Lifting the Veil on Google's Public Response to the European Commission's Google Search Case

Adam Raff and Shivaun Raff
Co-founders of Foundem and SearchNeutrality.org

12 December, 2016

Table of Contents

1 Introduction

At first glance, Google's 3 November 2016 blog post[1] appears to be a straightforward rehash of Google's previous public arguments. But this appearance is deceptive. The reality is that Google knows it has already lost the battle over those arguments.[2] As we show below, Google's latest blog post is actually a tentative segue into a new line of argument—based on the pretence that the Commission's formal anti-trust charges are about ads rather than search results and on the false notion that the two are interchangeable.

In this document, we describe the unusual and often counterintuitive business model underpinning Google's anti-competitive search manipulation practices, and we provide a point by point deconstruction of Google's blog post.

The Commission's April 2015 Statement of Objections (SO) formally charges Google with leveraging its overwhelming dominance of search to systematically favour its own comparison shopping service—by (a) artificially *demoting* or excluding rival comparison shopping services (through anti-competitive algorithmic penalties), and (b) artificially *promoting* its own comparison shopping service (through Universal Search). The Commission's July 2016 Supplementary Statement of Objections (SSO) simply reinforces these charges with additional evidence and data.

Yet, to read Google's 3 November blog post, which is billed as Google's public response to the above charges, you would be forgiven for being somewhat confused. That's because, as we describe below, Google misrepresents even the most basic elements of the charges against it:

- It continues to beat the dead horse of its Amazon-based, "shopping" not "comparison shopping" misdirection,
- It continues to steadfastly ignore the anti-competitive penalty half of the Commission's two-pronged, preferencing and penalising "favouring" allegations,
- And, in a new twist, it pretends that the Commission's case is about "improved ads" rather than manipulated search results.

If Google has any legitimate arguments to make in defence of the search manipulation practices that it has been quietly escalating for more than a decade (and that are now the subject of the Commission's formal antitrust charges), then it is about time it made them. As we demonstrate below, so far nothing Google has said justifies, legitimises, or even acknowledges these immensely harmful anti-competitive practices.

The Commission has made clear that it is seeking a remedy based on the equal-treatment/non-discrimination principle that has been endorsed by complainants[3], consumer groups and interested third parties. This remedy would simply require Google's search engine to hold all services, including Google's own, to exactly the same standards—subjecting them to exactly the same crawling, indexing, ranking, display, and penalty algorithms. It is no small irony that all Google would need to do to achieve this would be to once again make its search engine the unbiased and comprehensive service on which it forged its formidable reputation and market position.

As we explain below, Google's blog post suggests that Google may now be pinning any remaining hopes of evading the pragmatic and eminently reasonable non-discrimination remedy on an argument that search results and paid advertisements are interchangeable. But this would be problematic for Google: first, because it isn't true, and, second, because convincing users that it is in

[1] https://blog.google/topics/google-europe/improving-quality-isnt-anti-competitive-part-ii/
[2] E.g., http://europa.eu/rapid/press-release_STATEMENT-16-2535_en.htm
[3] http://www.searchneutrality.org/google/open-letter-to-almunia

their interests to abandon relevance-based natural search results in favour of payment-based advertisements is likely to be a tough sell. It is perhaps a sign of Google's growing desperation that it has finally begun to deploy some of these arguments, albeit obliquely, in public.

It is worth noting that, in the two-sided market in which Google operates, Google's well-worn line about competition being "only a click away" does nothing to mitigate its special responsibilities as an overwhelmingly dominant search engine[4], but it does underline the unusual extent to which Google's market position depends on maintaining a trustworthy, even benevolent, public image.

It is also worth noting that the Commission's Search SO and SSO cover all of Google's search results, regardless of whether they are accessed on a desktop, laptop, tablet, or mobile phone, or through a browser or an App. Moreover, the Commission's required remedy is likely to extend far beyond product price comparison to also include travel search, local search, and all other existing and future specialised search services.

2 The (Much Misunderstood) Business Model of a Search Engine

Many of the obfuscatory arguments contained in Google's public responses to the European Commission's formal charges in the Search case are rooted in Google's sometimes counterintuitive business model.

The business model of a retailer is readily understood. People visit a retailer to buy products, and retailers make their money by selling those products. By contrast, the business model of a search engine is not so straightforward. People visit a search engine for its search results, but few search engines make money from these search results. A horizontal search engine like Google only makes money when users look beyond their search results to the surrounding advertisements and click on one of them. Because users only tend to resort to these ads when their search results don't have what they're looking for, there is an inevitable tension between a search engine's need to produce good enough search results to attract and retain users and its conflicting need to ensure that the results are bad enough that users regularly resort to clicking on an ad.

Others have highlighted this inherent conflict of interest, including, most notably, Google's own founders:

> *"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."*
> Sergey Brin and Larry Page, Anatomy of a Search Engine, 1998

The following is a screenshot from April 2011 illustrating what Google's natural search results (highlighted in green) and paid advertisements (highlighted in red) used to look like. The conflict of interest arises because users go to Google for the green stuff, but Google only makes money when users click on the red stuff:

[4] See also Appendix II: The Super-Dominant Supermarket Analogy

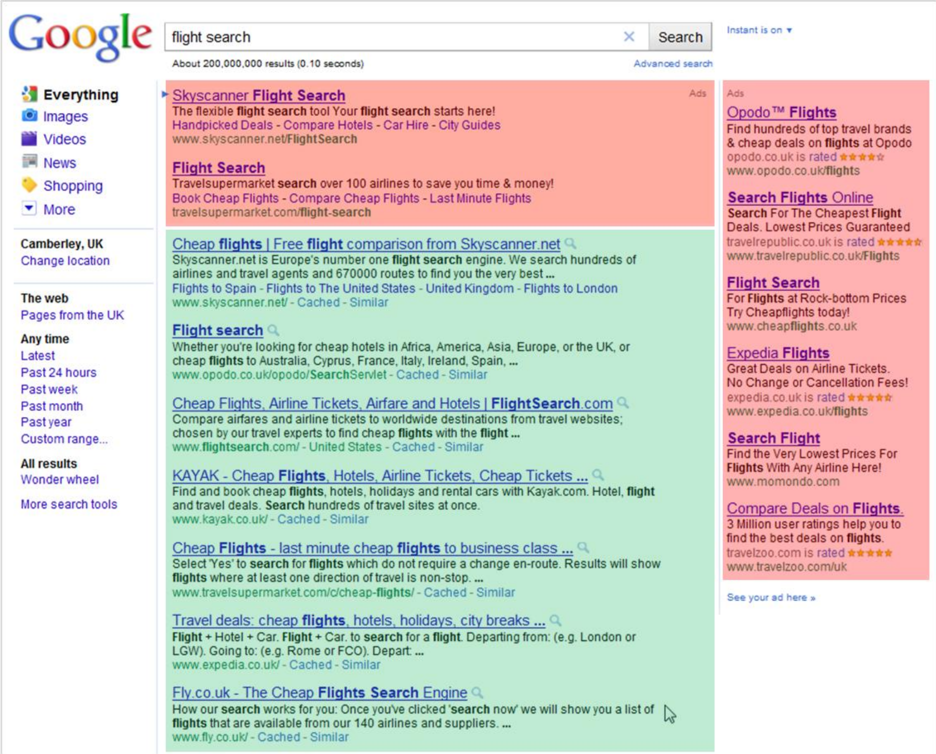


Figure 1: A screenshot from April 2011.
We have highlighted Google's natural search results in green and Google's paid advertisements in red

In essence, a search engine's business model is a numbers game: for any page containing paid ads, there is a chance that a user will click on one or more of these ads. For several years, Google's revenues grew at a phenomenal rate, broadly in line with the phenomenal growth in global internet use and search volumes. But, as the growth in search volumes began to level off, Google sought other ways to maintain its revenue growth. Aside from attracting more users (which is difficult for Google, given its overwhelming dominance of search in most countries), a search engine can endeavour to grow its revenues in two ways:

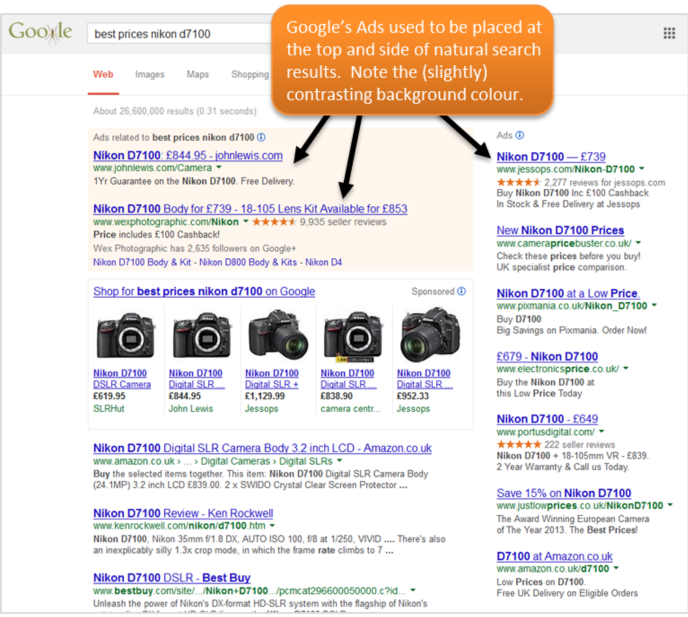
- First, by increasing the probability that a user will click on an ad—perhaps by lowering the quality and relevance of its search results so that more users resort to the ads, or perhaps by blurring the line between ads and search results so that users don't necessarily realise they are clicking on an ad.
- Second, by increasing the number of its own pages a user looks at per visit, perhaps by keeping users on the search engine's own properties (such as its price comparison service) and *not* sending them off to anyone else's. This is particularly important for queries with commercial rather than informational intent (e.g., searches for a digital camera or a flight to New York rather than for the height of Mount Kilimanjaro).

As we discuss below, since around 2005 Google has been increasingly deploying all of these techniques (and then some) to grow its revenues.

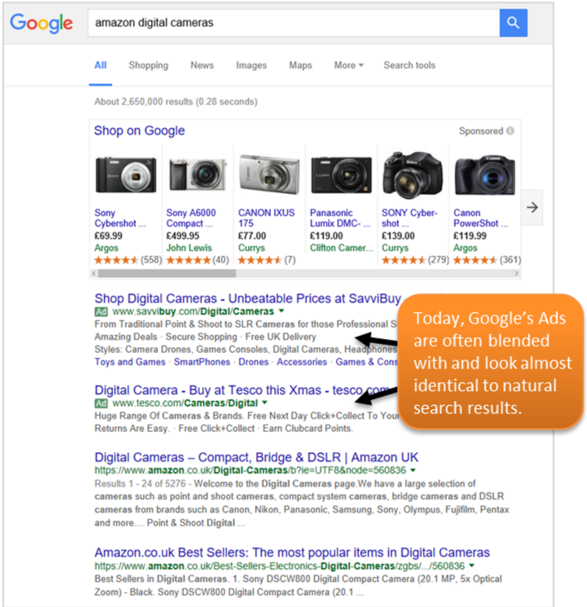
2.1 Blurring the Lines between Ads and Search Results

It is difficult to know precisely when Google first began to blur the lines between the presentation of its paid advertisements and its natural search results, but there is no doubt that it has been quietly and steadily doing so for several years. Google's ads have started to look increasingly like search results, and areas of the page that were once reserved for search results are now sometimes used for ads and vice versa.

The following screenshots illustrate how Google's ads used to look in 2013 compared to how they look now. For the time being, let's ignore the large, eye-catching Google Shopping insert at or near the top of both pages (and let's gloss over the fact that it being difficult to ignore is pretty much the whole point). Notice how, in 2013, the ads at the top of the page were presented on a different background colour—presumably to help users differentiate between Google's paid advertisements and natural search results. Interestingly, this colour evolved over the years, typically becoming less and less visible. In 2016, not only are these top ads now merged into an area that used to be reserved for search results, their appearance is now indistinguishable from natural search results, save for a frankly miniscule "Ad" icon:



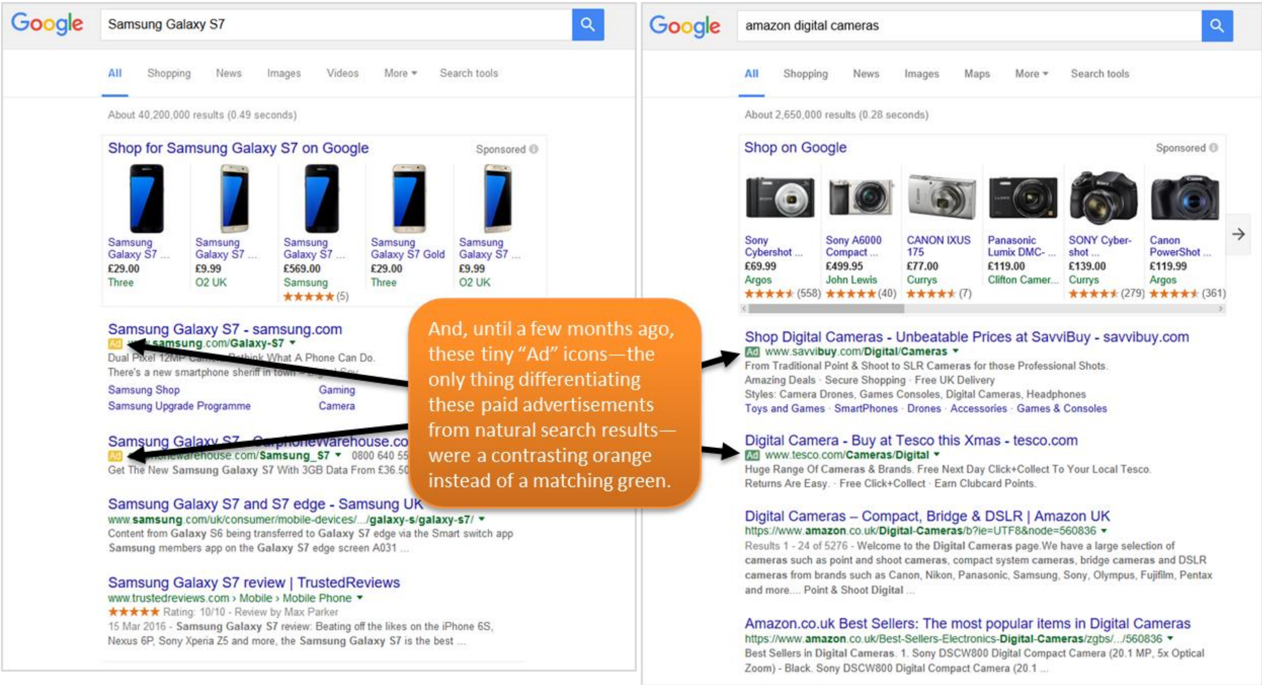
3 December 2013



17 November 2016

Figure 2: A typical Google search result page in December 2013 and November 2016.

Clearly, the scope for Google's users to be confused about which "results" are search results and which are paid advertisements is greatly increased by these changes. Moreover, the scope for confusion is far greater now than it was even just a few months ago. As illustrated in the screenshot below, as recently as April this year, the small "Ad" icon used to be a contrasting orange colour—not the matching green colour used today:



11 April 2016 | 17 November 2016

Figure 3: A typical Google search result page in April 2016 and November 2016.
Note the switch in colour of the "Ad" icon from contrasting orange to matching green.

