



The European Commission's Google Search Case

A Timeline of Significant Events

On 27 June 2017, the European Commission adopted a Prohibition Decision (a guilty verdict) in the Google Search Case. Google was fined a record €2.4 billion (\$2.7 billion) and given 90 days to mend its ways. The following is a timeline of the significant events leading up to and beyond this landmark Decision.

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1 Introduction

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

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

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

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

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

2 Timeline of Events

September 1998

Google launched its horizontal search engine.

26 June 2000

Google signed a distribution deal with Yahoo! and started powering Yahoo!'s search results¹.

23 October 2000

Google launched **AdWords**, its self-service, search-advertising programme. At this time, AdWords ads were sold on a cost-per-impression (CPM) basis, in which advertisers paid each time their ad appeared, regardless of whether a user clicked on it.

6 August 2001

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

20 February 2002

After Google's CPM model proved unpopular with advertisers, Google transitioned its AdWords program to a cost-per-click (CPC) charging model. As Google's co-founders had pointed out four years earlier, for any search engine funded in this way, there is an unavoidable tension between the need to produce good enough search results to attract and retain users and the conflicting need to ensure

¹ <http://googlepress.blogspot.co.uk/2000/06/yahoo-selects-google-as-its-default.html>

that they are bad enough that users regularly resort to clicking on sponsored links to find what they are looking for:

*"The goals of the advertising business model do not always correspond to providing quality search to users...advertising income often provides an incentive to provide poor quality search results."*²

May 2002

Google signed a distribution deal with AOL and Netscape for both search and search advertising. This was probably the moment at which Google became the dominant *search* and *search advertising* provider globally, a position it has now held and consolidated for well over a decade.

12 December 2002

Google launched a product-price-comparison service, **Froogle**, which it later re-branded **Google Product Search** and, most recently, **Google Shopping**.

18 August 2004

Google's **IPO**. Google's unusual dual-class share structure, which granted its top executives ten votes for every one vote of a regular shareholder, guaranteed Google's Founders "*carte blanche authority in running the company over the near term.*"³

September 2004

In an interview⁴, Google Co-Founder Larry Page responded to a question about the temptation for search engines and portals to develop "sticky" content and services in order to keep users on their sites and earn more advertising revenue:

"That's the problem. Most portals show their own content above content elsewhere on the web. We feel that's a conflict of interest, analogous to taking money for search results. Their search engine doesn't necessarily provide the best results; it provides the portal's results. Google conscientiously tries to stay away from that. We want to get you out of Google and to the right place as fast as possible. It's a very different model."

Two and a half years later, Google succumbed to its own growing conflict of interest. In May 2007, Google introduced "Universal Search"—a mechanism specifically designed to insert prominent links to Google's own content and services above the content and services from elsewhere on the web.

27 October 2004

Google acquired Keyhole Corp., a California-based digital mapping company.

In April 2005, Google integrated Keyhole's dynamic 3D mapping technology into its recently launched Google Maps service and in June 2005 used it as the basis of its Google Earth service.

28 March 2005

Google acquired Urchin and used its web analytics technology to create **Google Analytics** (launched in November 2005).⁵

January 2006

Foundem launched a vertical search service built on its proprietary patented technology.

Vertical search is fundamentally different from horizontal search, fulfilling a different role and requiring different expertise and technology. The two forms of search are complimentary; one is not

² Sergey Brin and Larry Page, *Anatomy of a Search Engine*, April 1998

<http://infolab.stanford.edu/~backrub/google.html>

³ <http://news.cnet.com/2100-1030-5321813.html>

⁴ <http://www.sec.gov/Archives/edgar/data/1288776/000119312504139655/ds1a.htm>

⁵ <http://www.google.com/corporate/timeline/#2005-urchin-acquired>

a replacement for the other. Where horizontal, keyword-based search engines like Google and Bing are intrinsically general-purpose, requiring little understanding of the nature of the data or sites they are searching, vertical search engines tend to be highly specialised, supporting parameterised searches that require an understanding of both the nature of the items being searched for and the parameters required to search for them.

The inherent complexity of vertical search, coupled with the lack of a general purpose, vertical-agnostic technology to support it, tended to limit the scope of individual vertical search services to just one or a small handful of closely-related verticals. Foundem's patented, programmable, parameterised search technology allowed it to provide best-in-class vertical search for almost any vertical, with just a fraction of the development and maintenance costs of its competitors. With this innovative technology, Foundem planned to transform vertical search from a narrow, niche-by-niche proposition into a broad, comprehensive and scalable one. Despite Foundem's diminutive size, it quickly became one of the world's broadest vertical search services, covering product-price-comparison, travel search, jobs search, and property search.

In addition to the many hidden innovations of Foundem's underlying technology, Foundem also pioneered many user-facing innovations that have since become commonplace, including search-form auto-suggestions, dynamic contextual filters, and price-history graphs that show fluctuations in product prices over time.

9 March 2006

Google acquired Upstartle, whose web-based collaborative word-processing software, Writely, became the basis for Google's Google Docs service (launched in October 2006).

March 2006

Google completed the roll-out of its "Big Daddy" update, a major change to its search engine infrastructure and algorithms. One element of this update caused significant problems for many vertical search services, especially emerging start-ups.

By their nature, vertical search services tend to have a very large number of pages. Price comparison services, for example, typically contain hundreds of thousands of product-specific pages, and digital-mapping services typically contain similar numbers of postcode-specific pages. By tying a site's crawl-depth to its PageRank, Google's Big Daddy update meant that very large websites suddenly required a very large number of "authoritative" inbound links to ensure that their pages were crawled and indexed by Google. This posed a significant problem for new or emerging vertical search services: how to gain the substantial number of inbound links now required in order to be crawled and indexed by Google, when their service could not be found or discovered within Google's search results? Whether by accident or design, the anti-competitive effect of these changes will have been significant, preventing many new and potentially innovative vertical search and mapping services from getting off the ground.

26 June 2006

Foundem was struck by a site-wide, **algorithmic Google Search Penalty**, which systematically excluded all of Foundem's pages from Google's search results, irrespective of their relevance to users' search terms.

This penalty not only excluded Foundem from all general searches, such as "price comparison", it also excluded Foundem from all highly specific searches, even in cases where Foundem would have been the only truly relevant result, such as "compare prices shoei xr-1000".

29 June 2006

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

Reconsideration Requests (formerly known as Re-inclusion Requests) were (and to a certain extent still are) Google's official channel for websites to appeal penalties. But, despite acknowledging that its penalty algorithms "are not infallible"⁶, we now know that Google's policy until at least February 2011 was to ignore all Reconsideration Requests lodged against algorithmic, as opposed to manual, penalties.⁷

21 July 2006

Foundem filed another *Reconsideration Request* to Google regarding its search penalty. Again, Google did not respond.

1 August 2006

Foundem was struck by a site-wide, **algorithmic Google AdWords Penalty**. Overnight, all of Foundem's Landing Page Quality (LPQ) scores were artificially lowered from around 10 out of 10 to around 1 out of 10. As a result, Foundem's minimum bids (the minimum price Foundem had to bid for its ads to be eligible for display in Google AdWords) rose by a prohibitive 10,000% (from around 5 pence per click to around £5 per click).

2 August 2006

By this point, Foundem had been excluded from Google's natural and paid search results, both of which are essential channels to market for any internet-based business.⁸

Foundem deduced that it had been struck by one or more site-wide algorithmic Google penalties, targeted at sites that "lack original content". While a lack of original content is a characteristic of certain spam sites, it is also a defining characteristic of all search services (horizontal and vertical). The value of search services lies not in the production of original content but in their ability to efficiently organise, search, and summarise the content of others. Other than fundamentally changing from a search service to a content publisher, Foundem's only way back into Google's search results and ad listings was to have Google intercede to manually lift the penalties.

Foundem embarked on what would turn out to be a three-year long effort to have these unjustified Google penalties lifted.

2 August 2006

Following another unanswered Reconsideration Request, Foundem emailed Google's Head of Search Quality, Matt Cutts, about its Google search penalty. Mr Cutts was the Google employee most likely to be aware of the rationale behind Google's various penalty algorithms, and the most empowered to override them. Foundem explained that it was an innovative vertical-search start-up with patented technology, the value of which—in common with all search services—lies not in original content per se, but in the unique and undeniably useful service it offers to users.

