foundem

# PENALTIES, SELF-PREFERENCING, AND PANDA:

## Why Google's Behaviour Makes Antitrust Sanctions Inevitable

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August 31, 2011

## Introduction

Horizontal search engines like Google and Bing have become the Internet's gatekeepers, and the crucial role they play in directing users to websites means that most Internet-based businesses now rely on search engines for a substantial proportion of their traffic and revenues. Google's overwhelming global dominance of horizontal search means that, for most websites, this amounts to an uncomfortable but unavoidable reliance on Google. Even the Web's best-known and most established brands, such as Amazon, would be placed in jeopardy if Google were to systematically exclude them from its search results.

By manipulating its search results and ad listings in ways that demote its competitors' services while promoting its own, Google can exploit its gatekeeper status to commandeer a substantial proportion of the traffic of almost any website or industry sector it chooses. Because Google has been overwhelmingly dominant in both horizontal search and search advertising for several years, the natural market forces of healthy competition that would normally constrain or moderate such anti-competitive practices have not been in play. Regrettably, there is little hope of this situation changing any time soon.

## Vertical Search Is an Important Strategic Target for Google

Despite Google's wide and expanding diversity of interests, around 95% of its revenues still come directly from search advertising (the sponsored links you see around Google's search results and on other websites). Google's revenues have grown at a phenomenal rate over the last ten years, but this growth has been broadly in line with that of global search volumes. With global search volumes now levelling off, Google knows that it must look beyond horizontal search if it is to maintain anything like its previous rate of growth.

Vertical search, such as product price comparison, financial price comparison, travel search, job search, and property search, is fundamentally different from horizontal search. The two forms of search are complementary: one is not a replacement for the other. Because vertical search is inherently contextual, it provides a more targeted search and advertising channel than horizontal search. More targeted advertising channels are more attractive to advertisers and therefore provide some of the industry's greatest opportunities for growth. This makes vertical search a prime strategic target for Google.

But the various technical challenges of vertical search are very different from those of horizontal search; expertise in one does not necessarily provide an advantage in the other. To date, Google does not have a particularly strong track record of innovation in vertical search.

## Bait and Switch?

Before Google's need for growth compelled it to look beyond horizontal search it could focus on fulfilling its promise to provide the best possible search results for its users, even though that usually meant steering them to other people's websites as quickly as possible.

But Google's priorities have changed, and there is now a growing chasm between the enduring public perception of Google as comprehensive and unbiased and the reality that it is increasingly neither. This rift is reflected in changes Google has made to its published statements in recent years. The changes often transform the statements from clear and reassuring to nebulous and potentially worrying, suggesting a company struggling to come to terms with new and less palatable objectives. Google seems understandably reluctant to retract many of the reassuring promises on which it forged its monopoly and reputation.

For many years, for example, Google proudly proclaimed its fundamental mission as a search engine: to deliver users as quickly and efficiently as possible to the <u>other</u> websites with the information, products, and services they were seeking:

> *"Google may be the only company in the world whose stated goal is to have users leave its **website** as quickly as possible." Google Philosophy item 3, prior to September 2009*

How efficiently a search engine can deliver users to other people's websites is, of course, a key performance indicator for any search service. But, starting around 2005, Google began to develop a significant conflicting interest: to steer users, not to <u>other</u> people's services, but to <u>its own</u> growing stable of competing services (vertical search and others).

Presumably, Google then faced a dilemma. One of its core mission statements was no longer true. Eventually, in September 2009, Google changed item 3 of its Philosophy to read:

> *"We may be the only people in the world who can say our goal is to have people leave our **homepage** as quickly as possible."* Google Philosophy *item 3, after September 2009*

With this subtle change, from "website" to "homepage", Google appears to be quietly relinquishing its role as an unbiased search engine. The notion that Google might be "the only people in the world" wanting to get users off their homepage as quickly as possible is, of course, absurd. Of the 14.5 billion websites currently in existence, only a handful would not share this un-ambitious aim. It's equivalent to a retailer claiming to be the only store in the world who can say its goal is to get customers beyond its shop window and through its front door.