As a direct result of these iterative changes, where it used to be quite easy for users to accidentally click on an ad instead of a search result, nowadays it is sometimes difficult not to:

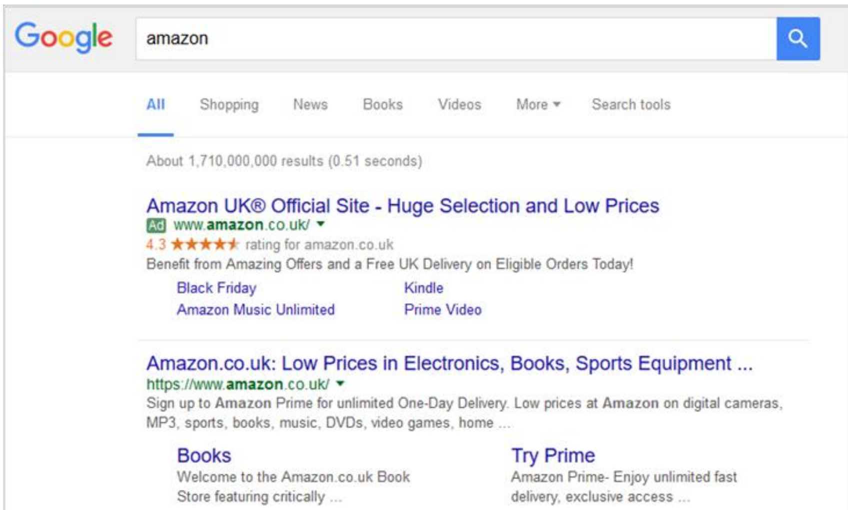


Figure 4

There is no doubt that this blurring of the lines between Google's natural search results and its paid advertisements will have resulted in increasing numbers of users unwittingly clicking on paid advertisements (which are ranked primarily according to the amount advertisers are willing to pay Google) rather than on the relevance-based search results they almost certainly came for. Note that this is true, whether or not this was the intent behind these changes.

It is also clear that, intentional or not, over the last several years Google has achieved a similar effect by quietly but surely degrading the quality of its search results for queries with commercial rather than informational intent.

2.2 Eroding the Usefulness and Quality of Google's Search Results

As discussed above, users visit Google for its relevance-based natural search results, not for its paid advertisements, and, generally, users only click on the paid advertisements either by accident or when they don't find what they're looking for in the natural search results. This leads to the inescapable conclusion that, if Google's search results were perfect and clearly differentiated from ads, Google would make very little money. It is worth noting that, despite Google's growing portfolio of business interests, users clicking on paid advertisements still generate more than 90% of Google's revenues:

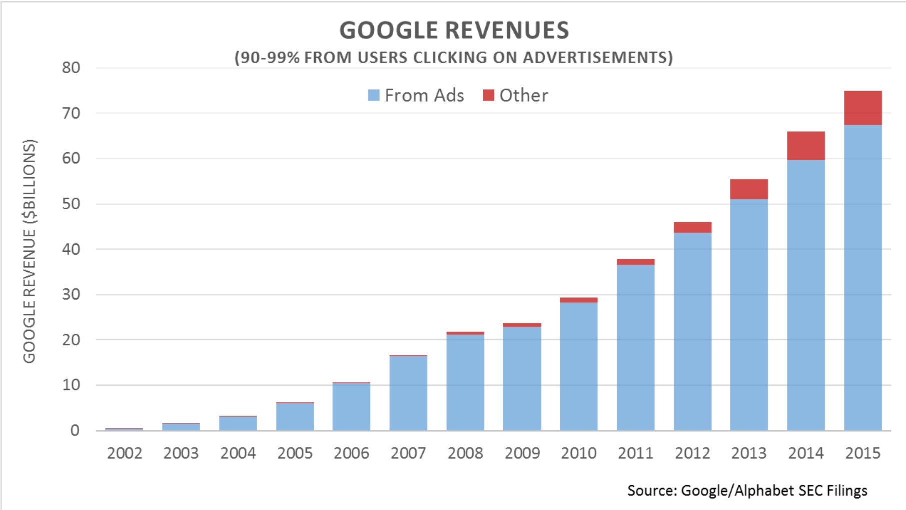


Figure 5: Google's revenues from users clicking on ads versus all other sources

With this in mind, one should be sceptical whenever Google claims that improving or maintaining the quality of its search results "for users" is its highest priority. Particularly, because the notable absence of any serious challenge to Google's overwhelming dominance of search and search advertising has meant that few of the natural market forces that would normally constrain or moderate Google's behaviour have been in play.

In their efforts to combat spam (websites masquerading as highly-relevant while offering no real value to users), all search engines employ a variety of algorithmic penalties[5] that seek to automatically identify and either demote or exclude these "low-quality" websites from users' search results, regardless of how relevant they *appear* to be to the users' queries.

But, over the last several years, Google has begun to introduce a new kind of algorithmic penalty. Although introduced under the banner of *quality control* or *quality improvement*, these new penalties would often target perfectly legitimate websites, or perfectly legitimate kinds of websites, and artificially exclude them from search results for which they would otherwise be highly relevant.

In contrast to spam, which users are rarely, if ever, looking for, when Google artificially removes legitimate sites from its natural search results it can have the effect of driving users into Google's paid advertisements. Users looking for these artificially demoted websites, or these kinds of artificially demoted websites, will now often fail to find them in Google's natural search results and resort instead to Google's paid advertisements. As a result, many of the websites affected by these penalties are compelled either to start paying Google for paid advertisements or to expand their existing search advertising campaigns.

---

[5] See Appendix I

This is a serious problem for users (whether they know it or not, which they often don't), because paid advertisements are ranked primarily according to the amount advertisers are willing to pay Google, not by their merit or likely relevance. It is also a serious problem for the affected websites, because free, natural search traffic is the lifeblood of most online businesses. The economics of Google's ad auctions, where there are nearly always more bidders than available ad slots, means that in the vast majority of cases advertisers are compelled to bid away the majority of their profits to Google (leaving little left over to fund growth or innovation).

In essence, any time Google can come up with a credible-sounding pretext to artificially demote otherwise highly relevant commercial sites from its search results, it effectively drives these sites (and the consumers that are looking for them) away from its unprofitable (for Google) natural search results and towards its highly profitable (for Google) paid advertisements.

One such pretext from a few years ago seemed to involve Google removing what it argued were effectively "duplicate" entries from its search results, so that a search for a particular product, for example, would return no more than one or two merchants selling that product. Google's argument seemed to be that merchants tend to offer very similar product pages, often featuring very similar product titles, the same or very similar photographs, and the same manufacturer-supplied descriptions. Why on earth, the argument went, would a user want to see more than one or two of these merchants in its search results? The answer of course is that while the various merchant pages might be 90% the same, the small degree to which they vary, such as price and availability, is of great interest to Google's users; indeed, it is often the whole point of the exercise.

While these kinds of spurious, revenue-boosting penalties are both harmful for Google's users (whether they realise it or not) and immensely harmful for any of the businesses affected by them, they are not necessarily anti-competitive. Nor are the similar-sounding but entirely legitimate kind of penalties that all search engines require in order to combat spam.

But there is a third kind of penalty—the *anti-competitive* penalties for which Google is being formally charged by the European Commission. Put simply, a spurious, pretextual Google search penalty becomes anti-competitive when it favours one or more of Google's own services—i.e., when Google owns or has an interest in a competing service that is effectively immune to the penalty. For example, in or around 2005, Google began developing a two-pronged, anti-competitive assault on vertical search—starting with price comparison, one of the most lucrative verticals. This from the US Federal Trade Commission (FTC):

> *"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.*
>
> *Similarly, Google has identified comparison shopping websites as undesirable to users, and has developed several algorithms to demote these websites on its SERP."* Page 28 of the inadvertently leaked FTC Final Staff Report, 8 August 2012[6].

As with the revenue-boosting penalties described above, these anti-competitive penalties were also introduced under the guise of quality control. Note that a site that copies most of its content from others, writes very little original content of its own, and only exists to deliver users to other websites sounds terrible, but only until you realise that these carefully contrived slurs describe all search services, including Google's own. All search services routinely copy the content of the sites they search; that is how search engines work. Of course, no one knows this better than Google. All of

[6] http://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf

Google's search result pages consist almost entirely of content that Google has copied from other sites. And the same is true for Google's price comparison service.

Google has introduced these anti-competitive penalties gradually over the course of several years. The exclusionary "lack of original content" penalty that struck Foundem in 2006, for example, seems to have been reserved for emerging and still relatively unknown services. Whereas, Panda (first introduced in 2011) and its various follow-on algorithmic updates have now resulted in the near wholesale eradication of all competing price comparison services from Google's search results, including the market leaders.

In common with Google's spurious but not necessarily anti-competitive penalties outlined above, these equally spurious but also anti-competitive penalties increase the chance that users looking for price comparison services will look beyond Google's natural search results to its paid advertisements. But, the near wholesale removal of all price comparison services (barring Google's own) from Google's search results has the substantial additional benefit for Google of keeping users looking for these kinds of services locked within Google's own properties rather than sending them elsewhere. This is particularly important for Google because, whenever Google sends a user to a rival price comparison service from its natural search results, it is not only forgoing any revenues from that particular click, it is also forgoing all future revenues from whatever other clicks the user might make on his or her journey to purchase.

Which brings us to the second Google practice for which Google is being formally charged: favouring its own price comparison service by inserting prominent links to it (or ads lifted from it) through Universal Search.

2.3 Keeping Users on Google Properties Rather Than Sending Them to Others

First deployed at the end of 2007, Universal Search is Google's mechanism for inserting links to and information from its own growing stable of specialised services, such as price comparison, travel search, local search, news, and digital maps. Importantly, Universal Search uses entirely different algorithms and relevance signals to rank Google's own services than Google uses to rank everyone else's. And crucially, Google makes no attempt to reconcile the relative relevance of its own specialised services compared with competing services across the two separate mechanisms of Universal Search and natural search. As a result, how aggressively Google 'blends' its own services at or near the top of its search results is entirely at Google's discretion.

Let us briefly return to a Figure illustrating the unusual disconnect between what users go to Google for (the green stuff) and how Google earns its money (the red stuff):

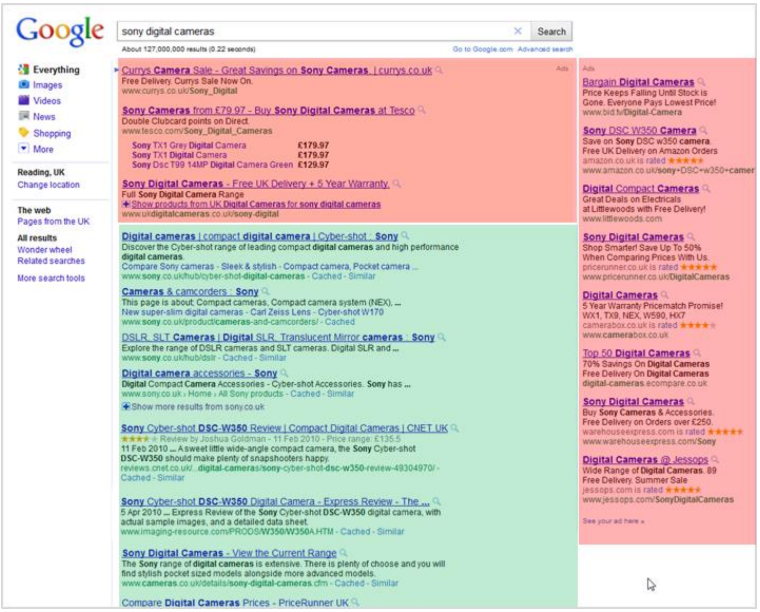


Figure 6

From Google's revenue-focused perspective, the natural search results (in green) represent a significant leak in its money-making machine. While it needs to provide natural search results in order to attract and retain users, every time a user clicks on one of these results instead of on a paid advertisement it is an opportunity lost—and, as we've seen above, not just from that one click but from whatever additional clicks the user subsequently makes on their journey to a purchase.

But, look what happens to the green area when Google injects a Universal Search insert into the mix:

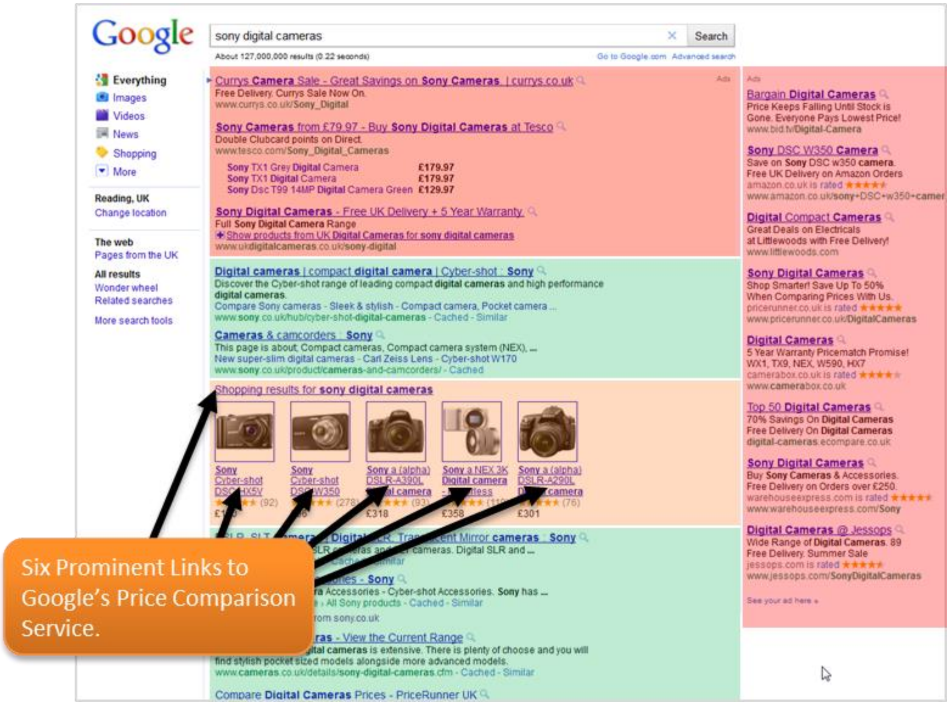


Figure 7: Illustrating a pre-2013 Universal Search insert (known as a Product Universal)

Into what was once (from Google's perspective) a barren wasteland of relevance-based natural search results—each of which represented potential loss of revenue—Google has now inserted six (in this particular example) eye-catching links to Google's own price comparison service (eleven links if you count the images). Instead of being lost to a merchant or one of Google's price comparison competitors, anyone clicking on these links will be delivered to Google's own price comparison service—where Google then has the opportunity to earn revenue from any subsequent clicks.

And the situation gets even better for Google following its February 2013 rebrand of its price comparison service from Google Product Search to Google Shopping and the associated transition to Commercial Units and a pay-for-placement model:

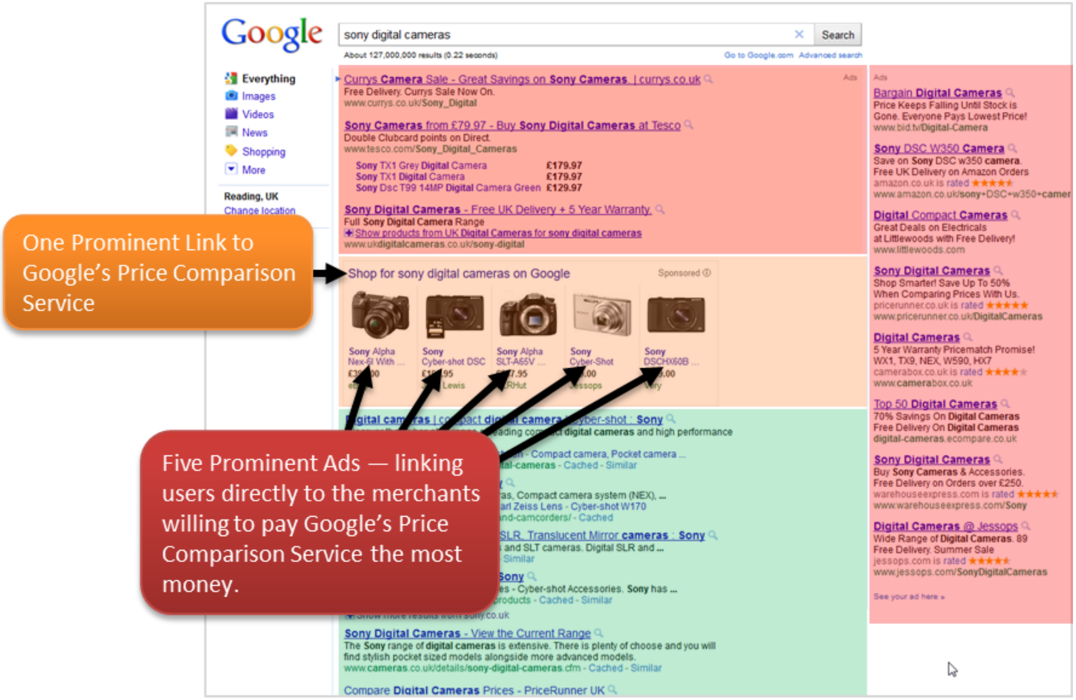


Figure 8: Illustrating a post-February-2013 Universal Search insert (known as a Commercial Unit)

As illustrated in Figure 8 above, in addition to featuring a prominent link to Google's own price comparison service (where users might go on to click on an advertisement), Google's new Commercial Units now also feature multiple brightly-coloured pay-for-placement advertisements lifted directly from Google's own price comparison service and placed in a prime location within the search results area. By promoting the highest-bidding ads from its price comparison service directly onto Google's search results page (rather than being a click away), Google has substantially increased the chance that a user will click on one of these ads.