Mr Cutts passed Foundem's email on to his colleague, Adam Lasnik, with instructions to explain to Foundem that "other search engines aren't always what we want to return".⁹

⁶ See [Google's September 2011 written response to the US Senate Antitrust Subcommittee's Questions](#)

⁷ http://www.theregister.co.uk/2011/02/18/google_on_manual_search_penalties/

⁸ Horizontal search engines have become the Internet's gatekeepers, and the crucial role they play in directing users to websites means that most Internet-based businesses now rely on search engines for a substantial proportion of their traffic and revenues. Given Google's overwhelming global dominance of horizontal search, for most websites this amounts to an uncomfortable but unavoidable reliance on Google. Typically, web sites receive the vast majority of their traffic from Google (Google accounts for 75% of Yelp's traffic, for example), and, crucially, there is no substitute for this traffic: web sites can supplement search engine traffic by traditional forms of advertising, but they cannot replace it. While an internet service may be able to survive an exclusion from Google's search results, it will not be able to compete against unpenalised rivals or achieve anything approaching its full potential. Note that Google's own specialised services are no less dependent on this Google search traffic than anyone else's.

⁹ Google's 3 May 2010 Reply to Foundem's EC Competition Complaint

August 2006

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

24 August 2006

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

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

1 September 2006

Google AdWords Support representative, Dave W, thought Google's penalising of Foundem such an obvious mistake that he wrote his own multi-page letter in support of Foundem's case. He seemed genuinely shocked and upset when Google's AdWords Quality Team ignored his arguments:

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

13 September 2006

Google's Adam Lasnik responded to Foundem's 2 August email.

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

9 October 2006

Google acquired YouTube.

October 2006

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

14 February 2007

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

13 April 2007

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

16 May 2007

Google launched "**Universal Search**" - a mechanism for "blending" prominent links to Google's own vertical search and other specialised services at or near the top of its organic search results, starting with Google Maps, Google News, Google YouTube, and Google Images:

*"Google is undertaking the most radical change to its search results ever, introducing a 'Universal Search' system that will blend listings from its news, video, images, local and book search engines among those it gathers from crawling web pages."*¹⁰

Competitors to Google's digital mapping service, who had been successfully competing and growing alongside Google Maps for more than two years, saw their traffic and revenues plummet overnight.¹¹

16 July 2007

Foundem was named *The Sunday Times* Website of the Week.¹²

2 August 2007

Foundem contacted Anthony House, a member of Google UK's Public Policy and Communications Group, who agreed to make internal enquiries about Foundem's search penalty.

14 August 2007

Foundem received another uninformed, boilerplate response from Google's AdWords Quality Team:

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

16 August 2007

After nearly a year of back and forth communication with various Google AdWords representatives, Foundem's appeal against its AdWords penalty was finally escalated to Google's Senior AdWords Evangelist, Fred Vallaey. During a conference call, Vallaey conceded that Foundem had been struck by an algorithmic penalty designed to target sites with a "lack of original content". He noted that price comparison and travel search services were, by their nature, likely to be hit by this new kind of penalty.

After hearing about Foundem's technology and partnerships, Vallaey agreed to champion Foundem through what he called the "**whitelisting**" process (Google's mechanism for manually overriding algorithmic penalties).

22 August 2007

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

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

31 August 2007

Google's Head of Universal Search Development, David Bailey, published *An Insider's View of Google Universal Search*.¹³

¹⁰ <http://searchengineland.com/google-20-google-universal-search-11232>

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

¹² <http://www.thetimes.co.uk/tto/travel/article1732499.ece>

¹³ <http://searchengineland.com/an-insiders-view-of-google-universal-search-12059>

Mr Bailey made clear that this was just the beginning. In Google's view, Universal Search really was a fast track to a world of Google Everything¹⁴, at least as far as vertical search was concerned:

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

8 September 2007

Google AdWords support sent Foundem an email entitled "Update on Whitelisting":

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

25 September 2007

Google manually "whitelisted" Foundem from its algorithmic AdWords penalty.

All of Foundem's AdWords Landing Page Quality scores immediately returned to normal (typically returning to 10/10 from 1/10).

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

9 October 2007

Foundem filed another *Reconsideration Request* to Google regarding its search penalty. This time, Foundem highlighted that Google's AdWords support team had recently whitelisted Foundem out of the AdWords equivalent of the same penalty. Again, Google did not respond.

21 November 2007

The Times newspaper named Foundem one of the UK's Top Travel Sites.¹⁵

December 2007

On 13 December 2007, CNN Money commented on how badly Google's price comparison service, Google Product Search, was doing:

"Traffic to Google Product Search...has plummeted in the last year, while competing services from rivals...have grown or held steady...Google Product Search...saw its October [2007] unique visitor count decline a huge 79% from October 2006, according to market tracker ComScore." Google's Pitch So Far Failing with Shoppers¹⁶

On 23 December 2007, *The Guardian* newspaper's Computer Editor, Jack Schofield, wrote:

"Traffic to Google Product Search - formerly Froogle - fell by 73.26%. This isn't too surprising, because it's not very good."¹⁷

Ironically, around the time these articles were being written, Google began promoting Google Product Search through its Universal Search mechanism. This placed prominent links to Google Product Search at or near the top of users' search results for nearly all product- and product-price-comparison-related search terms, bypassing the ranking and penalty algorithms used to place rival services.

¹⁴ See <http://www.nytimes.com/2009/12/28/opinion/28raff.html>

¹⁵ <http://www.thetimes.co.uk/tto/travel/article1732612.ece>

¹⁶ <http://news.investors.com/technology/121307-440795-googles-pitch-so-far-failing-with-shoppers.htm>

¹⁷ <http://www.guardian.co.uk/technology/blog/2007/dec/23/googlesgrowthbycomscorenum>

Foundem's [analysis](#) of the effects of this overwhelming self-preferencing found that Google Product Search's ailing fortunes were reversed virtually overnight. For example, U.S. traffic to Google Product Search increased twelve-fold, rapidly transforming it from a long-in-the-tooth, peripheral player to the World's leading price comparison service:

"[Previously], Google product search struggled to get used by more than 2% of Google users...[Since its inclusion in Universal Search,] Google Product Search has become the largest and most important specialty shopping search engine in existence...Google is the king for now and the foreseeable future in this space... yet their shopping product itself is still inferior in its presentation and usability to some of the other leading shopping search engines." InstantROI¹⁸, 26 November 2008

January 2008

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

1 February 2008

Foundem began powering content-integrated price comparison for *Photo Answers* magazine.

13 February 2008

In a Public Policy blog post arguing for network neutrality, Google made clear that it understands the immense anti-competitive power of a gatekeeper intent on cutting fledgling companies off from their users:

*"Innovation has thrived online because...new ideas and technologies...are allowed to succeed based on their own merits and benefits. Some major broadband service providers have threatened to act as gatekeepers, playing favorites with particular applications or content providers...It's no stretch to say that such discriminatory practices could have prevented Google from getting off the ground—and they could prevent the next Google from ever coming to be."*¹⁹

August 2008

In partnership with MCN (the UK's leading Motorcycle Magazine), Foundem and MCN launched the world's first price comparison service for motorcycle parts and accessories.²⁰ This service was made possible by Foundem's unique ability to integrate data extracted directly from merchant databases.

6 August 2008

Foundem filed another *Reconsideration Request* to Google regarding its search penalty. Google did not respond.

12 September 2008

Foundem filed another *Reconsideration Request* to Google regarding its search penalty. Again, Google did not respond.

16 September 2008

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

¹⁸ <http://instantroi.com/index.php/2008/11/26/google-product-search-shopping-optimization/>

¹⁹ <http://googlepublicpolicy.blogspot.com/2008/02/rep-markeys-net-neutrality-legislation.html>

²⁰ <http://www.mediaweek.co.uk/news/836320/Bauer-offers-online-shopping-portal-around-MCN-title/>

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

Neither Amit Singhal nor anyone else at Google responded.

19 September 2008

Foundem emailed Fred Vallaey (Google's Senior AdWords Evangelist) to ask if there was anything he could do to facilitate the removal of Foundem's ongoing search penalty:

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

23 September 2008

Foundem emailed Udi Manber (Google's VP of Engineering), copying Mr Singhal, to ask if there was anything he could do to facilitate the removal of Foundem's ongoing search penalty.

Neither Mr Manber nor Mr Singhal nor anyone else at Google responded.

24 September 2008

Google's Fred Vallaey responded to Foundem's 19 September email, informing Foundem that he had let the Search Quality Team know that, in his opinion, Foundem should not be penalised:

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

24 September 2008

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

1 October 2008

Foundem emailed Amit Singhal and Udi Manber, asking if there was anything in progress to suggest that Foundem should not reach out to a wider audience within Google. Again, no one at Google responded.