In September 2010, approximately a year after Google made this subtle change, Professor Eric Goldman noticed the new wording and blogged about its ominous implications. Google responded that it was merely “a small editing change” made “unconsciously by a proofreader” and that the text would be changed “back to 'website', as it should be”.

But, no sooner had it been reported that, "as promised, the wording on Google’s Our Philosophy page has been changed back to 'website'”, than Google changed it back again to 'homepage'.  As of October 26 2010 (the next available archived snapshot of the page), the statement read “homepage” again, as it continues to do today[1]:

> *“We may be the only people in the world who can say our goal is to have people leave our homepage as quickly as possible.”* Google Philosophy *item 3, July 29 2011*

As another example, in 2006 a statement on Google’s website claimed that PageRank—one of the key factors Google uses to rank its search results—“performs an objective measurement of the importance of web pages”.  At the same time, however, Google’s attorneys were arguing the exact opposite in court, claiming that “PageRank constitutes Google’s subjective opinion concerning the relative importance of a website…".

In May 2007, several months after a judge had highlighted the contradictory statements, Google replaced the online statement with one nebulous enough to accommodate both: “PageRank reflects our view of the importance of web pages”.

In another example, Google's online explanation of its search results used to read: "A site’s ranking in Google’s search results is automatically determined by computer algorithms". But this was altered in May 2007 to read: "A site's ranking in Google's search results relies heavily on computer algorithms ".

Similarly, where Google used to reassure its users that "there is no human involvement or manipulation of results”, it now offers the considerably less reassuring "We have always taken a pragmatic approach to help improve search quality".

## Google's Conflict of Interest

Google seems to have been preparing for an expansion into vertical search since at least 2005. Yet, it was only in 2010 that Google finally admitted publicly that it now counts vertical search services among its primary competitors:

> *“We face competition from:*
>
> *- Traditional search engines, such as Yahoo! and Bing.*
>
> *- **Vertical search engines** and e-commerce sites, such as...Kayak (travel queries), Monster.com (job queries), and Amazon.com and eBay (commerce). We compete with these sites because they, like us, are trying to attract users to their web sites to search for product or service information, and some users will navigate directly to those sites rather than go through Google...” Google* 2009 Annual Report*, February 2010*

[1] April 2012 Update: Soon after this paper was published, Google once again changed the wording of its mission statement. As of April 16 2012, the U.S. version of the statement reads "website", while the UK version continues to read "homepage".

If we look closely at the language Google used to announce that it now views vertical search engines as competitors, we can see the serious conflict of interest it poses. Google explains that it now competes with vertical search services to attract users looking for information:

> *"...We compete with these sites because they, like us, are trying to **attract users** to their web sites to search for product or service information..."*

With these words, Google is conceding that it now competes with vertical search services for the very thing that these services are substantially reliant on Google for—attracting users. In other words, Google is now choosing to compete with vertical search services for users, while being uniquely placed to directly disrupt the ability of these services to reach those users. By manipulating its search results and ad listings in ways that exclude or demote its competitors' services, while simultaneously promoting its own, Google can exploit its gatekeeper advantage to hijack a substantial proportion of the traffic of pretty much any website it chooses. This power to directly cut off a competitor's access to customers is rare in competitive relationships, and it is this far reaching and profoundly troubling conflict of interest that lies at the heart of Foundem's European antitrust Complaint and the subsequent investigations now under way in Europe and the US.

Google often uses Facebook and Twitter as examples of "rivals" that have been able to thrive despite Google's monopoly. It has chosen these examples carefully. Like horizontal search engines themselves, social networking services are 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.

## Google Penalties: Neutralising Competitors under the Pretext of Quality Control

### Penalties Act Irrespective of Relevance

All search engines employ an ever-evolving variety of penalties to manually or automatically eradicate spam sites from their search results. Because spam sites tend to masquerade as highly relevant, these penalties act irrespective of relevance: a penalised site will usually be excluded from all search results, even when it is the only truly relevant answer to a user's query.