2.4 None of these Practices are "Improvements" for Users

As discussed above, for the last ten years or so, Google has been progressively:

- blurring the lines between its natural search results and its paid advertisements,
- degrading the quality and usefulness of its search results for commercial queries, and
- escalating the anti-competitive search manipulation practices that keep users on Google's own services rather than sending them to competitors.

None of these practices are good for Google's users. On the contrary, they deny users access to the best or most relevant results, stifle innovation, suppress competition, and inevitably result in more and more users unwittingly clicking on advertisements (ranked primarily according to the advertisers' willingness to pay Google) rather than on natural search results (ranked according to their likely relevance to the user's query).

For example, a May 2016 study[7] found that nearly half of US searchers "can't differentiate between paid and organic search listings" and that "almost 2/3 of clicks" for "high commercial intent keyword searches" on Google now go to paid advertisements rather than to natural search results.

Folklore suggests that a frog placed in or even over boiling water will immediately leap out of harm's way, but a frog placed into cold water that is then gently brought to the boil will perish without ever perceiving the danger. Google has introduced the various practices described above gradually over time, in a series of virtually imperceptible individual steps. We suggest that this has gently lured users into accepting what would clearly be unacceptable if it had been noticed or properly understood. As a result, there is now a significant and growing gap between the enduring public perception of Google's search engine as comprehensive and unbiased and the reality that it is increasingly neither.

2.5 The Symbiotic Relationship between a Search Engine and Websites

Google's recent behaviour suggests that it may have forgotten the symbiotic relationship between a search engine and the websites it searches.

The crucial role search engines play in directing users to websites means that most Internet-based businesses rely on search engines for a substantial proportion of their traffic and revenues. Google's overwhelming dominance of horizontal search means that, for most websites, this amounts to an uncomfortable but unavoidable reliance on Google. With a few notable exceptions (such as rival horizontal search engines and social networking services, see footnote 18), even the Web's best-known and most established brands would be placed in immediate jeopardy if Google were to start systematically excluding them from its search results. Note that Google's own specialised services are no less dependent on this Google search traffic than anyone else.

Moreover, given that Google's users visit Google for its natural search results and <u>not</u> for its paid advertisements, there is and always has been a symbiotic relationship between the websites that depend on Google for free natural search traffic and the tens of billions of dollars of Google's advertising revenues that depend on these websites—because, without them, Google would have no natural search results to hang its ads on.

3 Paid-Placement versus Paid-Inclusion

Before the 2013 rebrand of Google's price comparison service from Google Product Search to Google Shopping, Google Product Search employed a business model similar to Google's natural search results: merchants listed their products for free, and Google generated revenues by placing AdWords ads around these listings.

With the rebranding to Google Shopping in 2013, Google introduced a fundamentally different business model for its price comparison service, whereby merchants now had to pay—not for *inclusion* (which is the industry standard for price comparison services) but for *placement* (which, as we explain below, entirely undermines the value price comparison services provide to users).

In a paid inclusion (aka pay-to-play) model, as the name suggests, merchants pay to have their offers *included* in the service's listings—their placement will be determined by the user's search and sort criteria. For example, by default, most comparison shopping services sort their listings by price, with the cheapest prices displayed first.

By contrast, in a pay-for-placement model, such as that employed by Google Shopping, merchants *bid* for placement and the amount a merchant is willing to pay is a determining factor in where its

[7] "The War on Free Clicks", May 2016: http://www.wordstream.com/blog/ws/2012/07/17/google-advertising

offers are placed. That is, by default, Google Shopping presents users with product listings that are *not* sorted by price, but instead prioritise offers from merchants willing to pay Google the most money for a click.

At the same time as changing the underlying business model of Google Shopping, Google also made a corresponding change to the form and function of the anti-competitive Universal Search inserts that were one half of the Commission's search manipulation ("favouring") concerns. Where Product Universals had inserted prominent and eye-catching links *to* Google's price comparison service, Google's new Commercial Units introduced multiple eye-catching pay-for-placement ads lifted directly *from* Google's price comparison service.

Figure 9 below shows Google's self-serving Universal Search inserts before and after the February 2013 transition to Google Shopping. The Product Universal (on the left) features six links to Google's price comparison service (one to a category page and five to specific product pages). The Commercial Unit (on the right) features one link to Google's price comparison service and five ads linking to five of the highest bidding merchants on Google's price comparison service:

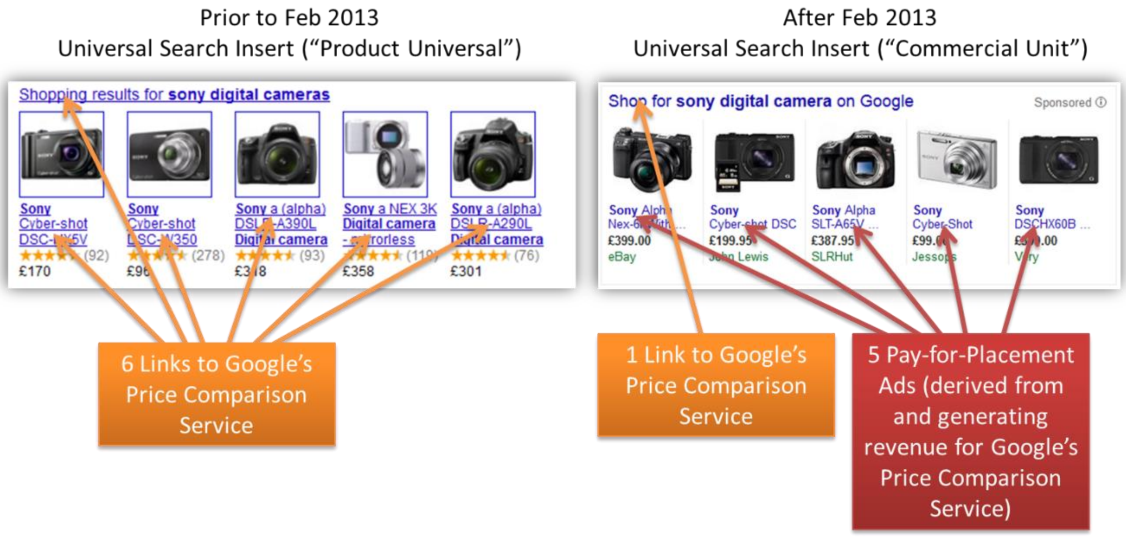


Figure 9: Google's self-serving Universal Search inserts before and after the February 2013 transition to Google Shopping.

Note that under Google's pay-for-placement model (on the right in Figure 9), the five or so products typically featured in a Commercial Unit are not the five best or cheapest offers; they are five offers from the merchants willing to pay Google the most money for a click. Another point that is often overlooked is that in both cases (because the query, "sony digital cameras" is quite general), it is relatively unlikely that either insert will contain the particular sony camera the user happens to be looking for.

By promoting five of the highest-bidding ads directly onto the search page rather than being a click away, Google substantially increased both the anti-competitive advantage Google was affording to its own price comparison service and the direct anti-competitive harm to consumers.

While the distinction between pay-for-placement and pay-for-inclusion may be relatively unimportant for advertisements that do not present themselves as search results, such as old-style AdWords ads, the distinction is immensely important in the context of a price comparison service. Users that visit a price comparison service presumably do so with a reasonable expectation that the service is helping them to compare prices. But the stark reality is that Google's insidious, two-pronged search manipulation practices have now all-but-eradicated competing price comparison services from the market. And—since the transition to Google Shopping and its pay-for-placement business model—Google has supplanted the considerable value that price comparison services provided to consumers with a clearly inferior service that, because it prioritises merchants that pay Google the most over merchants that offer consumers the best deals, fails to match users' most basic expectations of a price comparison service. As a result, it is inevitable that Google's users (i.e., pretty much everyone) are now paying higher prices for products than they need to.[8]

How many of Google's users realise that Google Shopping's results and the five-or-so offers that Google now promotes at the top of the search result page are advertisements? And how many realise that these advertisements are prioritised by the merchants willing to pay Google the most, rather than those offering the best prices? If users are trusting Google to place the best, highest quality, most relevant, or cheapest merchant offers in those precious top-slot positions, then there is no doubt that their trust is now misplaced.

Given how potentially harmful these paid-placement ads are, particularly for any users who fail to appreciate that these are pay-for-placement ads rather than search results, you might think that Google would go to great lengths to make this distinction clear. But you would be mistaken.

At the time of writing (December 2016), users clicking on the *Sponsored "information"* icon at the top of a Commercial Unit are simply and misleadingly told that "Google may be compensated by some of these providers". In other words, Google is not only failing to inform its users that these advertisements are prioritised by the highest bidders, it is also failing to clearly inform its users that they are advertisements at all:

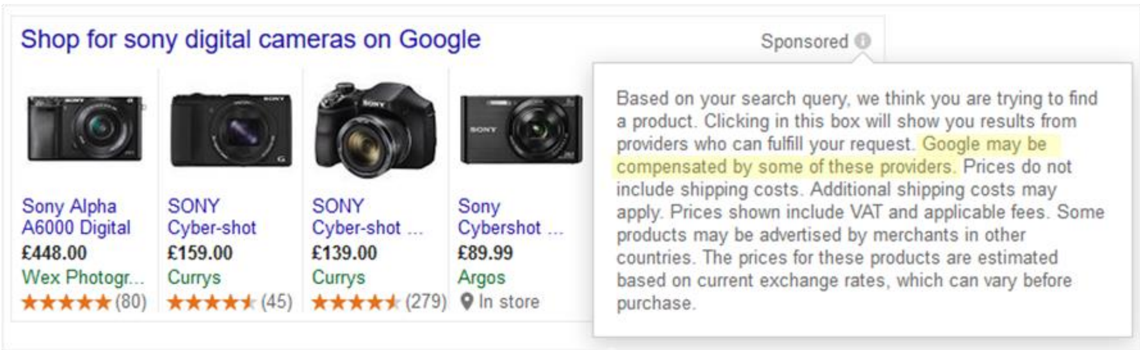


Figure 10: A screenshot from 1 December 2016 showing the explanatory text users are shown when they click on the Sponsored "i" icon (yellow highlighting added)

Needless to say, Google's online information for merchants is considerably less opaque—making it absolutely clear that Google always requires compensation from all merchant advertisers:

"Requirements for Shopping campaigns

There are a few requirements that you'll need to meet to be able to set up a Shopping campaign and create Shopping ads.

You'll need to set up accounts with Google Merchant Center and Google AdWords, and link them together…

…To get started, you'll send us your product data with Merchant Center and create a campaign in AdWords. Then we'll use your campaign to create ads on Google and around the web where potential customers can see what you're selling. We call these placements Shopping ads, because

[8] This common-sense conclusion is supported by multiple studies, including one carried out by the Financial Times in 2013 that found that users clicking on one of the Google Shopping ads featured in the Commercial Unit paid higher prices than necessary about 85% of the time: https://www.ft.com/content/a004c830-552d-11e3-a321-00144feabdc0

they're more than a text ad – they show users a photo of your product, plus a title, price, shop name and more…

…your Shopping ads participate in an ad auction, but you'll only be charged whenever [a] user clicks an ad that leads directly to the landing page on your website…This is known as cost per click (CPC). When you're creating your Shopping campaign, you'll decide how much you're willing to pay for each click." [9]

4 A Paragraph by Paragraph Deconstruction of Google's Blog Post

The following is a paragraph-by-paragraph deconstruction of Google's 3 November 2016 public response to the European Commission's SSO.

4.1 Paragraph 1 of Google's Blog Post

> *"When you search for something on Google, we try to provide you the highest quality information we can. Our engineers are constantly experimenting to find better ways to connect you with useful information, and, increasingly, to provide direct answers to your questions."*

As explained in section 2 above, since at least 2005, Google does not always try to provide users with the highest quality information it can. Increasingly, commercial and anti-competitive considerations have taken precedence–particularly for queries with commercial (rather than informational) intent.

Moreover, throughout the Commission's investigation, Google's public messaging has repeatedly conflated the important differences between:

- something that is *an answer* and something that is *a click away from an answer*;
- something that is *one of many possible answers* and something that is *the answer*; and
- something that *is relevant* and something that is *the most relevant.*

In addition to these perennial favourites, Google's latest missive also seeks to obscure the crucial difference between natural, relevance-based search results, and unnatural, pay-for-placement advertisements.

As Google knows, a link that takes users to Google's own price comparison service is no more of an answer than a link that takes users to a competing, and often superior, price comparison service. Both potential answers are a click away. And, since Google's 2013 transition to pay-for-placement Commercial Units, the links that take users to merchants (which have all been lifted from Google's price comparison service) are not links to what Google considers to be the best answer, they are links to an answer, generally from the advertiser willing to pay Google the most money for the click.

4.2 Paragraph 2 of Google's Blog Post

> *"We take that same approach to online shopping searches. If you're looking to buy a <coffee machine> or a <cast iron pan>, we want to connect you directly to merchants who sell them, whether that's through organic links or ads. In recent years, we've improved the format of our ads to include more informative displays with pictures, prices, and links where you can buy products. Showing more useful ads benefits us, our advertisers, and most of all, you, our users."*

This is probably the most important paragraph of Google's blog post. In it, Google seeks to gloss over the unpalatable truth at the centre of the Google Search case. As explained in sections 2 and 3 above, if you're looking to buy something, Google has become increasingly particular about exactly

[9] https://support.google.com/adwords/answer/2454022?hl=en-GB and https://support.google.com/adwords/answer/2454022?hl=en-GB&ref_topic=6275320

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).

Regrettably, Google has a long history of being less than forthcoming about these important points. In his September 2011 testimony to the US Senate Antitrust Subcommittee[10], Google Chairman and former CEO Eric Schmidt claimed that the links within Google’s Product Universals would take users to the vendors selling the products, not to Google’s own price comparison service. But this was not true. In the vast majority of cases, and certainly in the example that Mr Schmidt was being asked about, all of the links within the Product Universal delivered users to Google’s own price comparison service and not to the vendors as Mr Schmidt claimed:

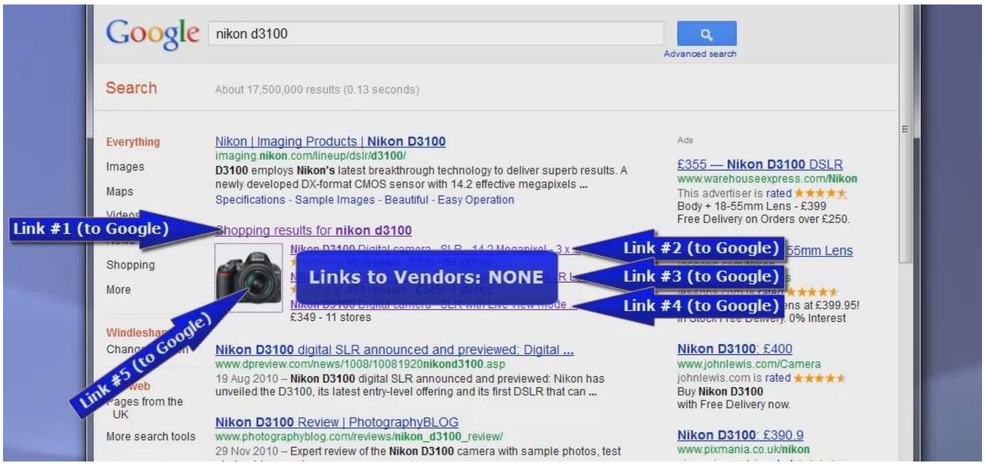


Figure 11: A screenshot from Foundem's YouTube video deconstructing Mr Schmidt's testimony

In fact, prior to the transition of Google Shopping to a pay-for-placement model in 2013, the vast majority of Product Universal inserts for all or the vast majority of popular, mainstream categories of products, such as cameras, washing machines, televisions, and so on, exclusively featured links to Google’s own price comparison service. As far as we are aware, the only occasions on which Google would insert links to merchants (rather than to its own price comparison service) was for long-tail, obscure product categories that it was unable to map directly to its own product taxonomy, such as bagel toasters, gas grills, teak furniture, cast iron pans, and so on.