6 November 2008

Having had no response to its earlier emails, nor any acknowledgement that Fred Vallaey's intervention had been noted or acted on, Foundem sent an email to Adam Lasnik, Udi Manber, and Amit Singhal with a brief summary of Foundem's case.

This time Foundem also addressed its email to a select group of Google managers from other teams. Foundem hoped that involving people outside of the Search Quality bubble might finally persuade the Search Quality team to consider, rather than ignore, the issue:

"... Since June 2006, Foundem has been suffering from a new class of Google penalty that is now systematically excluding all but its Homepage from Google's organic search results.

When a similar penalty decimated Foundem's AdWord 'landing page quality scores' in September 2006, Google's AdWord Quality Team intervened and overturned the penalty by manually 'whitelisting' Foundem's site. Unfortunately, Foundem has not yet found a way to achieve similar

intervention by Google's Search Quality Team and therefore remains inappropriately excluded from Google's organic search results.

Foundem's patented technology can provide best-of-breed vertical-search and price comparison services in virtually any domain. By seamlessly ingesting feeds, crawling websites, and querying APIs and databases, Foundem delivers unique search results that are generally more comprehensive and accurate than those of its competitors.

Foundem (www.foundem.co.uk) provides a unique service to its visitors. Its proprietary vertical search services span the broadest range of verticals available anywhere in the world, including Travel, Jobs, Property, and Price Comparison. Moreover, Foundem's innovative product classification technology allows it to deliver price comparison to many niche domains that lie beyond the reach of conventional services.

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

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

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

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

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

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

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

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

Yet, simply because it shares a business model with a category of sites that Google has recently started to penalize, Foundem is being denied access to a level playing field, and Google's users are being prevented from finding its many unique services.

Google's virtual monopoly on UK search traffic means that Foundem has no choice but to continue to pursue organic search whitelisting through all available channels..."

As on previous occasions, no one from Google responded.

8 December 2008

Channel 5's *The Gadget Show* (the UK's leading technology television program) named Foundem the UK's best price comparison site:

*"When searching for online bargains I reckon your first port of call should be price comparison websites... We took nine of the Gadget Show's favourite gadgets and searched for the best price we could get for each and every one of them on what we reckon are the twelve best price comparison sites in the UK... So, who does the Gadget Show recommend?... The top dog in our survey was in fact Foundem. This site found the lowest price in six out of nine cases, and found the second best price in the other three cases. But I also like their Price History graphs... which chart the cost of your item over time."*²¹

15 December 2008

According to Hitwise²², for the week leading up to Christmas, the keyword "Foundem" was the UK's fastest growing search term, beating "jls" and "cheryl cole" in the lead up to the X-Factor final.

16 December 2008

Foundem emailed the same selection of senior Google managers as before to highlight the Gadget Show recommendation:

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

17 December 2008

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

18 December 2008

Foundem responded to Adam Lasnik's email:

"...I am not asking for Google's private support for a search issue. Foundem is being systematically excluded from Google's search results by a site-wide... penalty, and I am therefore asking Google for the manual intervention/whitelisting that is the only remedy; just as whitelisting was the only remedy when an equivalent penalty struck Foundem's AdWords listings in 2006.

...Google's continuing blanket exclusion of Foundem... is not in anyone's interest, and I remain hopeful that we can resolve this issue without recourse to a public campaign."

18 December 2008

Once again, Mr Lasnik refused to address or acknowledge the issue: *"I must respectfully yet firmly note that my earlier guidance still stands."*

²¹ <http://gadgetshow.channel5.com/gadget-show/videos/news/christmas-shopping>

²² https://twitter.com/Hitwise_UK/status/1058197610

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

4 March 2009

Foundem engaged a PR agency to assist in taking its case public.

24 April 2009

Foundem had its first meeting with ICOMP²³ (the Initiative for a Competitive Online Marketplace).

June 2009

Foundem started speaking with the *BBC* and *The Guardian* newspaper about its case. Journalists from these organisations started making Foundem-related enquiries to Google shortly afterwards.

8 July 2009

Foundem had its first meeting with the **European Commission**, and began preparing a Competition Complaint under Article 102.

Foundem's Complaint was the first to describe how Google exploits its overwhelmingly dominant search engine to systematically promote Google's own specialised services (through Universal Search), while simultaneously demoting or excluding those of its competitors (through anti-competitive penalties). Foundem's Complaint made clear that Foundem's experience was just an example of anti-competitive practices that can lay waste to entire classes of competitors in any sector where Google chooses to deploy them.

9 July 2009

From an internal 9 July 2009 Google email quoted in the Commission's June 2017 Prohibition Decision²⁴:

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

14 July 2009

Four days before *The Guardian* newspaper was scheduled to speak to Google's Matt Cutts about Foundem's case, there was a subtle change to Foundem's Google search penalty. Foundem began to appear in Google's search results for a small number of search terms.²⁵ This change made no material difference to the traffic Foundem received from Google, but it did muddy the waters, making it more difficult to describe what had previously been a blanket, site-wide exclusion.

17 August 2009

The Guardian published an article²⁶ about Foundem's case. Unfortunately, following threats of legal action from Google, the article had been edited down to a point where it covered few of the salient points. This article is a poignant reminder of a time when it was virtually inconceivable to question Google's behaviour or motives.

²³ <http://www.i-comp.org/>

²⁴ Paragraph 390 of the [Prohibition Decision](#)

²⁵ http://www.foundem.co.uk/Foundem_Penalty_Scattergrams.pdf

²⁶ <http://www.guardian.co.uk/business/2009/aug/17/google-search-baffles-internet-firm>

October 2009

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

7 October 2009

Following meetings with policy makers and regulators in Europe, Foundem noticed that, while there was considerable public awareness and concern about the discriminatory power of network providers (net neutrality), there was little or no public awareness or concern about the discriminatory power of search engines. Given that nearly all of the discriminatory power of search engines lay in the hands of a single corporation, this lack of awareness and concern was particularly troubling.

Foundem realised that, by framing its concerns under the apt label of "**search neutrality**", it could harness some of the considerable educational effort that Google and others had already invested in the strikingly similar concerns of "network neutrality".

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

12 October 2009

Foundem's co-founder and CEO, Shivaun Raff, attended a talk by Google's Chief Legal Officer, David Drummond. Afterwards, she approached him to explain Foundem's position and propose a dialogue.

14 October 2009

Google's Head of Public Relations for EMEA, Peter Barron, contacted Foundem. This marked the start of a detailed dialogue between Google and Foundem that culminated in Foundem being whitelisted out of its three-and-a-half-year Google search penalty on 1 December 2009.

15 October 2009

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

During the one hour call, Mr Cutts highlighted a small number of minor typographical anomalies on Foundem's site. Foundem explained that these were derived from the sites that Foundem searches and that, as such, they would be equally prevalent on all price comparison services, including Google's own.

16 October 2009

Foundem emailed Mr Cutts with several [screenshots](#) illustrating that exactly the same anomalies Mr Cutts had highlighted during the previous day's call were equally common on competing price comparison services, including Google's own:

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

20 October 2009

In the [inaugural article](#) of SearchNeutrality.org, Foundem proposed and defined **Search Neutrality** as the principle that search results should be driven by the pursuit of relevance and not skewed for commercial gain:

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

Search Neutrality can be defined as the principle that search engines should be open and transparent about their editorial policies, or, better still, should have no editorial policies other than that their results be comprehensive, impartial, and based solely on relevance.”²⁷

30 October 2009

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

31 October 2009

New York Times Columnist, Joe Nocera, referred to Foundem’s case in his column²⁸:

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

2 November 2009

Google’s Peter Barron informed Foundem that the U.S. team had not taken kindly to Foundem’s request that they expedite their deliberations. He confirmed that Google would require the full month.

3 November 2009

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

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

3 November 2009

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

19 November 2009

The Register published an article about Foundem’s case, entitled “When Algorithms Attack, does Google Hear You Scream?”²⁹

20 November 2009

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

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

²⁷ <http://www.searchneutrality.org/search-neutrality>

²⁸ <http://www.nytimes.com/2009/10/31/business/31nocera.html>

²⁹ http://www.theregister.co.uk/2009/11/19/google_hand_of_god/

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

These minor typographical anomalies affected just a tiny fraction of Foundem's pages, and ranged from the trivial (such as a full-stop without a following space) to the absurd (such as the suggestion that height-width-depth dimensions were some kind of corruption). Most importantly, as before, because these anomalies originated on the websites that Foundem searches, they occurred with similar frequency on all price comparison services, including Google's own.³⁰

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

21 November 2009

Foundem addressed all of Mr Cutts' "issues".