In a much publicised example from earlier this year, Google applied a manual three-month penalty to JC Penney, following allegations that the US retailer had used prohibited SEO tactics. It was widely reported that, during the penalty, JC Penney no longer appeared anywhere on the first several pages of Google's search results for large numbers of generic queries such as "dresses" or "summer dresses". What was not reported was that this penalty also meant that Google's users could no longer find JC Penney, even when using very specific, JC Penney-oriented queries such as "JC Penney summer dresses" or "Dresses at JC Penney". Understanding that these penalties—whether applied manually or algorithmically—act irrespective of relevance is crucial when assessing the potential for consumer harm caused by penalties applied either in error or for spurious, anti-competitive reasons.

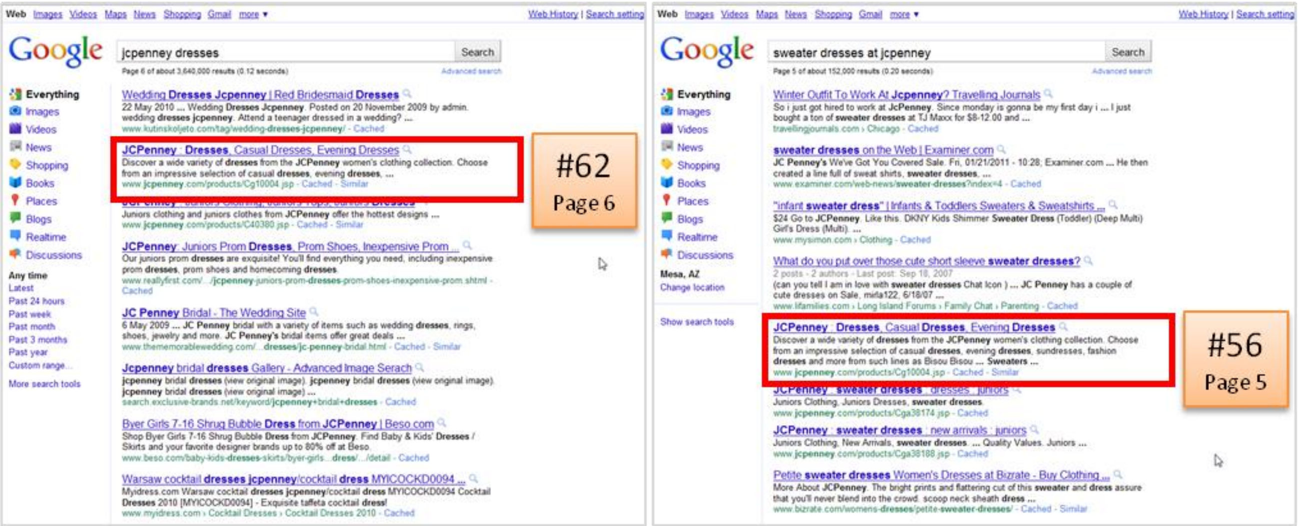
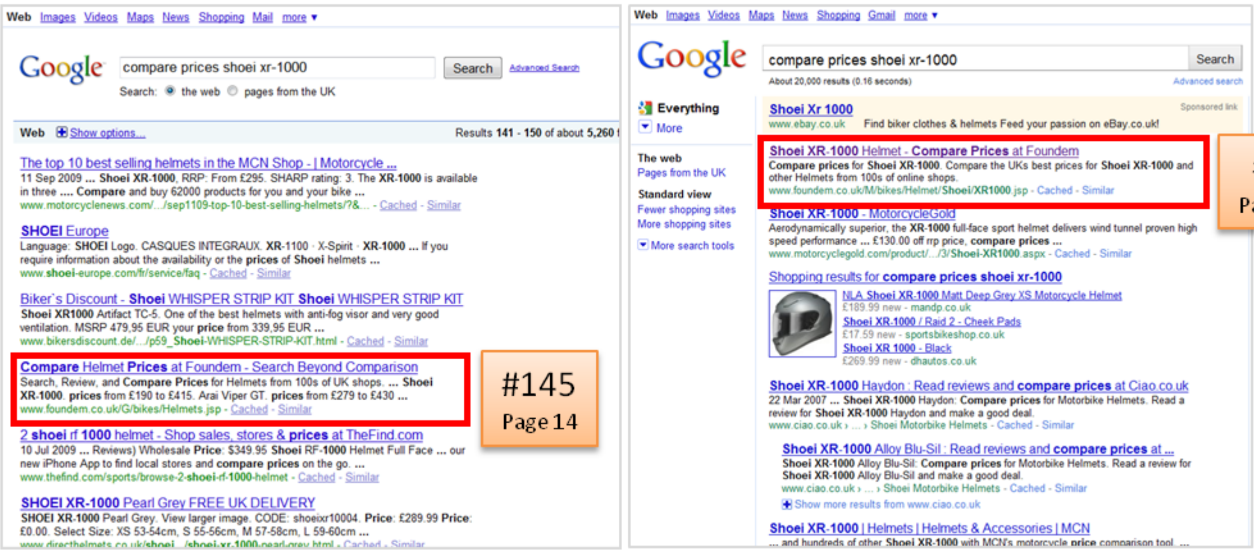