The following historical screenshots are representative of the vast majority of Product Universal formats (i.e., prior to the 2013 transition to Commercial Units). Note that all of the links within these inserts “connect users directly” to Google’s own price comparison service, not to the “merchants who sell [the products]”:

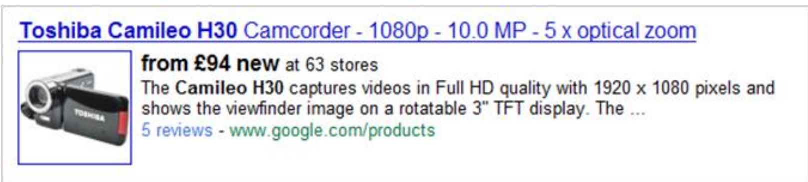


Figure 12: Screenshot from 27 July 2010 for the query “Toshiba Camileo H30” – featuring 3 links to Google’s own price comparison service and 0 links to merchants

[10] https://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1

Figure 13: Screenshot from 31 July 2010 for the query "Sony Ericsson XPERIA X10" – featuring 3 links to Google's own price comparison service and 0 links to merchants

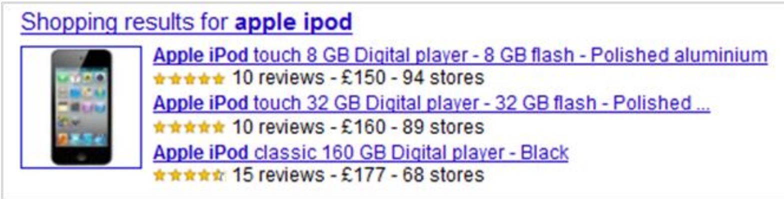


Figure 14: Screenshot from 11 January 2011 for the query "apple ipod" – featuring 5 links to Google's own price comparison service and 0 links to merchants

Figure 15: Screenshot from 9 June 2011 for the query "sony digital cameras" – featuring 11 links to Google's own price comparison service and 0 links to merchants.

Figure 16: Screenshot from 9 Oct 2011 for the query "nikon d5000" – featuring five links to Google's own price comparison service (including the title and image links) and 0 links to merchants

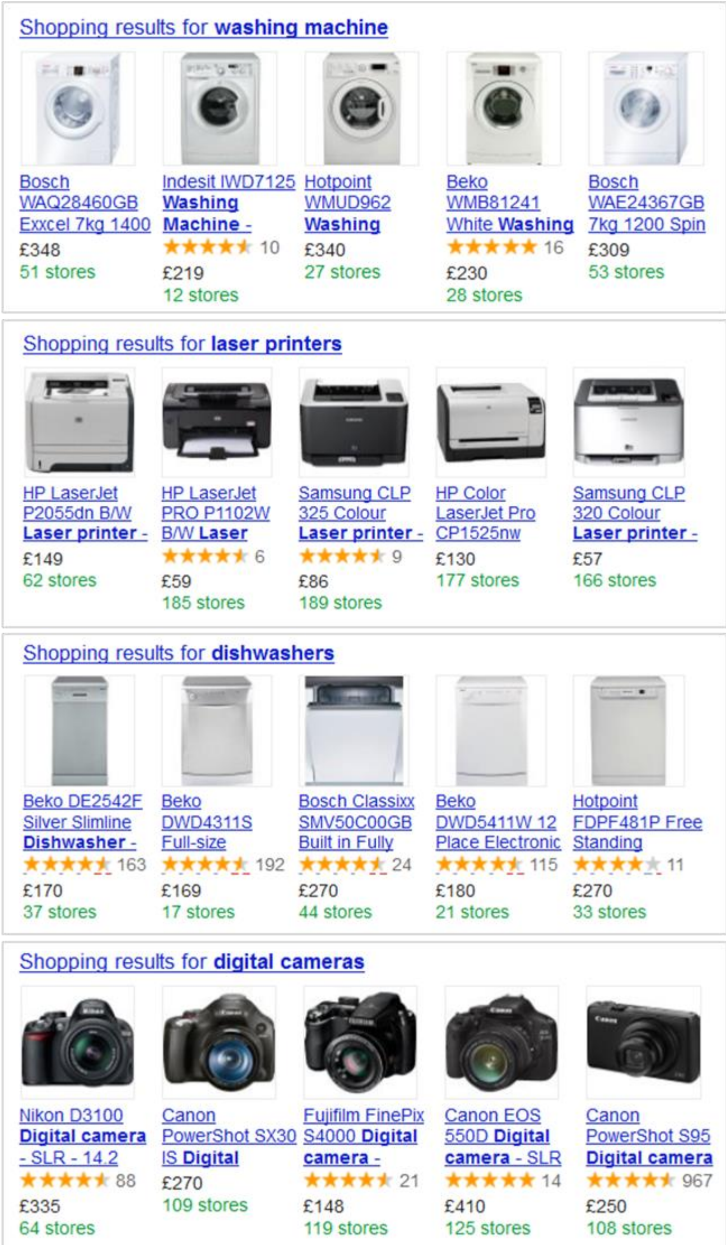


Figure 17: Screenshots from 9 & 11 October 2011 for the queries "washing machine", "laser printers", "dishwashers", and "digital cameras" – all featuring 11 links to Google's own price comparison service and 0 links to merchants

Clearly, none of the above inserts are or contain "answers". Instead, they contain several links to Google's price comparison service, which may or may not provide an answer that is a click away. And, because Google's Universal Search mechanism makes no attempt to reconcile the relative quality or relevance of its own price comparison service compared to any of the competing price comparison services that would also have been relevant to these queries, it is inevitable that, in many cases, links to one or more of these competing price comparison services would have provided Google's users with links to better "answers".

With the introduction of Commercial Units in Europe in February 2013, however, Mr Schmidt's September 2011 claims have become somewhat true—but not because these Google inserts have become less anti-competitive or more useful to users. On the contrary, they have become more anti-competitive and more harmful for users. As we explained in our July 2015 interactive presentation[11], with the introduction of Commercial Units Google replaced most of the anti-competitive links to its own price comparison service with anti-competitive, pay-for-placement advertisements lifted directly from its own price comparison service. The inevitable result of this change will have been a substantial increase in the revenues for Google's price comparison service, despite a corresponding drop in the traffic being driven to it:

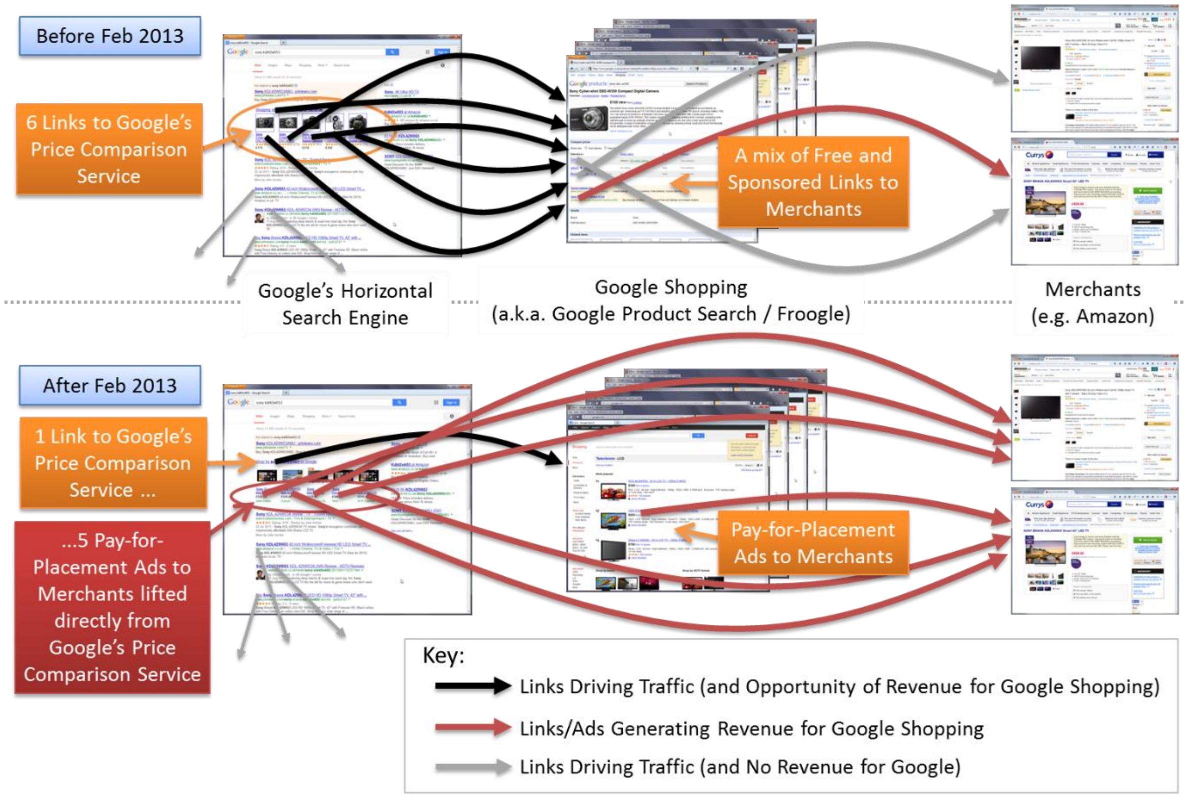


Figure 18: Illustrating the typical change in links and revenue flow since the introduction of Commercial Units and the transition to a pay-for-placement model for Google Product Search (aka Google Shopping)

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 in section 3 above, they are not.

As discussed above, Google's blog post is not simply a rehash of its previous public arguments; it is a tentative segue into a new line of argument, based on the pretence that the Commission's formal anti-trust charges are about ads rather than search results and on the false notion that the two are interchangeable. This argument needs to be tentative because it is a dangerous one for Google to pursue in public: convincing users that it is somehow in their interests to abandon relevance-based natural search results in favour of payment-based advertisements is likely to be a very tough sell.

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 investigation[12]. It is particularly ironic that Google is

[11] http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis/

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

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. For example, in this 2001 interview[13], Google CEO and co-founder, Larry Page, suggested that substituting relevance-based results with pay-for-placement ads was immoral, bad for users, and bad for the long-term reputation of the search engine deploying them:

"Q: If you could make more money by doing paid placement in results, would you?

Page: No. We'd make money in the short term, but not the long term.

Q: How does advertising or "sponsored links" differ from paid placement in the eyes of the average user?

Page: It doesn't and that's the problem. We believe that advertising and editorial should be split. We do the best job we can with computers and such to give you the best search result content. We don't do pay for placement.

Q: Is that a moral stance or a business one?

Page: Both. We believe that the company that's successful will be trusted. When people trust us, then we'll make more money."

Google's claim that "showing more useful ads benefits us, our advertisers, and most of all, you, our users", is reminiscent of Apple's claim that its primary motivation for removing the headphone jack from its latest iPhone was "courage". Bear in mind that these so-called "more useful ads" replaced relevance-based natural search results. Clearly, advertisers would prefer to receive free organic search traffic rather than hand Google the majority of their profits through paid advertisements, and users would prefer to be presented with organic search results based solely on their likely relevance to the query, rather than ads from the highest bidders. The only real beneficiary of this unwholesome transition is therefore Google.

Indeed, if Google really does believe that paid advertisements are what its users want, then why is it increasingly making changes that disguise them as natural search results? For example, with the recent change to the small "Ad" icon from contrasting orange to matching (camouflage?) green discussed in section 2.1 above:

11 April 2016 | 17 November 2016

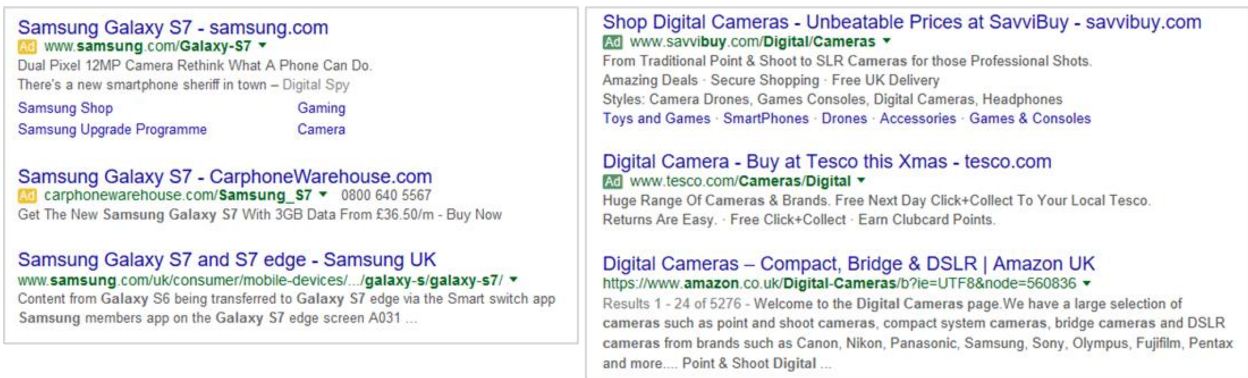


Figure 19: Between April and November 2016 the small "Ad" Icon changed from contrasting orange to matching green

[13] http://www.bizjournals.com/sanfrancisco/stories/2001/08/06/newscolumn8.html

4.3 Paragraph 3 of Google's Blog Post

> *"That's why we disagree with the European Commission's argument that our improved Google Shopping results are harming competition. As we said last year in our response to the Commission's original Statement of Objections (SO), we believe these claims are wrong as a matter of fact, law, and economics."*

Here and in the paragraphs that follow, Google would have us believe that, six years into the Commission's investigation, Google remains confused about the most basic nature of the allegations against it.

Nobody should be surprised to learn that the European Commission's "argument" (aka formal antitrust charges) has nothing to do with "improvements" to Google Shopping or a suggestion that "improved Google Shopping results are harming competition". As Google well knows, the Commission's case is about Google exploiting its dominance of horizontal search to harm competition by diverting traffic and revenues away from competing price comparison services and towards its own price comparison service (currently called Google Shopping), irrespective of the different services' relative merits or relevance.

For more than a decade, Google has played a decisive role in determining what the vast majority of us read, use and purchase online. Left unchecked, there are few limits to this *gatekeeper* power. Google can deploy its search manipulation ("favouring") practices to commandeer the lion's share of traffic and revenues in virtually any online sector of its choosing, crushing competition, innovation, and consumer choice in the process.

4.4 Paragraph 4 of Google's Blog Post

> *"The Commission's original SO drew such a narrow definition around online shopping services that it even excluded services like Amazon. It claimed that when we offered improved shopping ads to our users and advertisers, we were "favouring" our own services — and that this was bad for a handful of price comparison aggregators who claimed to have lost clicks from Google. But it failed to take into account the competitive significance of companies like Amazon and the broader dynamics of online shopping."*

4.4.1 "Comparison Shopping" versus "Shopping"

Here, as in its earlier public blog posts, Google feigns confusion about the difference between "shopping" and "comparison shopping" (aka price comparison shopping). As Google is well aware, the formal charges set out in the Commission's SO and SSO are not about Google manipulating its search results to favour its own "shopping" service. Indeed, Google does not (yet) have a "shopping" service to anti-competitively favour even if it wanted to. The Commission's charges are about Google manipulating its search results to favour its own "*comparison* shopping" service. The Commission has always made this distinction crystal clear, including in its April 2015 press release[14]:

[14] http://europa.eu/rapid/press-release_IP-15-4780_en.htm

European Commission - Press release

Antitrust: Commission sends Statement of Objections to Google on comparison shopping service; opens separate formal investigation on Android

Brussels, 15 April 2015

The European Commission has sent a Statement of Objections to Google alleging the company has abused its dominant position in the markets for general internet search services in the European Economic Area (EEA) by systematically favouring its own comparison shopping product in its general search results pages. The Commission's preliminary view is that such conduct infringes EU antitrust rules because it stifles competition and harms consumers. Sending a Statement of Objections does not prejudge the outcome of the investigation.