Monday 23 November 2009

Foundem emailed Mr Cutts to inform him that all of the "issues" raised in his 20 November email had been addressed.

Foundem's [email](#) also demonstrated, with multiple examples, that all of these "issues" occurred with equal frequency on all price comparison services, including Google's own.

1 December 2009 am

Having not yet had a reply to its 23 November email, Foundem emailed Peter Barron to ask if he could expedite:

"We have addressed every one of the issues Matt has raised. In each case we have addressed the issues within 24 hours (wherever possible using general solutions that go well beyond the specific examples mentioned) ...We have also highlighted that all of the issues Matt has raised are commonplace on all other leading price comparison sites, including Kelkoo, PriceRunner, and Google's own Product Search, suggesting that Foundem is being held to a higher standard than its peers".

Later the same day, Mr Barron informed Foundem by telephone that he "couldn't be more specific" but that "things were afoot".

1 December 2009 pm

Within hours of Mr Barron's call, **Google manually "whitelisted" Foundem from its algorithmic Search penalty.** All of Foundem's Google search rankings across tens of thousands of pages and hundreds of thousands of keywords were instantly restored to something approaching "normal". Foundem's traffic from Google increased by around 10,000%.

17 December 2009

Foundem emerged from its three-and-a-half year Google search penalty into a radically transformed online marketplace.

The new and insurmountable barrier to fair competition posed by Google's recently introduced Universal Search mechanism, coupled with Foundem's mounting concerns that it had not yet been fully restored to a level playing field, persuaded Foundem that it should proceed with its European Competition Complaint. Foundem asked the Commission for a few weeks to update and augment its Complaint.

³⁰ http://www.foundem.co.uk/23_November_2009_Email_with_Added_Screenshots.pdf

28 December 2009

Foundem co-founder Adam Raff's Op-Ed for the New York Times, [Search, But you May Not Find](#),³¹ was published:

"...Google was quick to recognize the threat to openness and innovation posed by the market power of Internet service providers, and has long been a leading proponent of net neutrality. But it now faces a dilemma. Will it embrace search neutrality as the logical extension to net neutrality that truly protects equal access to the Internet? Or will it try to argue that discriminatory market power is somehow dangerous in the hands of a cable or telecommunications company but harmless in the hands of an overwhelmingly dominant search engine?..."

2 February 2010

Foundem filed an **updated and augmented** version of its **EC Competition Complaint** against Google's search manipulation practices.

At this time, complaints by the French legal search engine, eJustice.fr, and the Microsoft-owned, European price comparison service, Ciao, were also taken up by the European Commission. These very different complaints concerned the terms and conditions imposed on Google's advertising syndication partners. A year later, eJustice.fr filed a supplementary complaint echoing many of Foundem's search manipulation concerns (see 22 February 2011).

10 February 2010

The European Commission notified Google about Foundem, Ciao, and eJustice's Complaints.³²

12 February 2010

In its 2009 Annual Report³³, Google made its first public declaration that it viewed vertical search services as competitors:

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

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

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

23 February 2010

After receiving enquiries from journalists indicating that Google was preparing to publicly announce Foundem's European Competition Complaint, Foundem published some of the preferencing data and arguments from its Complaint:³⁴

"Universal Search transforms Google's ostensibly neutral search engine into an immensely powerful marketing channel for Google's other services. When coupled with Google's 85% share of the global search market, this gives Google an unparalleled and virtually unassailable competitive advantage, reaching far beyond the confines of search. Universal Search allows Google to leverage its search engine monopoly into virtually any field it chooses. Wherever it does so, competitors will be harmed, new entrants will be discouraged, and innovation will inevitably be suppressed. These are not

³¹ <http://www.nytimes.com/2009/12/28/opinion/28raff.html>

³² https://investor.google.com/pdf/20120930_google_10Q.pdf

³³ <http://www.sec.gov/Archives/edgar/data/1288776/000119312510030774/d10k.htm>

³⁴ http://www.foundem.co.uk/FCC_Comments.pdf

hypothetical risks. Although Universal Search is still in its infancy, there are already compelling examples of the harm it has done to competitors across a range of markets.”

24 February 2010

Google announced that it had received EC Competition Complaints from Foundem, Ciao, and ejustice.fr.

In a briefing to journalists, Google’s Senior Competition Counsel for EMEA, Julia Holtz, omitted any mention of the preferencing (Universal Search) half of Foundem’s Complaint and—despite Google having whitelisted Foundem out of its three year search penalty just two months earlier—categorically denied the existence of either penalties or whitelisting: *“we don’t whitelist or blacklist anyone.”*³⁵

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

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

May 2010

Foundem had its first meetings with the U.S. Department of Justice (**DOJ**), Federal Trade Commission (**FTC**), and staffers of the **Senate Antitrust Subcommittee**.

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

3 May 2010

Google submitted its formal Reply to Foundem’s EC Competition Complaint.

10 June 2010

The European Commission sent Google’s Reply to Foundem for comment.

1 July 2010

Google announced its acquisition of flight search technology company ITA Software.

August 2010

The **Texas Attorney General** opened an antitrust investigation into the issues raised by Foundem’s case and contacted Foundem for further details.

29 August 2010

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

³⁵ <http://www.ft.com/cms/s/2/2e16bd92-2209-11df-98dd-00144feab49a.html#axzz1e9MjO400>

³⁶ http://www.theregister.co.uk/2011/03/11/google_admits_search_algorithm_whitelists/

3 September 2010

Google announced that the Texas Attorney General had launched an Antitrust Investigation into Google, citing Foundem's case.³⁷

September 2010

Foundem learned about a presentation that Google's Senior Competition Counsel for EMEA, Julia Holtz, was due to deliver at an International Bar Association (IBA) conference the following week. This presentation included many false or misleading assertions about the issues at the centre of Foundem's Competition Complaint against Google and included slides that were misleading and defamatory about Foundem.

Friday 17 September 2010

On the morning of Ms Holtz's presentation to the IBA's antitrust conference in Florence, Foundem [emailed](#)³⁸ Ms Holtz (CC'd to several of the panellists and moderators at the conference), rebutting some of the misleading information contained in her presentation.

A brief extract from Foundem's email:

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

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

Tuesday 21 September 2010

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

Foundem emailed Google:

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

22 September 2010

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

Google's Peter Barron replied to Foundem's email:

"...this problem was due to a glitch relating to an older version of a data file, and certainly not retaliation! We have reverted to the newer version so things should now be back to normal."

³⁷ <http://www.nytimes.com/2010/09/04/technology/04google.html>

³⁸ http://www.foundem.co.uk/Foundem_Letter_to_Julia_Holtz.pdf

26 October 2010

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

26 October 2010

The **FairSearch** coalition was launched in the U.S.³⁹

30 November 2010

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

In its statement, the Commission made clear that it considered Foundem's allegations regarding Google's search and AdWords manipulations to be its primary area of concern:

*"The Commission will investigate whether Google has abused a dominant market position in online search by allegedly lowering the ranking of unpaid search results of competing services which are specialised in providing users with specific online content such as price comparisons (so-called vertical search services) and by according preferential placement to the results of its own vertical search services in order to shut out competing services. The Commission will also look into allegations that Google lowered the 'Quality Score' for sponsored links of competing vertical search services..."*⁴⁰

13 December 2010

Foundem joined FairSearch.

14 December 2010

Following the opening of the European Commission's formal investigation into Google's business practices two weeks earlier, the German Federal Cartel Office transferred its investigation into Complaints from the **German Publisher's associations (VDZ and BDZV)** and the German online mapping companies, **Euro-Cities** and **Hot Maps**, over to the European Commission.⁴¹ Google had already seen and commented on the BDZV/VDZ and Euro-Cities complaints. The Hot Maps complaint, which Google had not yet seen, was sent to Google on 1 April 2011.