**Figure 1: Two screenshots (from February 14 2011), showing Google search results for two examples of JCPenney-specific queries during its manually-applied, three-month, Google search penalty**

As another example, in August 2008 Foundem launched the world's first price comparison service for motorcycle parts and accessories (in partnership with *MCN*, the UK's leading Motorcycle Magazine). This substantial domain was unique to Foundem for a significant period of time and provided price comparisons for tens of thousands of products that were not available anywhere else. During Foundem's 3-year Google search penalty (which lasted from June 2006 to December 2009), Google users will have been unwittingly denied access to price comparisons for these products, even when specifically searching for them:




During Foundem's 3 Year Google Search Penalty | After Google Lifted Foundem's Search Penalty

**Figure 2: Two screenshots (From September 2009 and June 2010, respectively) showing Google search results for the query "compare prices shoei xr-1000", a price-comparison-specific query for a niche product (a motorcycle helmet) for which Foundem (for much of its penalty) was the only truly relevant result.**

## Penalties Targeted at Vertical Search

One of the first visible signs that Google was preparing the ground for an aggressive, anti-competitive assault on vertical search came in 2006, when it quietly introduced a new kind of algorithmic search penalty, targeted at sites with a "lack of original content" and whose "primary purpose is to drive traffic to other sites".

Although these characteristics describe a certain kind of spam site, it is no coincidence that they also describe all vertical search sites—the very services that Google was now preparing to compete with. Google knows better than most that search services are not intended to produce “original content”: they are intended to organise, search, and summarise the content of others. As we saw earlier, Google also knows that the primary purpose of any search service is to deliver users efficiently to other sites.

As can be seen from a glance at Google’s AdWords FAQs between 2006 and 2009, Google also knew that its new penalties would inevitably strike legitimate vertical search sites as well as the spam sites they were ostensibly targeting:

> *"The following website types will sometimes merit low landing page quality scores and may be difficult to advertise affordably...be particularly careful to adhere to our landing page quality guidelines - especially* ***the rule about offering unique content****: eBook sites, ‘get rich quick’ sites,* ***Comparison shopping sites, Travel aggregators,*** *Affiliates." Google AdWords FAQ, prior to September 2009*

Some have argued that it is appropriate for Google to start excluding or penalising rival vertical search services:

> *“Google is a search engine. A search engine’s job is to point you to destination sites that have the information you are seeking, not to send you to other search engines”.* Danny Sullivan*, The Incredible Stupidity Of Investigating Google For Acting Like A Search Engine, Search Engine Land, November 2010*

But this argument is fallacious, as it completely overlooks the crucial difference between *horizontal* and *vertical* search engines. As Google knows, millions of users every day visit Google specifically looking for vertical search engines and the unique information they provide:

> *“Vertical search sites are important to [Google] and our users - indeed vertical search sites which offer added value often come top of our search rankings.”* Google Spokesman*, The Register,* November 2009

## Adding Insult to Injury

Foundem was a highly innovative vertical search start-up, when in June 2006 – just months after launch – it was struck by one of Google’s new vertical-search-targeted penalties. This penalty instantly excluded Foundem from all of Google’s search results and Ad listings. As one of the broadest vertical search sites in the world – covering travel, product price comparison, property, and jobs – if any site was going to trip a vertical-search detection algorithm, it was Foundem.