The Commission has also formally opened a separate antitrust investigation into Google's conduct as regards the mobile operating system Android. The investigation will focus on whether Google has entered into anti-competitive agreements or abused a possible dominant position in the field of operating systems, applications and services for smart mobile devices.

EU Commissioner in charge of competition policy Margrethe Vestager said: "*The Commission's objective is to apply EU antitrust rules to ensure that companies operating in Europe, wherever they may be based, do not artificially deny European consumers as wide a choice as possible or stifle innovation*".

"In the case of Google I am concerned that the company has given an unfair advantage to its own comparison shopping service, in breach of EU antitrust rules. Google now has the opportunity to convince the Commission to the contrary. However, if the investigation confirmed our concerns, Google would have to face the legal consequences and change the way it does business in Europe."

"I have also launched a formal antitrust investigation of Google's conduct concerning mobile operating systems, apps and services. Smartphones, tablets and similar devices play an increasing role in many people's daily lives and I want to make sure the markets in this area can flourish without anticompetitive constraints imposed by any company."

Comparison shopping

Comparison shopping products allow consumers to search for products on online shopping websites and compare prices between different vendors. The preliminary conclusion of the Commission's investigation opened in November 2010 is that Google gives systematic favourable treatment to its comparison shopping product (currently called 'Google Shopping') in its general search results pages, e.g. by showing Google Shopping more prominently on the screen. It may therefore artificially divert traffic from rival comparison shopping services and hinder their ability to compete on the market. The Commission is concerned that users do not necessarily see the most relevant results in response to queries - this is to the detriment of consumers, and stifles innovation. The Commission's preliminary view is that to remedy such conduct, Google should treat its own comparison shopping service and those of rivals in the same way. Google now has the opportunity to respond to the Commission's

Figure 20: The European Commission's 15 April 2015 Press Release Regarding the Search SO

As you would expect, the Commission's definition of online shopping services like Amazon does include services like Amazon, despite Google's surprising claim to the contrary. But, as explained above, the subject of the Commission's SO isn't online *shopping*—it is online *comparison shopping*. As you would also expect, the Commission's definition of the online comparison shopping market takes full account of the broader dynamics of online shopping and quite rightly excludes online retailers and merchant platforms like Amazon. That's because online retailers and merchant platforms like Amazon are not comparison shopping services.

4.4.2 Anti-Competitive Search Penalties – Google's Elephant in the Room

Google goes on to fundamentally mischaracterise the Commission's two-pronged "favouring" allegations: first, by pretending that they concern ads rather than search results, and second, by steadfastly ignoring the penalty/demotion half of the Commission's charges.

The Commission's allegations that Google "favours" its own services mirror those of Foundem's 2009 Competition complaint—namely, that Google systematically inserts links to its own specialised services at or near the top of all relevant search results (e.g. through Universal Search) while simultaneously demoting or excluding links to competing specialised search services (through anti-competitive penalties).

Again, note that the Commission's "favouring" allegations pre-date by several years the 2013 transition from anti-competitive *links* to even more anti-competitive *ads* that Google is obliquely referring to here when it erroneously implies that the Commission's allegations started "when [Google] offered improved shopping ads to [its] users and advertisers" (see section 4.2 above).

4.4.3 A "Handful" of Competitors?

Google goes on to claim that the Commission's case is that Google's anti-competitive practices only harm "a handful of price comparison aggregators". But this claim is also erroneous. The Commission's case concerns anti-competitive Google practices that adversely affect the entire price comparison market across Europe and beyond. The unprecedented number of Complainants are just the tip of a far larger iceberg—as is the narrow price comparison market that is the focus of the Commission's current Search SO. The Commission has made clear that it chose to narrow the focus of its current Search SO to price comparison, not because it isn't concerned about the harm that Google's anti-competitive practices are inflicting on additional specialised search markets, such as travel search and local search, but because the price comparison market provides some of the earliest and most compelling evidence of the harm inflicted by these practices. The Commission has also made clear that the required remedy is likely to extend far beyond product price comparison to also include travel search, local search, and all other existing and future specialised search services. The following is from Commissioner Vestager's April 2015 statement:

> *"Today's Statement of Objections focuses on comparison shopping because that is the area where Google has been favouring its products in its search results for the longest period. However, we continue to look at the ways in which Google may also favour its other specialised search services. If an infringement is proven, a case focusing on comparison shopping could potentially establish a broader precedent for enforcing EU competition rules in other instances of Google favouring its own services over competing services…*
>
> *Of course, there is great public interest in the Google antitrust cases because it affects so many people and companies."* 15 April 2015 Statement by Commissioner Vestager on the Google Search SO[15]

4.5 Paragraph 5 of Google's Blog Post

> *"Our response demonstrated that online shopping is robustly competitive, with lots of evidence supporting the common-sense conclusion that Google and many other websites are chasing Amazon, by far the largest player on the field."*

While online *shopping* may be robustly competitive, online *comparison shopping*—the subject of the Commission's current Search SO and SSO—most certainly is not. Google's continuing protestations about the flourishing fortunes of Amazon and eBay remain the red herrings they have always been. Google does not (yet) have an online retail, 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 directly competing service of its own to anti-competitively insert at the top of all relevant search results.

As our June 2015 interactive presentation[16] clearly demonstrated, the comparison shopping market has been all-but eradicated throughout Europe (and the US) as a direct result of Google's anti-competitive practices, and Google's so-called evidence to the contrary failed to stand up to the slightest scrutiny:

[15] http://europa.eu/rapid/press-release_STATEMENT-15-4785_en.htm
[16] http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis/

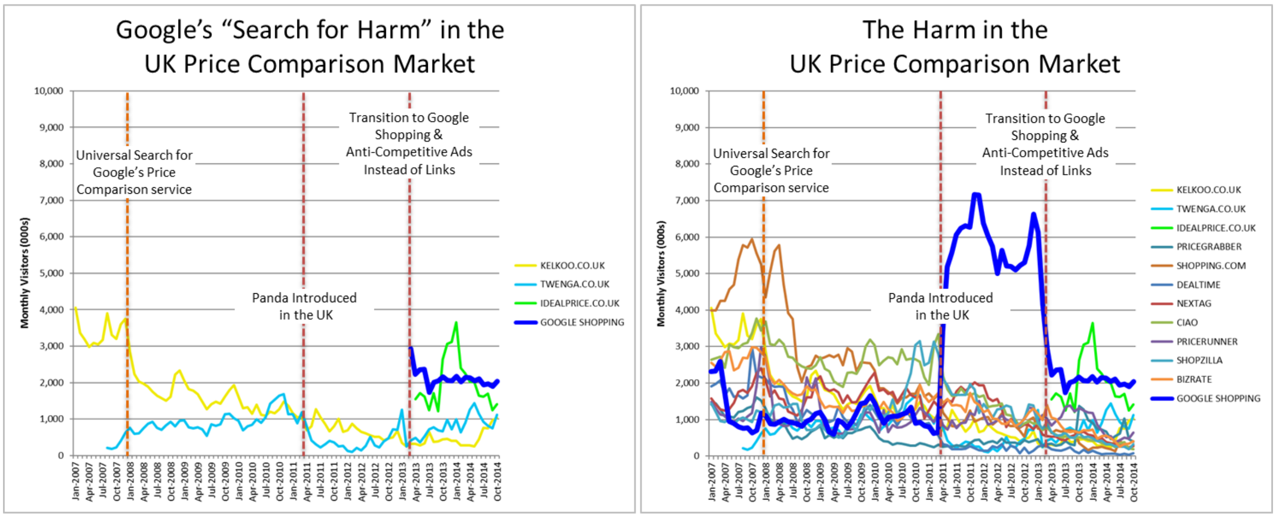


Figure 21: Screenshots from our June 2015 Presentation – Contrasting the data that Google included in its "Search for Harm" graph with the data it inexplicably left out

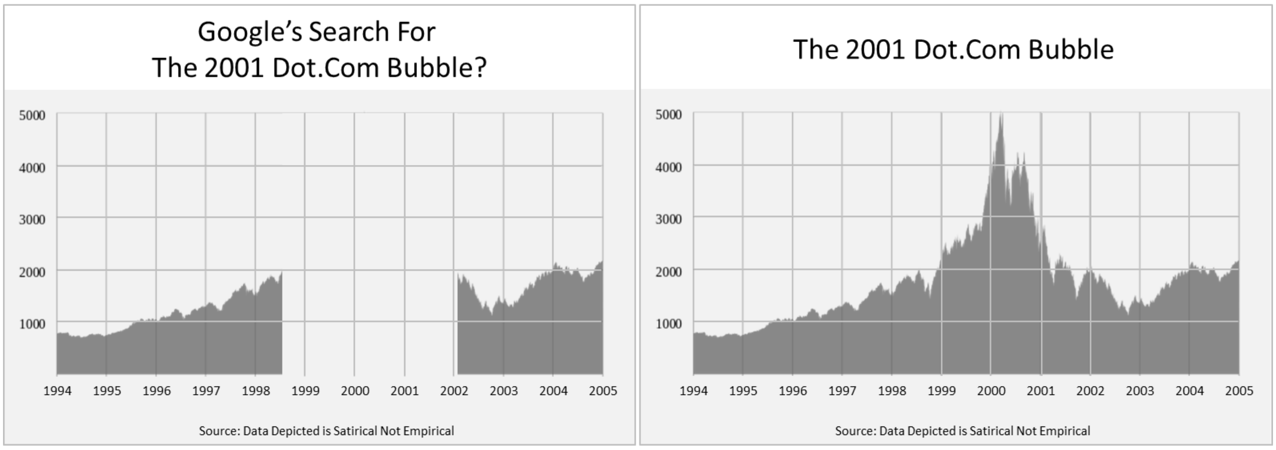


Figure 22: A satirical swipe at Google's approach to evidence in its April 2015 "Search for Harm" blog post

Moreover, Google's claim that it is "chasing Amazon, by far the largest player on the field" would be a more compelling argument if Google had at least entered the field—for example, by developing or acquiring an online merchant or merchant platform of its own. As it stands, and in stark contrast to Amazon, for which selling products is its raison d'etre, you simply cannot use Google Shopping to directly buy products, as is clear from Google Shopping's "About Us" page[17]:

> *"4. How do I buy something from Google Shopping?*
>
> *You can't buy products directly from Google Shopping because we are not a store. We help you find the items you're looking for and point you to stores (both online and offline) that offer them for sale."*

It is worth noting, however, that, without the Commission's intervention, if Google did decide to enter the field of e-commerce and start competing directly with Amazon, then there is little doubt that it would ultimately succeed. That's because the whole point of Google's anti-competitive search manipulation practices is that they allow Google to enter virtually any market of its choosing[18] and commandeer the lion's share of that market's traffic and revenues. That is, rather

[17] See archive of the page from 24 November 2012 on the Way Back Machine: https://web.archive.org/web/20121124092943/http://www.google.com/intl/en_us/products/about.html#buy

[18] Google often points to Facebook and Twitter as examples of "rivals" that have been able to thrive despite Google's dominance of search. But, like horizontal search engines themselves, social networking services are

than competing on the merits—which is difficult, costly, and ultimately uncertain—Google can simply build or acquire any adequate service and start quietly steering users to it for all relevant search terms.

4.6 Paragraph 6 of Google's Blog Post

> *"We then showed that our improved ads were helpful to users and merchants. We never compromised the quality or relevance of the information we displayed. On the contrary, we improved it. That isn't "favouring" — that's listening to our customers."*

As explained in section 2 above, Google now routinely "compromises the quality and relevance of the information [it] displays", by blurring the lines between ads and search results, degrading the quality and usefulness of its search results for commercial queries, and escalating the anti-competitive search manipulation practices designed to keep users on Google's own services rather than sending them to competitors.

General-purpose, horizontal search engines like Google and Bing use hundreds of different ranking signals, which they weight and combine to determine the relative placement (rank) of every matching (relevant) search result. In the absence of any anti-competitive, financial, or political bias, this ordering would reflect the search engine's "best guess" at relevance—that is, the search results deemed most likely to satisfy a user's query would be listed highest. How good a search engine is at making this guess will depend on the effectiveness of its various interwoven algorithms and the selection, calibration, and relative weighting of its ranking signals.

In many cases, there is no "right" answer, and no two search engines will agree on the optimum ordering 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 self-serving Universal Search mechanism (which systematically promotes links to Google's own, often inferior, specialised services) and its anti-competitive penalty algorithms (which systematically demote or exclude links to competing, often superior, specialised services) are both clear examples of financially motivated arbitrary discrimination that significantly compromise the quality and relevance of the information Google displays.

Unfortunately, Google doesn't specify what it means by its claim to be "listening to [its] customers", but the nature and complexity of search engines and the inherent lack of definitive right and wrong answers, means that search engine bias is usually difficult for users to detect—a point eloquently noted by Google's co-founders shortly before launching their (at-the-time, bias-free) search engine:

> *"Since it is very difficult even for experts to evaluate search engines, search engine bias is particularly insidious"* The Anatomy of a Search Engine[19], Sergey Brin and Larry Page, April 1998

4.6.1 What does Google Mean by "Improved Ads" or "More Useful Ads"?

We cannot know for certain what Google is alluding to with its claim that "our improved ads were helpful to users and merchants"—nor with its similar claims about "more useful ads", "improved Google Shopping results", "improved shopping ads", or "most relevant merchants' ads" in paragraphs 2, 3, 4, and 14, respectively. But all of these claims seem to be an oblique reference to

---

one of the very few kinds of website that do not depend on horizontal search engines for a substantial proportion of their traffic. Both horizontal search and social networking sites have to create their own network if they are to succeed. Users don't go to Google in search of the social networking site they should use today; they go to the one that their friends use. Similarly, users don't go to Google to find a horizontal search engine; they already made that choice when they went to Google.

[19] http://infolab.stanford.edu/~backrub/google.html

Google's February 2013 rebrand of its price comparison service from Google Product Search to Google Shopping and the accompanying change that saw most of the anti-competitive links to Google's own price comparison service being replaced with anti-competitive advertisements lifted directly from its own price comparison service.

But, in any case, all of Google's improved-ads-based claims (a sizeable chunk of Google's blog post) are fatally flawed on two fronts:

First, all of Google's claims about "improved" or "more useful" ads completely ignore the several years of abuse that pre-date the February 2013 introduction of those ads. In other words, Google fails to offer any justification or defence for the more than five-year period where its anti-competitive preferencing practices took the form of link-based Product Universals, not ad-based Commercial Units.

Second, what exactly is Google suggesting that these ads are "more useful" than, or an "improvement" on? We suggest that there are only three possibilities, and none of them offer a viable defence:

- Is Google suggesting that these anti-competitive, pay-for-placement ads (lifted from Google's price comparison service) are somehow an improvement over the pre-February 2013 anti-competitive links to Google's price comparison service? If so, why? It seems clear that the opposite is the case. Where each of the anti-competitive links *to* Google's price comparison service took users to a service where they could compare prices (albeit not necessarily on the best or most relevant service), each of the anti-competitive ads lifted *from* Google's price comparison service simply take users to a single merchant offer from one of the merchants willing to pay Google's price comparison service the most money for the privilege (see Figure 9 above).
- Or is Google suggesting that these anti-competitive, pay-for-placement ads are somehow an improvement over relevance-based natural search results? That would be an even tougher argument to make. Clearly, websites would prefer to receive their traffic via free natural search results and users would prefer to be presented with the relevance-based natural search results they came to Google for (see section 2 above).
- Or is Google simply suggesting that, because Google-Shopping-derived ads feature pictures and other visual enhancements, they are an improvement over purely text-based, AdWords ads? Remarkably, the wording in paragraph 2 of Google's blog post suggests that this third option is by far the most likely basis for Google's improved-ads claims:

  "In recent years, we've improved the format of our ads to include more informative displays with pictures, prices, and links where you can buy products."

But if this last possibility really is the basis for all of Google's vague "more useful ads" claims, then none of these claims do anything to answer the charges Google faces:

a) Even if Google Shopping ads are better or more useful than AdWords ads, they are still just ads. And crucially, Google is providing them in place of natural, relevance-based search results, <u>not</u> as a replacement for AdWords ads:

   "More than one of your Shopping ads can appear for a given user search and, if relevant, a Shopping ad and a text ad can also appear at the same time. This means that your reach with shoppers for a single search could double…

   …Your Shopping ads can appear at the same time as text ads, because we want to give shoppers access to the full variety of products that match their search. This means that

shoppers can find the best match before clicking through to make a purchase, which might help you close the sale.