5 January 2011

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

Days later, following a dispute with the DOJ over jurisdiction, the FTC's investigation was put on hold pending a decision by the DOJ on whether to challenge Google's planned acquisition of ITA Software.⁴²

17 January 2011

The Italian Competition Authority (AGCM) transferred a complaint against Google from **nntp.it** to the European Commission.⁴³

³⁹ http://www.fairsearch.org/wp-content/uploads/2010/10/FairSearch.org-Coalition-Urges-DOJ-To-Challenge-Google-ITA-Deal_10-26-10.pdf

⁴⁰ http://europa.eu/rapid/press-release_IP-10-1624_en.htm?locale=en

⁴¹ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

⁴² <http://www.bloomberg.com/news/2011-04-05/google-said-to-be-possible-target-of-antitrust-probe-after-ita-acquisition.html> and http://www.businessweek.com/magazine/content/11_19/b4227027693933.htm

⁴³ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

20 January 2011

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

28 January 2011

Google's Head of Search Quality, Matt Cutts, wrote a blog post⁴⁴ describing a major upcoming change to Google's algorithms, codenamed "**Panda**":

"one change...primarily affects sites that copy others' content and sites with low levels of original content."

This blog post was part of a series of unusual and troubling public statements by Google that led Foundem to suspect that Google might be preparing a significant escalation of its "lack of original content", vertical-search-targeted search penalties.

31 January 2011

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

31 January 2011

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

Foundem raised concerns about the anti-competitive intent and impact of Panda several weeks before Panda was first deployed. For example, as we wrote in a 31 January 2011 [blog post](#):⁴⁵

"We note with interest Google's recent announcement that it has changed its search algorithms to further target 'sites that copy others content and sites with low levels of original content'. Is this simply a commendable attempt to punish spam and reward the authors of original content, or does it mark an escalation in Google's ongoing disadvantaging of rival vertical search services?"

That Foundem anticipated the anti-competitive intent and effect of Panda simply from the manner and language Google used to pre-position it substantially undermines any future Google argument that the considerable harm Panda caused to Google's price comparison rivals was unexpected, accidental, or collateral.

21 February 2011

The New York Times reported⁴⁶ a meeting between Google CEO Eric Schmidt and European Competition Commissioner Joaquín Almunia at the annual World Economic Forum in Davos:

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

⁴⁴ <http://www.mattcutts.com/blog/algorithm-change-launched/>

⁴⁵ <http://www.searchneutrality.org/foundem/original-content>

⁴⁶ http://www.nytimes.com/2011/02/21/business/global/21google.html?pagewanted=all&_r=0

22 February 2011

eJustice.fr's parent company, **1plusV**, filed a supplementary competition Complaint with the European Commission, echoing many of Foundem's search manipulation concerns.⁴⁷

24 February 2011

Google deployed its **Panda** update (at this stage only in the U.S.). Just as Foundem had anticipated, many of the U.S.'s leading price comparison services plummeted in Google's search rankings.

Prior to Panda, Google's devastating anti-competitive demotions of rival vertical search services had been primarily reserved for emerging, and still largely unknown, competitors. With Panda, however, Google began penalising many established vertical search players.

25 February 2011

Foundem raised its concerns with the European Commission that Panda appeared to contain a substantial escalation of precisely the kind of anti-competitive lack-of-original-content penalties described in Foundem's Competition Complaint and currently under investigation by the Commission.

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

1 March 2011

Foundem emailed Google about Panda:

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

2 March 2011

Google's Peter Barron responded to Foundem's email but declined to comment.

7 March 2011

Google acquired BeatThatQuote, a small, UK-based financial price comparison service.

The UK's Office of Fair Trading (OFT) considered referring the acquisition to the UK's Competition Commission but decided not to, publishing the full text of its decision on 11 August 2011.⁴⁸

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

11 March 2011

Google publicly admitted to manual **whitelisting**—a practice it had until now publicly denied.⁴⁹

17 March 2011

ICOMP appointed Foundem CEO, Shivaun Raff, as its Special Advisor for search and related competition issues.

⁴⁷ <http://www.nytimes.com/2011/02/23/technology/23google.html>

⁴⁸ http://www.oft.gov.uk/shared_of/mergers_ea02/2011/Google-BeatThatQuote.pdf

⁴⁹ http://www.theregister.co.uk/2011/03/11/google_admits_search_algorithm_whitelists/

31 March 2011

Microsoft filed an EC Competition Complaint against Google.⁵⁰

8 April 2011

The DOJ approved Google's acquisition of ITA Software, despite privately expressing concern that Google could leverage its dominance in horizontal search to anti-competitive advantage in the travel search sector.

11 April 2011

Google's **Panda** update was deployed in the UK. As anticipated by Foundem, many of the UK's leading price comparison services, including Foundem, plummeted in Google's search rankings.

13 April 2011

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

21 April 2011

Foundem participated in a Roundtable discussion with the Competition Commission of India (CCI), organised and hosted by the CUTS Institute for Regulation & Competition in New Delhi.⁵¹

28 April 2011

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

Following the DOJ's approval of Google's acquisition of ITA Software, the FTC re-opened the general antitrust investigation into Google's search practices it had put on hold since January.

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

17 May 2011

Foundem presented the European Commission with evidence of the devastating anti-competitive impact of Panda, and explained why Panda increased the urgency for the Commission to conclude its investigation and take effective action. Foundem also raised the possibility of requesting Interim Measures.

16 June 2011

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

23 June 2011

The U.S. Senate Antitrust Subcommittee threatened to subpoena Google:

*"Google Inc.'s reluctance to provide a top executive for testimony to a Senate panel probing its market power has prompted threats of subpoenas for Chief Executive Officer Larry Page and Chairman Eric Schmidt..."*⁵²

⁵⁰ <http://www.bbc.co.uk/news/technology-12918059>

⁵¹ <http://www.hindustantimes.com/columnsbusiness/has-the-time-come-to-regulate-google-search/article1-714115.aspx>

⁵² <http://www.bloomberg.com/news/2011-06-22/google-faces-senate-subpoena-threats-to-get-testimony-from-page-schmidt.html>

24 June 2011

Google publicly confirmed that the FTC had launched a formal investigation into its search and search advertising business practices.⁵³

27 June 2011

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

8 July 2011

Google Executive Chairman Eric Schmidt yielded to pressure from the U.S. Senate Antitrust Subcommittee, and agreed to testify at the Senate hearing into Google's dominance of the Internet search industry.⁵⁴

12 August 2011

Google's **Panda** update was rolled out to the rest of Europe (including Germany, France, Italy, Spain, and Austria).⁵⁵

16 August 2011

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

31 August 2011

Foundem published its [*Penalties, Self-Preferencing, and Panda*](#)⁵⁶ paper:

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

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

15 September 2011

The U.S. Senate Antitrust Subcommittee asked for further details of Foundem's April 2011 [study of Google's U.S. search rankings](#)⁵⁷, which the Subcommittee planned to use in its upcoming hearing.

Foundem responded:

"Briefly, the graphs illustrate where various leading price comparison services rank in Google's search results including where Google's Universal Search mechanism has inserted Google's own competing price comparison service, Google Product Search...this data was gathered for 650 product- and product-price-comparison-related search terms, such as "Toshiba 55WX800U", "best

⁵³ <http://googleblog.blogspot.co.uk/2011/06/supporting-choice-ensuring-economic.html>

⁵⁴ <http://www.bloomberg.com/news/2011-07-08/google-will-let-schmidt-testify-in-senate.html>

⁵⁵ <http://searchenginewatch.com/article/2103234/Google-Panda-Update-Hits-Europe-Which-Sites-Rose-Fell-in-Germany-France-Austria>

⁵⁶ http://www.foundem.co.uk/Google_Conflict_of_Interest.pdf

⁵⁷ http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedies.pdf, page 2

prices Toshiba 55WX800U”, and “compare prices Toshiba 55WX800U”. To ensure that the products were relevant to the American market, we selected them from various US best-seller lists, including Amazon.com. We wrote a tool to collect and analyze this data automatically. The tool used a set of US-based proxies to ensure that the search results being analysed were US-targeted. We collected this data in April this year.

...In the event that you do raise the subject of Universal Search at the hearing, it may be helpful to note that, in our experience...Google goes to great lengths to avoid conceding publicly that its Universal Search mechanism uses different algorithms and relevance signals to rank its own services than it uses to rank everyone else’s. As a result, how aggressively Google ‘blends’ its own services at or near the top is entirely at Google’s discretion; a point clearly illustrated by the scattergrams.”