Foundem survived what would for many businesses have been a fatal drop in traffic and revenues by partnering with some of the UK’s leading media companies to power their vertical search offerings. Foundem won these partnerships because of the unique capabilities of its patented technology, which allows it to provide comprehensive, parameterised search of any vertical, with just a small fraction of the resources of its competitors.

Foundem's prestigious partnerships and the independent accolades that it accumulated over the years despite being excluded from Google were eventually enough to convince Google that its algorithms had erred and that Foundem's penalty could not be justified. Google manually whitelisted Foundem out of its AdWord penalty in 2007 and out of its Search penalty in 2009.

In its recent efforts to deflect the increased public scrutiny that has followed the launch of antitrust investigations on both sides of the Atlantic, Google has employed a variety of diversionary strategies. For nearly a year, for example, senior Google spokespeople repeatedly denied the existence of either penalties or whitelisting:

> *"We don't whitelist or blacklist anyone...", Julia Holtz, Google* Senior Competition Counsel EMEA, Feb 2010 (*Financial Times* February 25 2010)

> *"Google denies it uses whitelists. Company spokesman Adam Kovacevich reiterated this denial on the phone with The Register on Tuesday morning." The Register,* December 1 2010

But after Foundem produced emails from Google, including one from September 2007 entitled "Update on Whitelisting", Google eventually abandoned these public denials:

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

Another of Google's diversionary strategies has been to deploy spurious accusations specifically designed to sound damning to an audience unfamiliar with the mechanics of search:

> *"Since the primary purpose of [Foundem] is to drive traffic to other websites, the Quality Team has decided that the initial evaluation was not in error."* Email to Foundem from Google Quality Team, August 24 2006

> *"Google has denied the claims, arguing that Foundem struggled in its search rankings because of a lack of original content." The New Statesman,* February 24 2010

> *"Google says it 'de-indexed' [Foundem] because much of its content – about 87% – was copied from other sites..." The Guardian,* November 30 2010

A site that copies 87% 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 <u>all</u> 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. A search on Google is not a search of the Web; it is a search of Google's copy of the Web. And all of Google's search result pages are comprised entirely of content that Google has copied from other sites. Google's slurs are not just hypocrisy. They are propaganda designed to conceal a blatantly anti-competitive practice under the guise of quality control.

Tellingly, when the exact same accusations were levelled at Google by *KinderStart* in 2006, Google quite rightly defended its role as a search engine by pointing out that a search engine's unique selection, presentation, and ordering of search results is, in itself, original content:

*"According to KinderStart, Google's search results **function solely to link a user to third party websites** and **contain no original content**. But Google's **search results are original content**, expressing Google's opinion of the relative significance of websites." Google Attorneys, 2006*

### The Difference between *Established* and *Emerging* Competitors

A search engine cannot openly penalise *established* competitors without undermining its reputation as unbiased and comprehensive: users would notice the sudden disappearance of well-known websites from their search results. Unfortunately, this is not the case for *emerging* websites and brands, which can be excluded without users noticing: users can't miss what they don't yet know about.

Interestingly, in its 2009 Annual Report, Google drew a distinction between established and emerging competitors, noting that emerging start-ups are more likely to be able to out-innovate Google:

*"Our current and potential competitors range from large and established companies to emerging start-ups... Emerging start-ups may be able to innovate and provide products and services faster than we can." Google [2009 Annual Report], February 2010*

Thus, although, individually, start-ups pose little immediate threat to Google, collectively, as the companies most likely to innovate, they pose a significant longer-term threat. The "next Google" is far more likely to emerge from an agile and innovative start-up, than from a cumbersome and less flexible incumbent.

