and job search), which Google's proposals threaten to directly and rapidly destroy.

As used to be the case with product price comparison and mapping, the second set of constituents are currently innovative and highly profitable industries, employing many thousands of people and contributing many millions in tax revenues across Europe.

4. The Legal Bits

It is important to note that once the Commission has clearly identified competition concerns the burden of proof lies with the Commission to prove that the proposals remedy the concerns. But the Commission has entirely failed to provide any evidence or reasoning that supports its case. On the contrary, there is overwhelming evidence from Complainants, other market participants and, it now transpires, from Google's own submissions (see section 2 above) that proves beyond any doubt that the adoption of Google's proposals would have disastrous consequences for the competition and consumers the Commission is duty bound to protect.

The Commission has not studied the market since 2010, and has failed to provide any analysis of its own. Instead, it is relying on arguments it has adopted wholesale from Google. This and the other failures referred to above mean that the Commission will find it impossible to properly motivate a decision that focuses only on a set of positively harmful commitments and fails even to respond to other aspects of our Complaint.

The *Preliminary Assessment* presents a catalogue of systematic and deliberate abuses, stretching over a period of years. This more than merits a fine and a prohibition of these abusive practices. But, instead, the Commission proposes to adopt a decision that would not only fail to protect competition in the future or restore competition foreclosed in the past, it would also directly inflict additional harm on consumers and the remaining competitors. The Commission also needs to explain why it is unwilling to take any action to remedy the cumulative impact of the abuses that it acknowledges have continued and escalated during the period of its investigation.

It would be unprecedented for the Commission to allow a dominant entity to settle a competition case and avoid prosecution by substantially increasing the immensely damaging, anti-competitive abuse it had been instructed to remedy. Moreover, it seems likely that this precedent could fatally undermine the Commission's ability to enforce abuse of dominance cases in the future.

It has already been pointed out to the Commission that Article 9 gives it the power only to accept commitments which adequately address the concerns raised in the *Preliminary Assessment*. Put simply, Article 9 does not allow the Commission to reach a "settlement" or a "compromise". It would appear from his public statements that the Commissioner has failed to understand the limits on his powers. The reality is that any decision to accept the current commitments would be *ultra vires* and lead to the Article 9 decision being struck down.

If the Commission proceeds on the basis set out in its Letter, it would have catastrophic consequences for the European Digital Economy and we (and no doubt many others) would appeal the decision. We would also expect many of those who appeal to seek interim measures to suspend implementation of the decision pending the outcome of the appeal. Thus, the Commission should expect to find itself in the frankly extraordinary position that it would be arguing before a Court that the commitments are necessary to protect the very Complainants who would be petitioning to be spared the implementation of those commitments.