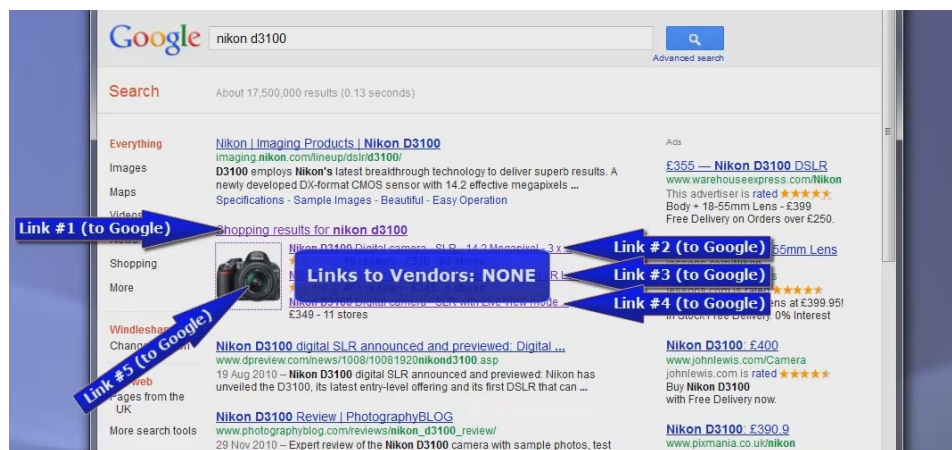
21 September 2011

The U.S. **Senate Antitrust Subcommittee** held a **hearing** into Google's business practices: “*The Power of Google: Serving Consumers or Threatening Competition?*”

The Committee’s ranking Republican, Senator Lee, questioned Google's Eric Schmidt extensively around Foundem’s April 2011 [study of Google’s U.S. search rankings](#), eliciting many of the most revealing moments of the hearing.

Mr Schmidt was repeatedly asked whether Google’s search algorithms hold Google’s own vertical search services to the same standards as everyone else’s. After Mr Schmidt appeared to deny that Google gives its own services any special treatment in its search results, he was shown one of Foundem’s scattergrams and [asked to explain](#)⁵⁸ the preferential treatment of Google’s own price comparison service clearly illustrated by the study. Mr Schmidt repeatedly ducked the questions by claiming, among other things, that Google’s price comparison service is not a price comparison service.

Towards the end of his testimony, with little time remaining for follow-on questions, Mr Schmidt substantially [revised his answer](#)⁵⁹, conceding that Google’s Universal Search mechanism inserts prominent links at or near the top of Google’s search results. However, rather than conceding that these prominent links divert users away from competitors’ services and towards Google’s own, Mr Schmidt mistakenly claimed that these are links to vendors, not to Google’s own services. In truth, in the vast majority of cases (and certainly in the example Mr Schmidt was being asked about), all of the inserted links pointed to Google’s own service, not to vendors:



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

⁵⁸ <http://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1&t=6m23s>

⁵⁹ <http://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1&t=19m34s>

NB: In February 2013, Google replaced many of these traffic-diverting links to Google's own price comparison service with revenue-diverting ads derived from Google's price comparison service (and linking directly to merchants).⁶⁰

31 October 2011

Foundem published a short [video](#) deconstructing key elements of Mr Schmidt's testimony at September's Senate hearing. As the authors of the study that provoked much of Mr Schmidt's most troubling testimony, Foundem is uniquely placed to shed light on Mr Schmidt's answers.

1 December 2011

Foundem gave a presentation in Hamburg at a meeting of the German Association of Online Travel Agents, VIR⁶¹, whose members include Expedia, Opodo, and eBookers.

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

1 December 2011

The Financial Times reported⁶² that the European Commission had drafted a formal Statement of Objections⁶³:

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

19 December 2011

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

21 December 2011

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

10 January 2012

Google launched "Search Plus Your World", which started to preference its own social networking service, Google+, in Google's search results.

23 January 2012

Twenga lodged a complaint against Google with the European Commission.

3 February 2012

Foundem had its first meeting with BEUC, the European Consumer Organisation representing 40 national consumer organisations from across 31 European countries. BEUC was quick to grasp the critical importance of the Google Search investigation for European consumers.

⁶⁰ See section 4.2 of our [December 2016 Reply](#) to Google's Public Response to the EC's SSO for further details.

⁶¹ <http://www.vir-connect.de/vir-en.htm>

⁶² <http://www.ft.com/cms/s/2/a6065478-1c6e-11e1-9b41-00144feabdc0.html#axzz1fMnfLjhn>

⁶³ The formal charge sheet, setting out the Commission's preliminary findings of infringement.

20 February 2012

Company E, “a company wishing to remain anonymous”⁶⁴, applied to become an Interested Third Party in the Google investigation. This application was rejected by the Commission’s Hearing Officer on 28 February 2012.

19 March 2012

BEUC wrote an open letter⁶⁵ to Commissioner Almunia in support of search neutrality and the other concerns Foundem had raised:

“...Consumers trust that search results are impartial and based solely on relevance to their query, without any manipulation of the order or results.

However, we are concerned that the dominant search engine, Google, may have abused its position in the search market to direct users to its own services and secondly to reduce the visibility of competing websites and services...

...it is crucial that consumers are provided with results that are most relevant to their needs without any discrimination or manipulation on the grounds of Google’s own commercial interests.

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

26 March 2012

Yelp Inc. applied to be admitted as an Interested Third Party “in the event that the Commission issued a statement of objections”.⁶⁶

24 March 2012

Foundem suspended major sections of its service, pending action by the European Commission:

“...we have temporarily suspended our flight, hotel, rental car, property, job, book, music, motorbike gear, and DVD search domains.

In common with many of the World’s leading vertical search services, Foundem’s traffic has been severely impacted by Google’s recent ‘Panda’ update. As a result, since the introduction of Panda to the UK in April 2011, we have struggled to maintain aspects of our service to the exacting standards that we have set ourselves. We have therefore reluctantly taken the decision to temporarily suspend some of our search verticals, pending the outcome of the European Commission’s antitrust investigation into Google...”

29 March 2012

Streetmap lodged a complaint against Google with the European Commission.

30 March 2012

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

April 2012

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

⁶⁴ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

⁶⁵ <http://www.beuc.eu/publications/2012-00210-01-e.pdf>

⁶⁶ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

1 April 2012

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

2 April 2012

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

9 April 2012

Amadeus, the world's leading GDS provider, and ETTSA, the European Technology and Travel Services Association⁶⁷, publicly expressed support for Expedia's EC Competition Complaint against Google:

*"Consumers expect that Google search results are neutral, but this is not the case when the results favour Google's own platforms, such as Flight Search. Unlike Google, other players in this arena, including the Global Distribution Systems (GDS's), abide by strict neutrality principles enshrined in EU legislation when displaying travel search results," ETTSA said, urging the Commission to closely examine Google's potential abuse of dominance to protect consumers."*⁶⁸

12 April 2012

Google announced a new stock structure, effectively guaranteeing Google's founders control of the company in perpetuity. From CNN Money:

*"Google is pulling one of the stranger technical manoeuvres the stock market has seen for quite some time...The new stock structure, which gives Google's leaders significantly more power than its shareholders, won't be popular with corporate governance advocates...Google's shareholders will vote on the measure at its annual meeting on June 21. In a sentence that sums the whole manoeuvre up, the company said: 'Given that Larry, Sergey, and Eric control the majority of voting power and support this proposal, we expect it to pass.'"*⁶⁹

26 April 2012

The Competition Commission of India (CCI) launched an investigation into Google's discriminatory practices.⁷⁰

30 April 2012

Based on technology it had acquired from its purchase of BeatThatQuote in March 2011, Google launched and began systematically preferencing its own UK credit card comparison service.

21 May 2012

Commissioner Almunia announced the European Commission's preliminary conclusions that Google was infringing European Competition rules. In his statement⁷¹, Commissioner Almunia outlined four areas of concern, citing search manipulation as the first of those concerns.

Instead of issuing the Statement of Objections the Commission was reported⁷² to have written in December, Commissioner Almunia offered Google an opportunity to settle the case, just as Google's Eric Schmidt had reportedly⁷³ asked him to do in Davos the previous year. Commissioner Almunia offered Google "a matter of weeks" to propose remedies "capable of addressing [the Commission's]

⁶⁷ <http://www.etsa.eu/about-us/our-members>

⁶⁸ <http://www.travelagentcentral.com/technology/amadeus-supports-expedia-complaint-against-google-34530>

⁶⁹ <http://money.cnn.com/2012/04/12/technology/google-earnings/index.htm>

⁷⁰ <http://www.hindustantimes.com/sectorsinfotech/matrimony-com-takes-google-to-cci/article1-846700.aspx>

⁷¹ http://europa.eu/rapid/press-release_SPEECH-12-372_en.htm?locale=en

⁷² <http://www.ft.com/cms/s/2/a6065478-1c6e-11e1-9b41-00144feabdc0.html#axzz1fMnfLjhn>

⁷³ http://www.nytimes.com/2011/02/21/business/global/21google.html?pagewanted=all&_r=0

concerns” or face the formal Statement of Objections, and imposed fines and remedies that would inevitably follow.