Just eleven days before Google's 2009 Annual Report was published, Foundem filed its European Competition Complaint against Google, which highlighted the inevitable cost to innovation of policies that arbitrarily reward incumbents while punishing start-ups:

*"Any policy that, inadvertently or otherwise, whitelists **established** sites while leaving **emerging** sites penalised inevitably **suppresses innovation**." Foundem's European Complaint, February 1 2010*

Moreover, in its 2008 Public Policy Blog post arguing for network neutrality, Google made it abundantly clear that it recognises the immense anti-competitive power of a gatekeeper intent on cutting fledgling companies off from their users:

*"... innovation has thrived online because...new ideas and technologies...are allowed to succeed based on their own merits and benefits. Some major broadband service providers have threatened to act as **gatekeepers**, **playing favorites** with particular applications or content providers… It's no stretch to say that **such discriminatory practices** could have **prevented Google from getting off the ground --** and they could **prevent the next Google from ever coming to be."** Google [Public Policy Blog], February 13 2008*

### Universal Search: Neutralising Competitors under the Pretext of User Convenience

In a more innocent time, Google's Head of Search Quality, Matt Cutts, said the following:

*"At the core of the Google value system is the belief that the user experience matters most... and if Google makes no attempt to steer users to its own sites, a bond of trust will form"*
*Matt Cutts,* from *Googled – The End of the World as We Know it* by *Ken Auletta*

But steering users to its own sites is exactly what Google's ironically named Universal Search mechanism was designed to do:

*"Google is undertaking the most radical change to its search results ever, introducing a 'Universal Search' system that will blend listings from its news, video, images, local and book search engines among those it gathers from crawling web pages." Danny Sullivan, Search Engine Land, May 2007*

By shoehorning prominent links to Google's own services into its users' search results, Universal Search is transforming Google's ostensibly neutral search engine into an immensely powerful marketing channel for Google's other services.