Example:

If you sell ballet slippers and have a text ad for ballet equipment and a Shopping ad for ballet shoes, a customer could see both of your ads on the same Google Search results page." Google's Shopping Ads Help Page for Merchants[20]

b) Whatever the relative merits of Google Shopping ads versus AdWords ads from the perspective of merchant advertisers, there is no escaping the fact that these pay-for-placement Google Shopping ads are positively harmful for users (a point acknowledged by Google CEO Larry Page in 2001 when he suggested that substituting relevance-based results with pay-for-placement ads was immoral, bad for users, and bad for the long-term reputation of the search engine deploying them (see section 4.2)).

c) If Google is relying on the "improved" more informative display formats of its Google Shopping ads as the sole justification for its immensely damaging anti-competitive practices, then why doesn't Google cease its anti-competitive practices and instead simply introduce the same or similar enriched display formats for its AdWords ads, or, better still, for its natural search results? Indeed, as luck would have it, Google has already developed a framework of HTML meta-tags specifically suited to the latter task:

"If you're a merchant, you can give Google detailed product information that we can use to display rich snippets (for example, [image,] price, availability, and review ratings) right on our search results pages." Enabling Rich Snippets for Products, November 2016[21]

4.7 Paragraph 7 of Google's Blog Post

"This summer, the Commission sent us a revised version of its case called a Supplementary Statement of Objections. The Commission's new filing didn't offer a new theory, but argued that because sites like Amazon sometimes pay price comparison aggregator sites for referred traffic, they can't also be considered rivals. But many companies simultaneously compete and cooperate. And in fact Amazon gets only a tiny fraction of its traffic from these services, hardly enough to support the idea they don't compete with price comparison sites and a range of other internet shopping services."

As the Commission made clear at the time, the SSO did not *revise* the Commission's case – it simply *reinforced* it with additional evidence and data. As such, a new theory was neither warranted nor appropriate:

"Today's supplementary Statement of Objections outlines a broad range of additional evidence and data that reinforces the Commission's preliminary conclusion that Google has abused its dominant position by systematically favouring its own comparison shopping service in its general search results…

By sending a supplementary Statement of Objections the Commission has reinforced its preliminary conclusion whilst at the same time protecting Google's rights of defence by giving it an opportunity to respond formally to the additional evidence." European Commission Press Release, 14 July 2016[22]

[20] https://support.google.com/adwords/answer/2454022?hl=en-GB
[21] https://developers.google.com/structured-data/rich-snippets/products?hl=en&rd=1
[22] http://europa.eu/rapid/press-release_IP-16-2532_en.htm

Google's suggestion that the Commission "argued that because sites like Amazon sometimes pay price comparison aggregator sites for referred traffic, they can't also be considered rivals" is a substantial mischaracterisation and understatement of the Commission's position. Moreover, Google is conflating *indirect* competition within a sector and *direct* competition within a relevant market (see section 4.9.3).

Google's assertion that Amazon gets "only a tiny fraction of its traffic" from price comparison services is particularly outrageous, because it once again overlooks the fact that, since the introduction of Google's *Panda* penalty in 2011, Google has all-but eradicated rival price comparison services from its search results. It is hardly surprising, therefore, that Amazon no longer receives the substantial volumes of traffic from these services that it used to.

4.8 Paragraph 8 of Google's Blog Post

> *"Our second response, filed today, shows that the Commission's revised case still rests on a theory that just doesn't fit the reality of how most people shop online. Consumers don't just look for products on a search engine, then click on a price comparison site, and then click again to visit merchant sites. They reach merchant websites in many different ways: via general search engines, specialist search services, merchant platforms, social-media sites, and online ads served by various companies. And of course merchants are reaching consumers directly like never before. On the mobile web—and more than half of Europe's Internet traffic is mobile these days—dedicated apps are the most common way for consumers to shop."*

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. As with most online tasks, this process would usually begin with a suitable query on a general search engine (i.e., Google). This arrangement was great for consumers, because they didn't necessarily need to know which particular price comparison or other specialised search service might be best suited to the particular product they were looking for. Instead, they could rely on Google to identify any potentially relevant services and attempt to rank them in order (with those most likely to be relevant listed first). With just one click on one of these 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.

Google's claim that the Commission's case "rests on a theory that just doesn't fit the reality of how most people shop online" is simply not true. Although Google accurately describes the way people use a price comparison service, by "look[ing] for products on a search engine, then click[ing] on a price comparison site, and then click[ing] again to visit merchant sites", it fundamentally misstates the Commission's position by implying that the Commission's case is based on the theory that this is the <u>only</u> way that people shop online. No one should be surprised to learn that this is not the Commission's case. The Commission takes full account of the "many different ways" in which consumers shop online.

Note that none of the alternative ways Google lists for reaching merchant sites (general search engines, merchant platforms, social-media sites, and online ads) allow users to compare prices and availability from a broad range of merchants without painstakingly visiting each merchant website in turn.

As to Google's point about the mobile web; it is important to understand that the Commission's Search SO and SSO covers all of Google's search results, regardless of whether they are accessed from a desktop, laptop, tablet, or mobile phone, or through a browser or an app. And, while it is no doubt true that dedicated apps from retailers and price comparison services account for a growing proportion of mobile-based eCommerce, this only becomes relevant to the Google Search case when this proportion rises to such a level that the adverse effects of Google's abusive search manipulation practices become negligible. While no one can say for certain if this will ever happen, it is certainly far from the case now, and is unlikely to be the case in the foreseeable future.

4.9 Paragraph 9 of Google's Blog Post

> *"While there's no indication that the Commission ever surveyed consumers, the evidence is clear: consumers can and do click anywhere and navigate to any site they choose. All of these services — search engines, price comparison sites, merchant platforms, and merchants — compete with each other in online shopping. That's why online shopping is so dynamic and has grown so much in recent years."*

4.9.1 The Commission Understands the Views of Consumers

Contrary to Google's assertion, there is every indication that the Commission surveyed consumers on multiple occasions. Two examples are the Commission's 353-page 2013 "Study on the coverage, functioning and consumer use of comparison tools and third-party verification schemes for such tools"[23] and its 2011/12 "Consumer market study on the functioning of e-commerce"[24].

Moreover, since 2012, the European Consumer Organisation, *BEUC*, which represents the views of 40 national consumer organisations from across 31 European countries, has been actively involved in the Google Search case. In March 2012 BEUC wrote the following in an open letter to the Commission:

> *"...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."*[25]

And, in March 2014, BEUC became a formal complainant in the Google Search case—the first time in its fifty-year history that it had felt compelled to take this step:

> *"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*

[23] http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/final_report_study_on_comparison_tools.pdf

[24] http://ec.europa.eu/internal_market/e-commerce/docs/communication2012/SEC2011_1640_en.pdf

[25] http://www.beuc.eu/publications/2012-00210-01-e.pdf

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."[26]

4.9.2 Consumers Can't Click on Links That Aren't There

With the claim that "consumers can and do click anywhere and navigate to any site they choose", Google is once again inviting the reader to overlook the transformative impact of Google's anti-competitive search penalties. Clearly, users can only click on search results that are presented to them. If no links to competing price comparison services are presented within the first several pages of Google's search results (even for queries where the user's price-comparison-related intent is clear), even the most determined user will fail to click on one.

Moreover, Google is failing to acknowledge the strong causal relationship between a link's relative placement within the search results and the number of users who will click on it—a point underlined by Ryan Moulton of Google's Search Quality Team in February 2011:

"Users click on whatever results you put in front of them, generally starting with the top and working their way down…. The user does have some discriminating power in this whole feedback loop, but it's miniscule compared to Google figuring out how to show them that result in the first place."[27]

4.9.3 Conflating Direct and Indirect Competition

By claiming that "search engines, price comparison sites, merchant platforms, and merchants compete with each other in online shopping" Google is muddying the important difference between indirect competition within a sector and direct competition within a relevant market.

For example, hotel chains and online travel agents clearly operate in separate, distinct markets, but they are both partners and indirect competitors within the broader travel sector. Hotels would prefer that users book with them directly rather than go through a travel agent, while travel agents would prefer that users book through them rather than go directly to the hotel. Clearly, just as Expedia does not compete directly with hotels to provide customers with a room for the night, hotels do not compete directly with Expedia by providing customers with a comprehensive search and booking engine for rival hotels.

If, in a booming travel sector, a dominant business was charged with anti-competitively harming online travel agents, it would be absurd for the defendant to point to flourishing hotel businesses as evidence that it cannot have harmed its rival online travel agents. Yet that is precisely what Google is doing when pointing to Amazon and eBay. Price comparison services and merchant platforms are indirect competitors and, indeed, they act as cooperative partners within the eCommerce sector. While Amazon would no doubt prefer all of its traffic to come to it directly with no associated acquisition costs, it is still very willing to pay commission to the price comparison services that feature its products. And price comparison services often feature Amazon's results among their listings.

4.9.4 "Online Shopping" is Growing but What About "Comparison Shopping"?

We agree with Google's observation that the "online shopping" sector has grown significantly in recent years:

[26] http://www.beuc.eu/publications/beuc-pr-2014-010_eu_google_investigation-beuc_complaint.pdf
[27] http://tinyurl.com/htbk3ad

Figure 23

But, as pointed out above, the formal anti-trust charges levelled at Google by the European Commission concern the price comparison market not the online shopping sector. Given that price comparison lies at the confluence of online search and e-commerce, both of which have enjoyed meteoric growth in recent years, the catastrophic collapse of the price comparison market during the same period is a glaring anomaly:

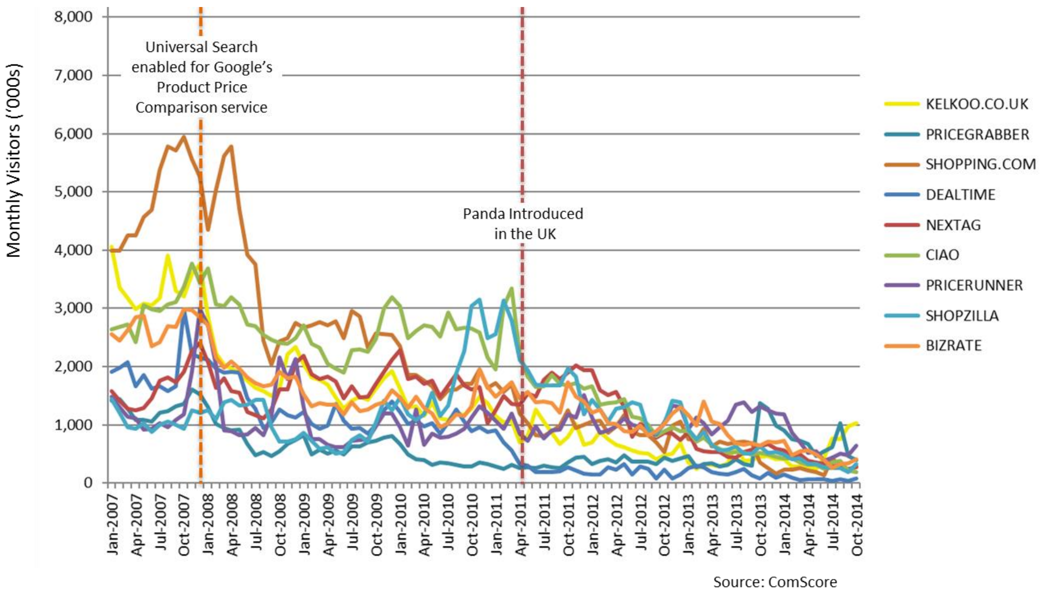


Figure 24

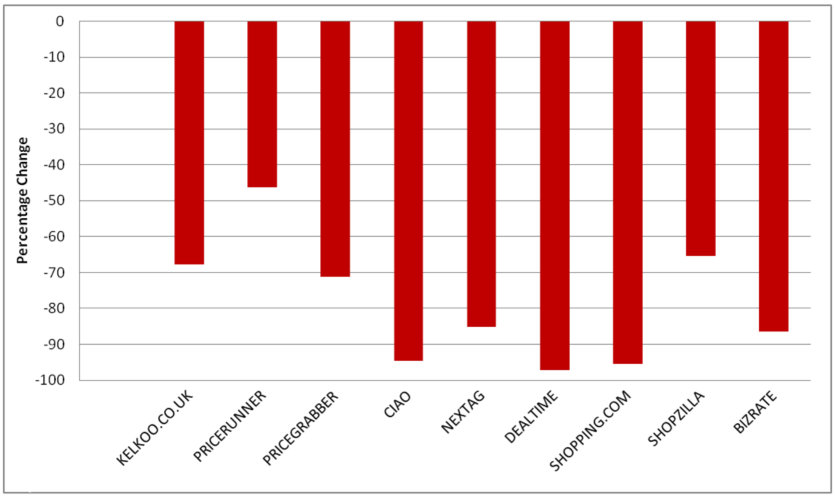


Figure 25: The Percentage Change in Traffic to Leading UK Price Comparison services from October 2007 to October 2014. Five of the best-known brands experienced a loss of between 85% and 95% of their traffic

Unfortunately for Google, its observation that online shopping "has grown so much in recent years" only serves to underline the considerable harm that Google's anti-competitive practices have wrought on the price comparison market. The sharp decline in traffic to Google's rival price comparison services illustrated in Figure 25 needs to be considered against the backdrop where every related indicator experienced considerable growth over the same period. This contrast is particularly stark when you consider that so many of the reasons why consumers are increasingly shopping online are directly facilitated by price comparison services:

Figure 26: Reasons for shopping online

Of course, the one notable exception to the sharp decline in fortunes for price comparison services is Google's own Google Shopping service, which has flourished. In Figure 27 below, note the sharp increase in traffic to Google Shopping (shown in bright blue) following the introduction of Google's Panda update (which severely penalised Google Shopping's price comparison competitors). Note also that the drop in traffic to Google Shopping since February 2013 isn't what it appears to be. As discussed above, Google's February 2013 transition to a pay-for placement model meant that much of the traffic that Google's search manipulation practices had been diverting away from rival price comparison services to Google's own price comparison service was, instead, now being diverted directly to the merchants advertising their products through Google's price comparison service. The inevitable result of this change will have been a substantial increase in the revenues for Google's price comparison service, despite a corresponding drop in the traffic being driven to it.