30 May 2012

Foundem’s Op-Ed for the Open Rights Group, *Would the Real Search Neutrality Please Stand Up*, was published:⁷⁴

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

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

31 May 2012

Just ten days after Commissioner Almunia had offered Google a matter of weeks to propose remedies for its anti-competitive business practices, Google publicly announced⁷⁵ its intention to radically alter the underlying business model of its product price comparison service (the vertical search service at the epicentre of the European Commission’s primary competition concern).

Couched as a method for giving merchants “greater control over where their products appear on Google Shopping”, Google was in fact radically transforming its service from a relevance-based price comparison service into a payment-based, pay-for-placement advertising platform—a transformation that would inevitably lead to Google’s users unwittingly paying higher prices for products.⁷⁶

19 June 2012

As an aid to Regulators, and to help inform the growing public debate on the topic, Foundem submitted and published an [Outline of Proposed Remedies](#) for Google’s search manipulation practices:

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

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

- **Non-Discrimination:** to end Google’s discriminatory self-preferencing of its own services and its discriminatory demotion or exclusion of competitors.
- **Transparency:** to shed light and scrutiny on the rationale and criteria underpinning Google’s anti-competitive practices. Note that this will not require the publication of Google’s algorithms or business secrets.

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

⁷⁴ <http://zine.openrightsgroup.org/features/2012/would-the-real-search-neutrality-please-stand-up>

⁷⁵ <http://tinyurl.com/pfur2f8>

⁷⁶ See section 3 of http://www.foundem.co.uk/Foundem_Response_to_Google_Nov_2016_Blog_Post.pdf

*Google should be required to crawl, index, and rank its own services in exactly the same way that it does everyone else. This is not only vital from a competition perspective, it is also sound business practice (sometimes known colloquially as 'eating your own dog food')."*⁷⁷

22 June 2012

Foundem filed a civil claim against Google in the UK High Court.

27 June 2012

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

17 July 2012

MoneySupermarket was approved as an Interested Third Party.

7 August 2012

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

Oracle's 17 August submission to Judge Alsup⁷⁸ stated:

"...Google maintains a network of direct and indirect 'influencers' to advance Google's intellectual property agenda. This network is extensive, including attorneys, lobbyists, trade associations, academics, and bloggers, and its focus extends beyond pure intellectual property issues to competition/antitrust issues...Oracle believes that Google brought this extensive network of influencers to help shape public perceptions concerning the positions it was advocating throughout this trial."

8 August 2012

The FTC investigators submitted their internal report, setting out the final conclusions of their 18-month investigation. This is the document⁷⁹ that was inadvertently disclosed to the Wall Street Journal two-and-a-half years later (see 19 March 2015).

7 September 2012

Further to Google's May announcement of its plans to transition its price comparison service to a pay-for-placement model, Google privately informed the Commission of its intention to introduce a new form of directly-monetised Universal Search insert to accommodate and exploit this new business model.

By introducing these "Commercial Units"—which were both deeply harmful to consumers and a substantial escalation of one of the primary abusive practices Google was supposed to be negotiating to end—Google was paving the way (or, more accurately, setting the trap) for proposing *Paid Rival Links* under the guise of a "remedy".⁸⁰

10 September 2012

While ostensibly engaged in settlement negotiations with the European Commission (where one of the Commission's primary concerns was Google's systematic preferencing of its own services), Google quietly launched and began systematically preferencing its own UK car insurance comparison service.

⁷⁷ http://www.foundem.co.uk/Foundem_Remedies_Proposals.pdf

⁷⁸ <http://www.guardian.co.uk/technology/2012/aug/20/oracle-google-oracle-patent-trial>

⁷⁹ <http://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf>

⁸⁰ See Figure 3 and Section 2.6 of Foundem's July 2014 [Response to the Commission Letter](#)

11 September 2012

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

21 September 2012

Commissioner Almunia announced that, so far, Google's proposed remedy concessions did not go far enough:

*"...it is well known that we have competition concerns that [Google] is using its dominance in online search to foreclose rival specialised search engines and search advertisers...After several exchanges with me, Google has agreed to propose solutions in the four specific areas of concern that we have identified...If effective solutions were found quickly and tested successfully, competition could be restored at an early stage by means of a commitment decision...However, we are not there yet, and it must be clear that – in the absence of satisfactory proposals in the short term – I will be obliged to continue with our formal proceedings."*⁸¹

October 2012

Having spent more than a decade railing against the harmful impact of pay-for-placement on consumers, Google transitioned its U.S. product price comparison service to just such a model.⁸²

30 October - 2 November 2012

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

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

Surprisingly, given that the FTC had fought the DOJ for jurisdiction over the Google case, Chairman Leibowitz expressed the view that taking any action against Google under U.S. antitrust law might be very difficult. Most alarmingly, he also expressed the clearly erroneous view that complainants were more concerned about Google's "scraping" practices than about Google's search manipulation practices.

16 November 2012

Foundem had a one-to-one meeting with Commissioner Almunia, where he expressed a strong preference for future-proofed, principle-based remedies.

3 December 2012

Following its meetings with the Chairman and Commissioners of the FTC the previous month, Foundem wrote to try to allay the Commissioners' concerns that a case against Google's search manipulation practices might, under U.S. law, be vulnerable to claims by Google that they were introduced as a "product improvement":

"...Google cannot argue that quietly excluding its rivals, including the current market leaders, while simultaneously force-feeding users its own, often inferior, services in any way improves the quality or usefulness of its search results. In light of this, we suggest that a 'product improvement' defence cannot stand up to the scrutiny of litigation."

⁸¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/629&format=HTML&aged=0&language=en&guiLanguage=en>

⁸² See section 3 of Foundem's December 2016 [Response to Google's Reply to the SSO](#)

31 December 2012

Following on from its 3 December letter, and in response to mounting media reports that the FTC was about to conclude its antitrust investigation into Google without tackling Google's search manipulation practices, Foundem wrote to the FTC:

"...It is no accident that search manipulation was the issue that sparked the U.S. and European investigations; its insidious, anticompetitive impact outweighs all of Google's other anticompetitive practices by a considerable margin. While virtually undetectable to users, Google's search manipulations lay waste to entire classes of competitors in every sector where Google chooses to deploy them.

...we are concerned that the FTC's reluctance to litigate against these abusive practices may stem more from misconceptions about the mechanics and financial incentives underlying the abuse than from the constraints of U.S. antitrust law...

...As we wrote to your Chairman and Commissioners on December 3, search penalties are a vitally important aspect of Google's anticompetitive abuse in their own right, but they are also important because they counteract any potential 'product improvement' defence by Google. While it might be theoretically possible for Google to construct a 'product improvement' veneer for its self-preferencing practices, this ruse cannot work as a defence for its anticompetitive penalty practices: systematically demoting or excluding rival services, including most or all of the current market leaders, entirely undermines users' most basic expectations of a search engine."

3 January 2013

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

At the FTC's press conference, Chairman Leibowitz confirmed Foundem's suspicions that he and his fellow Commissioners might have failed to grasp the mechanics and financial incentives underpinning Google's anti-competitive penalty practices. For example, he cited a much-publicised incident from 2011, in which Google manually and temporarily penalised JCPenney for allegedly gaming Google's algorithms.⁸³ Unfortunately, this kind of legitimate, anti-spam/anti-cheating penalty was not connected in any way to the illegitimate, anti-competitive algorithmic penalties the FTC had been investigating.

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

3 January 2013

Bloomberg wrote:

"The FTC missed an opportunity to explore publicly one of the paramount questions of our day: Is Google abusing its role as gatekeeper to the digital economy?

...at the root of the case, on both sides of the Atlantic, is the same vital issue: Is Google thwarting competition and thereby limiting consumer choice and reaping the benefit? If so, it's up to the FTC to invoke relevant antitrust laws and make it stop.