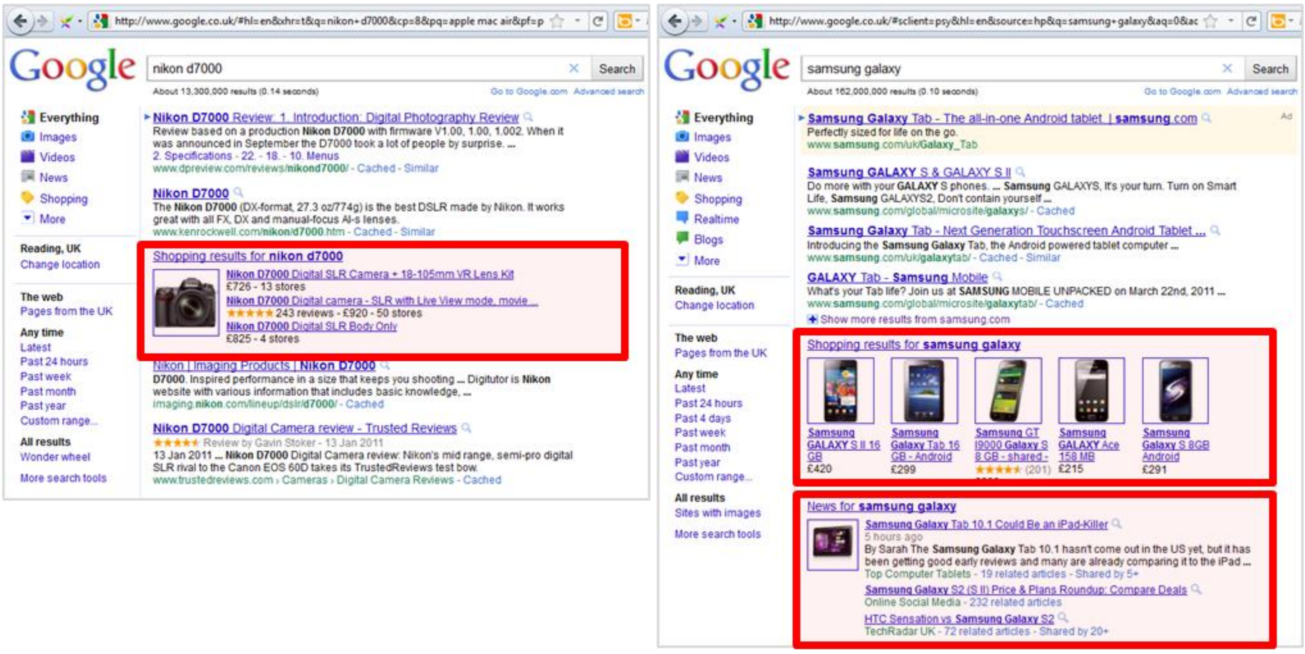



**Figure 3: Two screenshots of Google search results where Google's "Universal Search" mechanism has "blended" prominent and eye-catching links to Google's own service into its search results. We have outlined these links to Google Product Search (and Google News) in red.**

Google uses different ranking algorithms and relevance signals to place its own services than it uses to place everyone else's, which gives Google absolute control over how aggressively and comprehensively it chooses to commandeer any given vertical. Foundem's empirical study of the price comparison vertical, for example, found that Google is exploiting this control to consistently place its own price comparison service at or near the top of its search results for virtually all product- and price-comparison-related searches, with devastating anti-competitive effect.

In our New York Times op-ed arguing for search neutrality, published in December 2009, we warned that, if Google's anti-competitive practices aren't stopped, "we may be heading toward a bleakly uniform world of Google Everything—Google Travel, Google Finance, Google Insurance, Google Real Estate, Google Telecoms and, of course, Google Books".

In the year and a half since this op-ed was published, Google has done much to confirm this prediction. It acquired UK financial price comparison service BeatThatQuote and launched its own financial search service in the US. It acquired US flight search company ITA Software and introduced its own crude hotel price comparisons and real estate listings within Google Local. It acquired mobile advertising company AdMob and launched its own mobile phone, the Nexus One. It launched its own Facebook challengers, Google Buzz and Google+, and, just this month, it acquired communications giant Motorola Mobility.

We also issued a warning to those unperturbed by the prospect of entrusting all future Internet innovation to Google:

> *"Some will argue that Google is itself so innovative that we needn't worry. But the company isn't as innovative as it is regularly given credit for. Google Maps, Google Earth, Google Groups, Google Docs, Google Analytics, Android and many other Google products are all based on technology that Google has acquired rather than invented. Even AdWords and AdSense, the phenomenally efficient economic engines behind Google's meteoric success, are essentially borrowed inventions: Google acquired AdSense by purchasing Applied Semantics in 2003; and AdWords, though developed by Google, is used under licence from its inventors, Overture." Search But You May Not Find, New York Times, December 2009*

## Panda: Escalating Google's Undeclared War on Vertical Search

A detailed discussion of Google's recent update to its algorithms, codenamed "Panda", will have to wait for another day, but, in essence, Panda marks a significant escalation in Google's undeclared war on its vertical-search rivals.

So far, few have made a connection between Panda and the various antitrust Investigations into Google. But Panda isn't just relevant to these investigations; it is central to them. Despite being widely touted as an attack on content-farms—which are almost the polar opposite of vertical search services—Panda also marks an aggressive escalation of Google's vertical-search targeted, "lack of original content" penalties:

> *"one change...primarily affects sites that copy others' content and sites with low levels of original content"* Blog Post by *Matt Cutts, Google's Head of Search Quality,* January 28 2011

With Panda, Google is now targeting many established vertical search brands, as well as emerging ones. Still mindful that it cannot *openly* penalise well-known competitors, Panda's algorithmic demotions are more subtle than their predecessors: although affected sites do not completely disappear from Google's search results, they are systematically demoted to a point beyond the reach of most users, and so receive little or no traffic from this vital channel.

Where Foundem's EU Complaint reveals Google's smoking gun, we suggest that a detailed analysis of Panda and the events leading up to it will uncover the blueprints of Google's anti-competitive equivalent of a WMD programme.