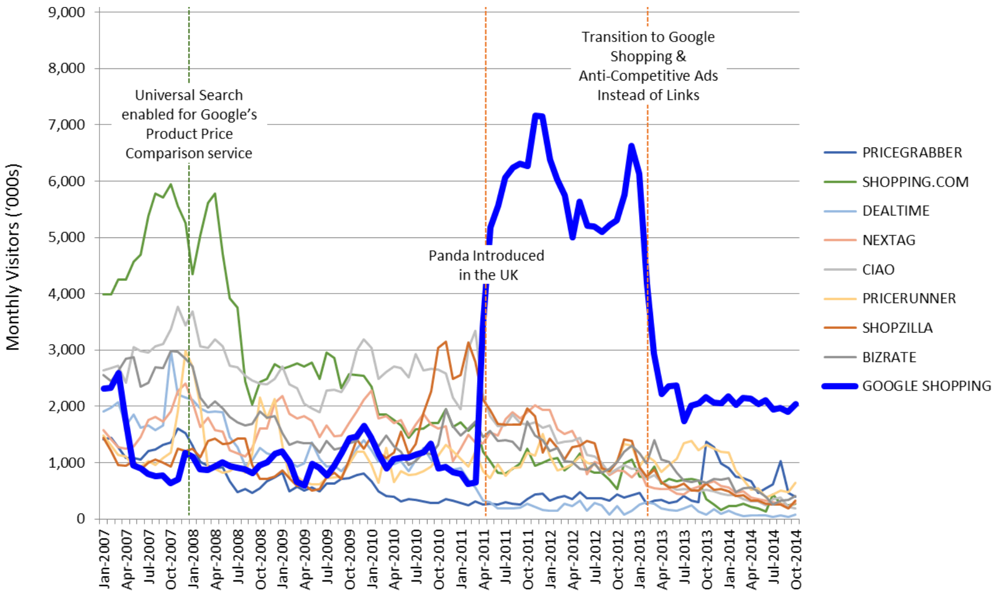


Figure 27: The UK traffic to Google Shopping (in bright blue) compared to other leading UK price comparison services

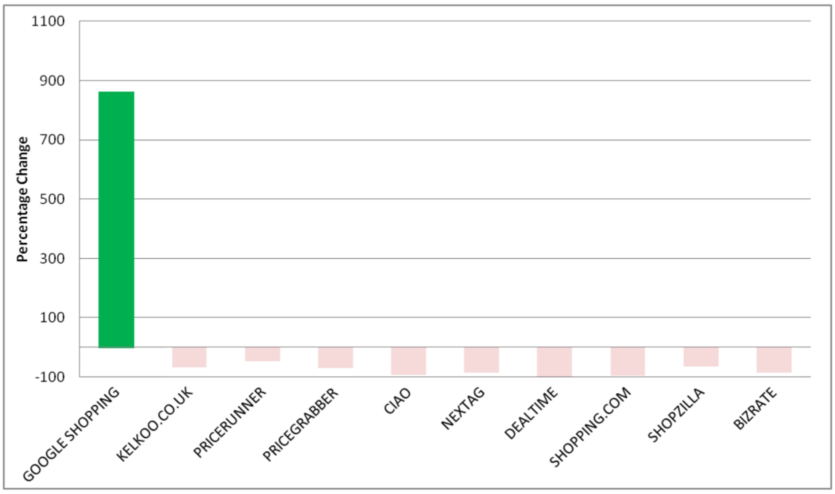


Figure 28: Percentage Change in Google Shopping's UK Traffic from October 2007 to January 2013

4.10 Paragraph 10 of Google's Blog Post

> *"In the year-and-a-half since the Commission's original filing, we've seen even more data confirming this. For example, a recent study shows that for many German online shoppers, Amazon is the first port of call on the web. A third of online consumers first go to Amazon, irrespective of where they ultimately make their purchases. Only 14.3% go first to Google, and only 6.7% to price comparison sites. A recent US study shows similar results: 55% of US consumers start their online shopping on Amazon, 28% on search engines, and 16% go straight to individual retailers."*

The first thing to note is that both of these studies were conducted several years after Google had effectively eradicated rival price comparison services from its search results. So, Google is once again stubbornly ignoring the transformative impact of its anti-competitive practices on the data it is pinning its arguments on. In essence, Google is seeking to justify its near-wholesale eradication of price comparison services by pointing out that, since it eradicated them, users no longer use them. If Google had cited studies pre-dating the introduction of its various anti-competitive practices, it would have found very different results (see below).

While our grasp of German is insufficient to allow us to analyse or comment on the methodology of the German study[28], it is worth noting that the US study[29] was not an academic exercise. It was commissioned by a US company as a means of drumming up business for its web personalisation products, which it markets primarily to retailers that compete online with Amazon (its customers include Staples, Nordstrom, Neiman Marcus, and House of Fraser).

Most importantly, the US study was conducted over the Labour Day weekend, which is a far from typical period in the US. Much like the now global phenomenon of Black Friday, during and in the lead up to the Labour Day weekend US consumers are bombarded by television, radio, newspaper, and direct email advertisements, all vying to entice them to visit specific retailers for never-to-be-repeated sale bargains:

From NJ.com, September 2016[30]:

> *"As much as Labor Day Weekend serves as a time for backyard barbecues and family trips to the beach, the last three-day holiday bash of the summer season also offers shoppers the chance for steep discounts on everything from clothing to cars.*
>
> *To mark Labor Day, retailers are slashing prices in stores and online and, experts say, consumers should be on the lookout for particularly good deals on summer apparel, back-to-school supplies, patio furniture, appliances and mattresses."*

From Heavy.com, September 2015[31]:

> *"Although Labor Day is supposed to be a day of celebrating the wage-earning workers of the U.S. and Canada, major online retailers like Amazon offer so many sales that the day can just as easily become about spending said wages.*
>
> *With Labor Day on Monday, September 7th, Amazon is offering a whole weekend of outrageous specials starting now, many of which center around getting out and travelling. Most of these specials are only good through September 7th, and if you want to be ready outfitted for a great day off next week, the time to start shopping is now."*

And from Amazon's own 2016 Labor Day promotion:

> *"What will you find during the Labor Day event? You'll find limited-time sales and specials from across Amazon, including sales on electronics, low prices on DVDs, and fashionable deals on clothing, shoes, jewelry, things to help your Labor Day celebrations and more. You'll find the best values we've got right here for your Labor Day plans."*

Common sense suggests that the Labour Day barrage of time-limited, retailer-specific, special offers—many of which, crucially, are just a click away from the targeted email or online article informing consumers about them—would significantly skew any study purporting to represent the general buying habits of US online shoppers. In particular, you would expect it to record a substantially exaggerated figure for the proportion of online shoppers going directly to retailers rather than via Google.

However, even if the US and German studies cited by Google *are* indicative of a recent migration of online shoppers from Google to Amazon as their *first port-of-call*, this would not be nearly as significant a finding as Google suggests. According to the cited US study, 70% of the online shoppers

[28] http://www.ifhkoeln.de/pressemitteilungen/details/amazon-ist-deutschlands-groesster-showroom-ecc-koeln-und-hybris-veroeffentlichen-neue-cross-channel-studie/
[29] http://go.bloomreach.com/rs/243-XLW-551/images/state-of-amazon-2016-report.pdf
[30] http://www.nj.com/entertainment/index.ssf/2016/09/labor_day_weekend_2016_sales_store_hours_deals.html
[31] http://heavy.com/social/2015/09/best-labor-day-deals-sales-coupon-amazon/

that went to Amazon as their first port of call during Labour Day weekend felt the need to perform some kind of manual price comparison on another retailer before completing a purchase. This figure rose to 90% for online shoppers that went to another retailer as their first port of call. Presumably, many of these efforts to manually compare prices on another retailer would take place via Google, in which case Google's search engine remains a critical touch point in users' journey to purchase.

Moreover, if 70% to 90% of visitors to retail sites really do go on to perform some kind of manual price comparison on another retailer, then it is a strong indication that Google's near-wholesale eradication of price comparison services is as frustrating for users as common sense would predict. If so, the migration of online shoppers suggested by the cited studies is more likely to be a symptom of the user harm caused by Google's anti-competitive practices than any kind of evidence that these practices are inconsequential.

While equivalent statistics to those in the US and German studies from earlier periods have so far proven disappointingly difficult to come by, there is plenty of evidence, from related statistics and anecdotal accounts, that demonstrate that however insignificant Google would like to suggest price comparison services have now become, this was certainly not the case before Google set about marginalising them.

The following are just a few examples of contemporaneous articles on this topic that predate Google's 2011 escalation of its anti-competitive penalties:

Roboshopper: Using Comparison Shopping Engines, March 16 2007[32]:

> *"In the past few years, comparison shopping engines have become increasingly popular among online shoppers. All the major internet companies, including Google, Yahoo, MSN, CNET and AOL offer comparison shopping. Services like Shopping.com, Shopzilla, Bizrate, and MySimon have become well known. There is also an ever increasing number of small startup companies that are trying to build better shopping engines in order to carve themselves a niche in this expanding market."*

Practical Ecommerce, 21 October 2008[33]:

> *"Comparison shopping sites like Shopping.com, Bizrate.com, Nextag.com, and Yahoo! Shopping allow cost-sensitive consumers to search for an item and then compare that item's price across several stores. These comparison shopping sites can get a significant amount of web traffic. For example, Shopping.com entertains nearly 20 million unique visitors each month and Pricegrabber.com gets about 26 million unique visitors monthly—far more than a typical online store."*

Shopping Maniac, 2009[34]:

> *"Some of the most successful websites on the internet today are the online price comparison engines. Type in a request to any search engine to try and find out the price of just about anything - and price comparison websites will always be at or near the top of the list returned to you."*

TechRadar: What will the high street look like in 2020, 4 January 2010[35]:

> *"As a price comparison site, [Kelkoo has] seen bargain-hungry UK consumers becoming increasingly price sensitive. They are more determined than ever to compare prices and check*

[32] http://roboshopper.blogspot.co.uk/2007/03/comparison-shopping-engines-how-they.html
[33] http://www.practicalecommerce.com/articles/848-Use-Comparison-Shopping-Sites-To-Boost-Leads
[34] http://people.wcsu.edu/restifo002/online-price-comparison-engines.html
[35] http://www.techradar.com/news/internet/what-will-the-high-street-look-like-in-2020-661097

information online before buying, whether this purchase is finally made in store or online. This has been especially true during 2009 and the recession, with some 80% of British online users saying they'll use price comparison sites to save money."

The impact of Internet technologies: Search, July 2011[36]:

"More than 40 percent of Internet users in the United States, Germany, and France visited a price comparison Web site in 2010, and in the United States, their numbers are growing at around 20 percent a year...

Search is an influential channel when consumers are deciding whether to make a purchase and what to buy. For example, McKinsey research shows that search engines dominate the touch points in the awareness and consideration phases of the purchasing process, particularly for automobiles, consumer electronics, and travel. Other research, this time in the personal computer industry, shows that when customers are evaluating products, Web searches are the most influential touch point, even higher than in-store touch points such as meeting with a sales representative".

4.11 Paragraph 11 of Google's Blog Post

"The Commission also claims consumers don't go to Amazon to compare product features and prices. But Amazon provides tools to do exactly that, plus the ability to buy products and have them delivered the next day, which makes Amazon an even stronger competitor. It's not surprising that when Amazon and other new competitors arrived in European countries, traffic to sites offering only price-comparison went down."

Google is wrong to suggest that Amazon provides anything comparable to the price comparison functionality offered by an actual price comparison service. While Amazon's Marketplace does provide users with a strictly limited ability to compare Amazon's own prices to those of the small independent retailers that participate in Amazon's merchant platform, it does not allow any form of price comparison between Amazon's prices and those of any other leading retailers. That most price comparison services feature Amazon and its various Marketplace Merchants within their price comparison results underscores this point.

Tellingly, the US study cited by Google in Paragraph 10 provides no indication that Amazon users consider the strictly limited ability to compare Amazon's prices to those of its Marketplace participants to serve as any form of meaningful price comparison. On the contrary, the study found that 70% of Amazon users specifically went elsewhere to compare prices.

Google is also wrong to suggest that traffic to price comparison services went down "when Amazon and other new competitors arrived in European countries". Amazon launched its first International sites in the UK and Germany in October 1998, which predates the launch of most if not all price comparison services (and more or less coincides with the launch of Google's search engine). There is no doubt that, contrary to Google's claim, traffic to price comparison services in the US, UK, and Germany grew at a phenomenal rate for several years following the arrival of Amazon ("and other new competitors") until at least 2006 (when Google began introducing its anti-competitive demotion and self-preferencing practices). Without access to the basis for Google's vague claim, it isn't possible to be certain, but it seems likely that it is, once again, based primarily on a failure to acknowledge the impact of Google's anti-competitive practices.

[36] http://www.mckinsey.com/~/media/mckinsey/dotcom/client_service/High%20Tech/PDFs/Impact_of_Internet_technologies_search_final2.aspx (PDF)

Finally, Google also suggests that because Amazon allows users "to buy products and have them delivered the next day" it is somehow "an even stronger competitor" to price comparison services. But price comparison services don't sell or deliver products; they search, analyse, and take users to the retailers that do, such as Amazon. In other words, to whatever extent online retailers indirectly compete with the price comparison services that feature them, there is no doubt that a specific retailer's ability to sell products, or the speed with which it delivers them, is of no consequence to this relationship.

4.12 Paragraph 12 of Google's Blog Post

> *"As the market changes, there are inevitably shifts among competitors. The data show that the handful of price comparison sites who've filed competition complaints don't reflect the wider marketplace. There are hundreds of shopping comparison sites and over the past ten years, some gained traffic, others lost traffic. Some exited the market, others entered. This kind of dynamic competition is undeniable. Online advertising is evolving rapidly, with companies like Facebook, Pinterest, and many others re-inventing what it means to connect merchants with consumers."*

Contrary to Google's claim, all of the available data shows that the "handful" of price comparison sites that have filed competition complaints, together with the numerous other price comparison and other services that have actively participated in the Commission's investigation, do accurately reflect the wider marketplace.

Moreover, Google's characterisation of the market as comprising "hundreds of shopping comparison sites" where "some gained traffic" and "others lost traffic" is simply not true. If Google believes that "dynamic competition" within the price comparison market is "undeniable", it begs the question why Google has yet to provide a single shred of evidence to support this assertion.

In fact, what you invariably find when you probe Google's claimed examples is that any sites that buck the trend of catastrophic decline aren't, in fact, price comparison services. For example, in June 2015 we demonstrated[37] that Google's public evidence of a "thriving" market failed to stand up to scrutiny. Foundem's civil case against Google provides another example: when ordered to list the "leading price comparison services" Google would be relying on in its defence, Google cited the world's leading online retailer, *Amazon*, and the UK's leading consumer organisation, *Which?*, as its only two examples. Of course, neither of Google's examples of "leading price comparison services" are, in fact, price comparison services, let alone leading ones. Note that, while *Which?* does feature some product price comparison listings on its website, it won't surprise anyone to learn that these have simply been syndicated from an actual price comparison service.

4.13 Paragraph 13 of Google's Blog Post

> *"There is simply no meaningful correlation between the evolution of our search services and the performance of price comparison sites. Meanwhile, over those same ten years, a rapidly increasing amount of traffic flowed from our search pages to popular sites like Amazon and eBay as they expanded in Europe, hardly a sign of our "favouring" our own ads."*

The correlation between the evolution of Google's anti-competitive search practices and the decline in traffic to price comparison sites is not just meaningful; it is breathtaking. It shouldn't surprise anyone to learn that when Google inserts eye-catching links to its own service at the top of every conceivably relevant search result page, it inevitably captures a considerable proportion of the clicks on those pages. Similarly, when Google systematically demotes competing services from the first few pages of search results, it inevitably leads to a marked decline in the traffic to those services.

[37] http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis/

Commissioner Vestager's 14 July 2016 Statement[38] regarding the SSO confirmed that the Commission has now obtained even more evidence to support these common-sense conclusions:

> *"We now have more evidence to show how important prominent display on Google's search result pages is to a website's traffic. This idea was challenged by Google in its reply. We have done further work that shows that visibility and traffic are two sides of the same coin. For many, that seems to be common sense. Now we have further evidence on file to back it up."*

And Figure 27 above is just one example (from publicly available data) of the undeniable correlation between the "evolution of [Google's] search services" and the "performance of price comparison sites".

Moreover, as discussed above, any increase in the amount of traffic flowing from Google's search result pages to popular online retailers like Amazon and eBay is (a) irrelevant to the Commission's case, and (b) likely to be primarily the result of the general rise in eCommerce, search volumes, internet use, and so on.

4.14 Paragraph 14 of Google's Blog Post

> *"The Commission's revised filing suggests we shouldn't use specialized algorithms to highlight what we consider to be the most relevant merchants' ads for our users, but should instead highlight ads from price comparison sites. But we get feedback from our users every time they use our services and their clicks tell us that this just isn't how they want to shop. Forcing us to direct more clicks to price comparison aggregators would just subsidize sites that have become less useful for consumers."*

Once again, Google is fundamentally misrepresenting the Commission's case and, in particular, the Commission's proposed remedy:

Google's Misrepresentation of the Equal-Treatment Remedy the Commission is Seeking	A Rough Translation into What the Equal-Treatment Remedy Actually Calls for
"Google shouldn't use specialized algorithms to **highlight what Google consider to be the most relevant merchants' ads for its users**…	Google shouldn't use specialized algorithms to **insert prominent links to Google's own price comparison service (or prominent ads derived from its price comparison service) at or near the top of its search results, without considering whether other price comparison services might be more relevant to the user's query**,
but should instead **highlight ads from price comparison sites."**	but should instead **rank its own and rival price comparison services on a level playing field based solely on their likely relevance to the user's query**.

In other words, the remedy sought by the Commission simply requires Google to restore Search Neutrality[39] (the principal that search results should be based solely on their relevance to the users' query) so that Google's price comparison service competes on a level playing field with its competitors (i.e., on the merits).

[38] http://europa.eu/rapid/press-release_STATEMENT-16-2535_en.htm
[39] https://zine.openrightsgroup.org/features/2012/would-the-real-search-neutrality-please-stand-up

When Google goes on to suggest that its users' clicks "tell us this just isn't how they want to shop", Google is not only railing against a purely imaginary version of what the Commission is calling for, it is also failing to point out that users can only click on something if it is there in the first place.