### Why So Few Openly Complain

Whether they like it or not, and most don't, companies the world over rely on Google for a substantial proportion of their traffic and revenues. From small family-run businesses to large multinationals, Google's search results and ad listings typically account for between 50% and 90% of a website's traffic. Given Google's ability to make unannounced changes that can instantly decimate any website's traffic with the tweak of a configuration file, it is sensible for any business to be extremely cautious about speaking out against Google.

You might expect that a site that has already been penalised would have nothing to lose by speaking out. But this is not the case. For a penalised site, a 50%, 60%, or even 90% reduction in traffic from Google is better than risking a 100% reduction. And a penalty that lasts a week, a month, or even a year is better than risking an indefinite one.

Since filing its EU Complaint, Foundem has spoken to a wide variety of companies throughout Europe and the United States, many of which have already suffered from Google's stranglehold on their business. From the very small to the very large, it is the fear of reprisals from Google that prevents them from speaking out publicly.

## 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 is taking 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.

### Business Models

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, 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 (sponsored links) and click on one of them. Because users only tend to look at sponsored links 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 need to ensure that the results are bad enough that users regularly resort to clicking on sponsored links.

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 funded search engines will be inherently biased towards the advertisers and away from the needs of the consumers… Since it is very difficult even for experts to evaluate search engines, search engine bias is particularly insidious…Furthermore,* ***advertising***

***income often provides an incentive to provide poor quality search results****."* *Sergey Brin* and *Larry Page*, *[Anatomy of a Search Engine](#)*, *1998*

In essence, a search engine's business model is a numbers game: for any page containing sponsored links, on average, users will click on one or more of these links a certain percentage of the time. A search engine can grow its revenues either by increasing this percentage (perhaps by lowering the quality and relevance of its search results) or by increasing the average number of pages containing ads that each user views per visit. For example, when Google directs users to its own price comparison service (whose pages also contain sponsored links), Google grows its revenues (whether or not it also charges merchants a commission for any resultant sales). On the flipside, every time Google directs a user to someone else's price comparison service it is forgoing those revenues, as well as any further opportunities to extract revenues from that user's visit. By contrast, the incentive for a supermarket to favour its own brands may be less acute, because a supermarket makes a profit from everyone else's brands as well as its own.

## Competition is Just a Few Steps Away

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

Just as Google cannot exclude well known brands like Amazon without users noticing, our dominant supermarket cannot remove well-known brands like Coca Cola from its shelves without risking a mass defection of customers to rival supermarkets. But, if it wants to, 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 Recent "Panda" Update

In many cases, the above anti-competitive techniques would only be partially effective: many 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, along with a few other well-known brands such as Pepsi Cola (perhaps as part of a broader divide and conquer strategy). 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. Yet, the suggestion that someone might want to take a look at Google (whose anti-competitive practices are not constrained or moderated by the market forces of healthy competition, and whose potential for abuse far exceeds that of a supermarket) is often met with a level of derision as fervent as it is inexplicable: for example, *"It's insane. It really is." Danny Sullivan, [The Incredible Stupidity Of Investigating Google For Acting Like A Search Engine], November 30 2010*

## Conclusion

As we have seen, Google's antitrust issues have nothing to do with "big is bad" or with whether or not Google achieved its search monopoly through lawful means. Nor are any of Google's anti-competitive practices mitigated by the fact that users could choose an alternative search engine if they wanted to or that another search engine might one day come along to displace Google.

The businesses being harmed by the anti-competitive practices described in Foundem's Complaint are not Google's rival horizontal search engines such as Bing or Yahoo. They are the thousands of businesses that compete with Google's other services—in price comparison, online video, digital mapping, news aggregation, local search, travel search, job search, property search, financial search, and so on.

Internet Search is an immensely powerful new paradigm, offering unparalleled opportunities for monopoly abuse on a global scale. To date, Google has been remarkably successful at diverting attention both from this inconvenient truth and from its own growing arsenal of anti-competitive practices. But as public and regulatory scrutiny intensifies, it is beginning to reveal the untenable conflict of interest at the heart of Google's antitrust issues.