Finally, adding insult to injury, Google doubles-down on its mischaracterisation of the Commission's proposed remedy to heap undeserved scorn on its beleaguered price comparison rivals: "Forcing us to direct more clicks to price comparison aggregators would just subsidize sites that have become less useful for consumers." In reality of course, with the transition from relevance-based placement to pay-for-placement in 2013, it is Google's own price comparison service that has become considerably less useful, and arguably positively harmful, for consumers.

4.15 Paragraph 15 of Google's Blog Post

> *"Ultimately, we can't agree with a case that lacks evidence and would limit our ability to serve our users, just to satisfy the interests of a small number of websites. But we remain committed to working with the Commission in hopes of resolving the issues raised, and we look forward to continuing our discussions."*

Contrary to Google's suggestion, there is overwhelming evidence supporting the Commission's case and an extraordinary lack of countervailing evidence of any kind from Google. As just one (publicly available) example, our June 2015 presentation[40] deconstructing Google's original public response to the Commission's SO provides an insight into what Google presents as evidence compared to what most would consider evidence.

In section 2 we began to lift the veil on Google's habit of presenting its anti-competitive and/or revenue-maximising practices as somehow being in the interests of its users. And in sections 4.4 and 4.12 we dealt with Google's attempts to mischaracterise the European Commission's enormously important Search Case as something in "the interests of a small number of websites". The reality, of course, is that the outcome of this case will have far reaching implications for hundreds of businesses and hundreds of millions of consumers.

4.16 Paragraph 16 of Google's Blog Post

> *"Today we have also filed our response to the Commission's concerns about our advertising service AdSense for Search, and in the days to come we will respond to the Statement of Objections about our Android operating system. These cases involve different claims and different substantive questions, but similarly cite just a few complaints to justify broad legal claims."*

We have no comment on this paragraph but have included it for completeness.

4.17 Paragraph 17 of Google's Blog Post

> *"We're confident these cases will ultimately be decided based on the facts and that this analysis will show our product innovations have benefited consumers and merchants, and expanded competition. The surest signs of dynamic competition in any market are low prices, abundant choices, and constant innovation — and that's a great description of shopping on the internet today."*

We agree with Google's suggestion that "signs of dynamic competition in any market are low prices, abundant choices, and constant innovation"; broadly speaking, this may well be a fair description of

[40] http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis/

the current state of the e-commerce sector as a whole. What it most certainly is not, however, is a fair description of the current state of the price comparison market:

Since the near-wholesale eradication of genuine price comparison services from Google's search results and the substitution of Google Shopping's pay-for-placement ads as the sole survivor in their place, there is no doubt that consumers have far fewer choices when looking to buy products and services online and are now paying significantly higher prices for their online purchases than they would otherwise (see section 3).

It is also clear that Google's discriminatory anti-competitive practices have stifled innovation. Indeed, in a 2008 Public Policy blog post arguing for network neutrality, Google made it clear that it recognises the immense innovation-suppressing 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."* [41]

Foundem itself provides a compelling example of the innovation-suppressing cost of these Google practices. Foundem is the lead complainant in the European Commission's Google Search case; it was our 2009 Competition complaint concerning Google's anti-competitive penalty and preferencing practices that triggered the Commission's investigation.[42] Foundem's patented, programmable vertical search technology allowed it to provide best-of-breed vertical search functionality to virtually any vertical with a fraction of the costs and resources of its competitors. Just weeks after the launch of its ground-breaking, multi-vertical service in 2006, Foundem was effectively disappeared from the internet by an exclusionary, algorithmic Google penalty targeted at emerging price comparison services. And Google's ongoing anti-competitive practices (such as Panda) continue to prevent Foundem's technology from reaching consumers even today.

5 Conclusion

It is no small irony that two of the most prescient and eloquent critics of Google's anti-competitive practices are Google's two co-founders, circa 1998-2004. Not only did Sergey Brin and Larry Page correctly anticipate by several years all of the anti-competitive practices Google would later go on to embrace, they also correctly identified and argued against the harm that these practices would cause to users and potentially to the reputation of any search engine that deployed them.

In their 1998 White Paper, *The Anatomy of a Large-Scale Hypertextual Web Search Engine*[43], Google's co-founders warned of the market-distorting power of an advertising funded search engine:

> *"Appendix A: Advertising and Mixed Motives*
>
> *Currently, the predominant business model for commercial search engines is advertising. The goals of the advertising business model do not always correspond to providing quality search to users...we expect that advertising funded search engines will be inherently biased towards the advertisers and away from the needs of the consumers.*

[41] http://googlepublicpolicy.blogspot.com/2008/02/rep-markeys-net-neutrality-legislation.html
[42] http://www.foundem.co.uk/Foundem_Google_Timeline.pdf
[43] http://infolab.stanford.edu/~backrub/google.html

Since it is very difficult even for experts to evaluate search engines, search engine bias is particularly insidious. A good example was OpenText, which was reported to be selling companies the right to be listed at the top of the search results for particular queries. This type of bias is much more insidious than advertising, because it is not clear who "deserves" to be there, and who is willing to pay money to be listed. This business model resulted in an uproar, and OpenText has ceased to be a viable search engine. But less blatant bias are likely to be tolerated by the market. For example, a search engine could add a small factor to search results from "friendly" companies, and subtract a factor from results from competitors. This type of bias is very difficult to detect but could still have a significant effect on the market. Furthermore, advertising income often provides an incentive to provide poor quality search results. For example, we noticed a major search engine would not return a large airline's homepage when the airline's name was given as a query. It so happened that the airline had placed an expensive ad, linked to the query that was its name. A better search engine would not have required this ad, and possibly resulted in the loss of the revenue from the airline to the search engine. In general, it could be argued from the consumer point of view that the better the search engine is, the fewer advertisements will be needed for the consumer to find what they want. This of course erodes the advertising supported business model of the existing search engines. However, there will always be money from advertisers who want a customer to switch products, or have something that is genuinely new. But we believe the issue of advertising causes enough mixed incentives that it is crucial to have a competitive search engine that is transparent and in the academic realm."

And in this interview[44] from 2001, Google co-founder and CEO Larry Page explained why in his view pay-for-placement (paid placement) is immoral, bad for users, and bad for the long-term reputation of the search engine (see section 4.2 for the full quote):

Q: How does advertising or "sponsored links" differ from paid placement in the eyes of the average user?

Page: It doesn't and that's the problem. We believe that advertising and editorial should be split… We don't do pay for placement.

Q: Is that a moral stance or a business one?

Page: Both…When people trust us, then we'll make more money."

And, in an April 2004 interview with Playboy magazine[45] at the time of Google's IPO, Larry Page and Sergey Brin criticised search engines that steer users to their own services rather than to the best or most relevant services and highlighted the critical importance of maintaining a "clear, large wall" between objective natural search results and "tainted" paid advertisements:

Q: With the addition of e-mail, Froogle[46]—your new shopping site—and Google news, plus your search engine, will Google become a portal similar to Yahoo, AOL or MSN? Many Internet companies were founded as portals. It was assumed that the more services you provided, the longer people would stay on your website and the more revenue you could generate from advertising and pay services.

[44] http://www.bizjournals.com/sanfrancisco/stories/2001/08/06/newscolumn8.html

[45] Transcript included here: https://www.sec.gov/Archives/edgar/data/1288776/000119312504139655/ds1a.htm

[46] *Froogle* was the original branding for Google's price comparison service, before it became *Google Product Search*, and subsequently *Google Shopping*

Page: *We built a business on the opposite message. We want you to come to Google and quickly find what you want. Then we're happy to send you to the other sites. In fact, that's the point. The portal strategy tries to own all of the information.*

Q: *Portals attempt to create what they call sticky content to keep a user as long as possible.*

Page: *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.*

…

Q: *Tim Berners-Lee, who designed the World Wide Web, worried that commercial content would prevail on the Internet, pushing aside open and free conversation and information from individuals. Does Google have a bias toward commercial websites?*

Brin: *One thing that's important to us is the distinction between advertising and pure search results. We make it clear when something is paid for. Our advertising is off to the side and in a couple of slots across the top. Ads are clearly marked. There's a clear, large wall between the objective search results and the ads, which have commercial influence. Other search engines don't necessarily distinguish. Beyond ads, with other search engines, payment affects the results. We think that's a slippery slope. At Google, the search results cannot be bought or paid for.*

…

Q: *With search engines, however, the line between editorial content and advertisements may become less obvious than in magazines. As you note, some search engines do not clearly identify results that are paid for. How can users know the difference?*

Page: *It's a problem for us because some people assume we blur the distinction as well. But people are smart. They can distinguish pure results. We will continue to make it clear.*

Brin: *It's an important issue, something people should be concerned about. We're dedicated to separating advertising and search results, and we want people to understand the distinction. The more awareness among the entire world's people about these questions—their ability to understand results that are tainted versus those that are not—the better..."*

Sadly, a mere two years later, with the development and introduction of Universal Search and anti-competitive penalties, Google succumbed to its various conflicts of interest and quietly abandoned its "very different model".

It is clear from the above (and elsewhere) that Google understands the harmful consequences of its anti-competitive search manipulation practices for users, businesses, and innovation. It is also clear that Google understands the betrayal of trust and insidious consumer harm that inevitably arises from any blurring of the line between relevance-based placement and paid-placement.

It is disappointing that, despite this understanding, and more than six years into the Commission's investigation, Google still seems as determined as ever to fight the Commission's charges with obfuscation and misdirection.

We suggest that it is time for Google to change course. The anticipated Prohibition Decision, which will require Google to end its anti-competitive practices, is an opportunity for Google to embrace the extraordinary responsibility that comes with its unprecedented market power and, in the process, recapture the core values on which Google forged its formidable reputation and position.

6 Appendix I: Google Search Penalties/Demotions

Like all horizontal search engines, Google employs a variety of algorithmic (and manual) penalties—powerful negative ranking signals designed to demote or exclude “undesirable” websites or pages, regardless of how relevant they appear to be to the user’s query. But penalties are supposed to be directed at websites that are “undesirable” in a spam sense, or that have been caught “cheating” the search engine’s algorithms; they should not be aimed at legitimate services whose only undesirable feature is that Google now views them as competitors to its own growing stable of rival services.

Search penalties are usually calculated “off-line” (rather than in real time) and are normally applied to an entire site rather than to a particular page. Because penalties were originally devised as a means of weeding out spam—sites that deliberately disguise themselves as being highly relevant to popular search terms in order to fool search engines into ranking them highly—they tend to be very powerful. Although a penalty signal may be just one signal of hundreds that Google uses to determine a page’s ranking for a particular search term, the penalty signal is often so heavily weighted that, as far as Google’s ranking algorithms are concerned, nothing else matters. For severe penalties, as long as a site remains penalised its pages will never appear anywhere near the top of Google’s search results for any query (except, perhaps, for the site’s brand-name) no matter how relevant. Consequently, an unjustified Google search penalty, whether imposed anti-competitively or in error, has the power to cause grave and irreparable harm to virtually any online business.

7 Appendix II: The Super-Dominant Supermarket Analogy

Finding a real-world example that is broadly analogous to an overwhelmingly dominant global search engine is difficult, which perhaps explains why it has taken so long for the considerable dangers of Google’s unconstrained power to be fully understood.

The closest parallel to the competitive relationship between Google and its vertical search rivals may be that of a supermarket whose own-brand products compete with branded products. But, for this to be even roughly comparable, we would need to imagine a supermarket as dominant as Google (in reality, no supermarket enjoys anything like this level of dominance). Nonetheless, there are enough similarities between Google and a super-dominant supermarket to make the analogy worthwhile, despite fundamental differences between their business models.

As discussed in section 2, the business model of a supermarket is readily understood. People visit a supermarket to buy products, and supermarkets make their money by selling those products. By contrast, people visit a search engine for its search results, but few search engines make money from these search results. Every time Google directs a user to someone else's service via a natural search result rather than a paid advertisement it is forgoing any revenues from that visit—not just from that one click but from any future clicks the user might make on their journey to purchase. By contrast, the incentive for a supermarket to favour its own brands is less acute, because a supermarket makes a profit from everyone else's brands as well as its own.

<u>Competition is Just a Few Steps Away</u>

Leaving aside the fundamental differences between how supermarkets and search engines earn revenue, let's explore our imaginary, super-dominant supermarket analogy more closely. Let's assume that the supermarket has, like Google, achieved a 90% share of its market, not because it owns nine out of every ten shops, but because nine out of every ten customers consistently choose to shop there.

Just as Google tries to brush-off all monopoly scrutiny with the specious observation that its competition "is just a click away", our similarly dominant supermarket could do the same. It could point out that its customers have a choice, because competing supermarkets are "just a few steps away". The point that both our dominant supermarket and Google would prefer people not to notice is that they both operate in two-sided markets: while consumers may have a choice, the brands, suppliers, and websites do not. As long as nearly all consumers continue to choose the dominant supermarket and search engine, all of the brands, suppliers, and websites have no viable alternative by which to reach them.

For example, if everyone shops at Safeway, and Safeway decides to no longer stock Acme Cola, then Acme Cola is likely to go out of business. The fact that Acme Cola would still be available in all of the other supermarket chains is clearly immaterial if nobody shops there.

The Supermarket Equivalent of Exclusionary "Penalties" for Emerging Brands

While our dominant supermarket cannot easily remove well-known brands like Coca Cola from its shelves without risking a mass defection of customers to rival supermarkets, it can terminally disadvantage a new emerging brand that no one has yet heard of, either by refusing to stock it, or by placing it somewhere where few will ever find it. This is broadly equivalent to Google's ability to neutralise emerging vertical search competitors through exclusionary penalties.

To extend the analogy further, when challenged, our supermarket could try to justify its actions by pointing out characteristics of the "penalised" products that sound bad but are often the reason that people want them, such as a high sugar content. This would be broadly equivalent to Google's bogus *lack-of-original-content* and *driving-traffic-to-other-sites* charges. For the analogy to be truly comparable, the challenger would also need either not to notice or not be so bold as to point out the many equally sugary products that remain "un-penalised" on the supermarket's shelves—including all of the supermarket's own brands.

The Supermarket Equivalent of "Universal Search" (Self-Preferencing)

To make significant inroads against the more established brands that it cannot so easily remove, our super-dominant supermarket could give disproportionately prominent placement and shelf space to its own-brand products and also use exclusive and particularly enticing displays for them. Of course, to a certain extent, all supermarkets routinely use this kind of self-preferencing.

Although broadly equivalent to Google's Universal Search mechanism, our supermarket's self-preferencing cannot achieve anything approaching the same anti-competitive impact. All brands work hard to make their packaging as distinctive and instantly recognisable as possible, so that they stand out and get noticed wherever they are on the shelf. But none of this branding is visible in the generic ("10 blue links") environment of a Google search result page, where everything is a uniform blue link, except, of course, for the "Universal Search" links pointing to Google's own services.

The Supermarket Equivalent of Google's "Panda" Update

In many cases, the above anti-competitive practices would only be partially effective: some customers would overcome these obstacles and continue to buy particularly strong brands like Coca Cola. For these situations, our super-dominant supermarket could deploy a new, even more aggressive, strategy (perhaps codenamed "Panda").

Under the pretext of concern for the health of its customers, the supermarket could remove most sugary drinks, including Coca Cola, from its shelves (or place them somewhere well beyond the reach of most customers). At the same time, and without offering any explanation for the apparent hypocrisy, it could leave its own equally sugary products in place. In order to avoid the possibility of a mass customer defection, the supermarket could continue to provide Coca Cola and other well-known brands to any customers who specifically ask for them by name.

There Are No Super-Dominant Supermarkets

Fortunately for consumers, and for the thousands of brands and suppliers that compete for their custom, nothing approaching Google's level of dominance exists today among supermarkets. The market shares of the world's leading supermarkets pale next to Google’s 85% share of the global search market. The leading UK and US supermarkets, for example–Tesco in the UK and WalMart in the US–have just a 30% and 20% share of their respective markets.

Any anti-competitive practices by supermarkets are therefore constrained and moderated by the natural market forces of competition. Even so, throughout the world, supermarkets are routinely subjected to regulatory scrutiny.