⁸³ <http://www.nytimes.com/2011/02/13/business/13search.html?pagewanted=all>

*Ask yourself this simple question: Am I harmed when rival services, whether for product comparisons, hotel bookings, airfares, restaurant reviews or maps, go out of business because they can't compete with Google? We suspect the answer is yes."*⁸⁴

From an interview with FTC Commissioner Thomas Rosch in Politico:

*"I think that Google took advantage of the chairman's desire to go out in a blaze of glory, and they tried to assure him that this was going to be good enough—and this was not good enough."*⁸⁵

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

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

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

*"How Google Skewed Search Results - FTC staff report details how Google favored its own shopping, travel services over rivals"*⁸⁶

*"FTC report recommended suing Google for anti-competitive practices"*⁸⁷

*"FTC: All-powerful Google ABUSED rivals. So we did NOTHING"*⁸⁸

*"Federal Trade Commission: Google Manipulated Search Results"*⁸⁹

*"FTC Report Details How Google Manipulated Results to Hurt Competitors"*⁹⁰

*"Google fixes search results says FTC"*⁹¹

10 January 2013

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

*"'We are still investigating, but my conviction is [Google] are diverting traffic,' Mr Almunia told the Financial Times, referring to Google's preferential treatment of its own vertical search services...'They are monetising this kind of business, the strong position they have in the general search market and this is not only a dominant position, I think - I fear - there is an abuse of this dominant position,' Europe's antitrust enforcer said... While Mr Almunia said Google showed a more constructive approach at a crunch meeting in December, he warned that he would be 'obliged' to issue formal charges if its proposal - expected this month - is unsatisfactory."*⁹²

⁸⁴ <http://www.bloomberg.com/news/2013-01-03/the-ftc-s-missed-opportunity-on-google.html>

⁸⁵ <http://www.politico.com/story/2013/01/how-google-beat-the-feds-85743> Page2.html#ixzz2KEjBqp40

⁸⁶ <http://www.wsj.com/articles/how-google-skewed-search-results-1426793553>

⁸⁷ <http://www.theguardian.com/technology/2015/mar/20/google-anti-competitive-ftc-report>

⁸⁸ http://www.theregister.co.uk/2015/03/20/ftc_we_thought_google_was_a_monopoly_and_we_did_nothing/

⁸⁹ <http://thenextdigit.com/19062/federal-trade-commission-google-manipulated-search-results/>

⁹⁰ <http://www.macobserver.com/tmo/article/ftc-report-details-how-google-manipulated-results-to-hurt-competitors>

⁹¹ <http://www.electronicweekly.com/news/business/google-fixes-search-results-says-ftc-2015-03/>

⁹² <http://www.ft.com/cms/s/0/2b5bead6-5b3c-11e2-8d06-00144feab49a.html#axzz2JdzUSNSw>

11 January 2013

Visual Meta, a German-owned European product price comparison service, filed an EC Competition Complaint against Google.

21 January 2013

In response to enquiries from the European Commission about what a remedy to Google's anti-competitive penalty/demotion practices might look like, Foundem followed up on its June 2012 Remedy Proposals with a [White Paper](#)⁹³ describing a mechanism for distinguishing legitimate Google penalties and demotions from their illegitimate and anti-competitive counterparts.

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

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

Google must be even-handed. It must hold all services, including its own, to exactly the same standards, using exactly the same crawling, indexing, ranking, display, and penalty algorithms.

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

As a single entity, Google naturally speaks with a single, disciplined, and consistent voice. By contrast, a multiplicity of Complainants would naturally speak with a multiplicity of different and sometimes contradictory voices. Foundem was acutely aware of this risk and spent much of the next few months organising a broad consensus around this simple, effective, eminently reasonable, and future-proofed remedy proposal.

30 January 2013

ICOMP lodged a complaint against Google with the European Commission.⁹⁴

31 January 2013

Following a week of intensive, face-to-face negotiations between Google and the European Commission in Brussels, MLex reported that Google had *"sent the European Commission a set of concessions aimed at resolving [the Commission's] antitrust probe."*⁹⁵

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

February 2013

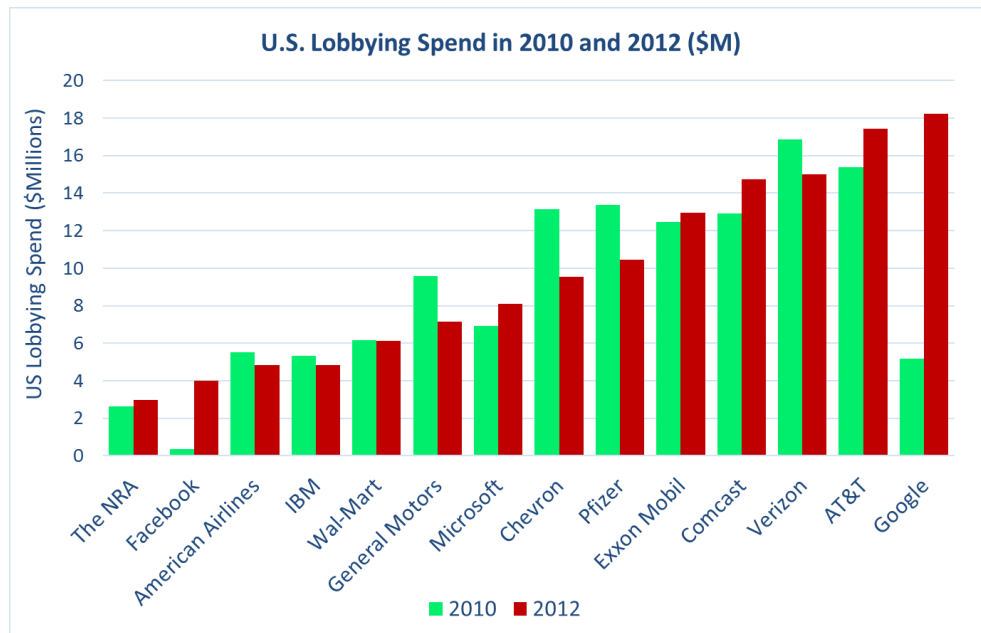
A report revealed that Google spent more money lobbying Washington in 2012 than any other tech firm. Google spent \$18 million in 2012, nearly double its 2011 spend and nearly four times its 2010 spend⁹⁶:

⁹³ http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remeddy.pdf

⁹⁴ <http://newsroom.i-comp.org/icompe-files-article-101-complaint/>

⁹⁵ <http://www.mlex.com/EU/Content.aspx?ID=314156>

⁹⁶ <http://tech.fortune.cnn.com/2013/02/18/apple-google-lobbying-washington/>



Data Source: The Center for Responsive Politics at OpenSecrets.org⁹⁷

13 February 2013

Google transitioned its European product price comparison service from relevance-based placement to a pay-for-placement model. Following the transition, Google's new form of Universal Search inserts ("Commercial Units") not only contained prominent links to Google's own service, they now also featured several prominent, directly-monetised links/advertisements derived from that service.

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

15 February 2013

FTC Chairman Jon Leibowitz left the FTC.

6 March 2013

BEUC applied to become an Interested Third Party. This application was granted on 26 March 2012.

13 March 2013

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

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

" ...

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

⁹⁷ <http://www.opensecrets.org/lobby/top.php?showYear=2012&indexType=s>

- *Agreements that de jure or de facto oblige websites owned by third parties (referred to in the industry as “publishers”) to obtain all or most of their online search advertisement requirements from Google (“third business practice”); and*
- *Contractual restrictions on the management and transferability of online search advertising campaigns across online search advertising platforms (“fourth business practice”).”⁹⁸*

21 March 2013

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

The letter highlighted the necessity to explicitly deal with both aspects of Google’s search manipulation practices (preferencing and penalties), and endorsed the even-handed (equal-treatment) remedy:⁹⁹

“...there are two equally important aspects to Google’s search manipulation practices: the systematic promotion of Google’s own services, and the systematic demotion or exclusion of its competitors’ services. Any effective remedies will require explicit commitments to end both aspects; remedying one without remedying the other would simply allow Google to recalibrate the un-remedied practice in order to achieve the same or equivalent anti-competitive effect.

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

Google must be even-handed. It must hold all services, including its own, to exactly the same standards, using exactly the same crawling, indexing, ranking, display, and penalty algorithms.

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

25 March 2013

The European consumer organisation, BEUC, published a [position paper](#)¹⁰⁰ endorsing Foundem’s *even-handed*, equal-treatment remedy and echoing the need for explicit commitments to end both aspects of Google’s search manipulation practices (i.e., self-preferencing and anti-competitive penalties).

3 April 2013

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

9 April 2013

Despite repeated assurances that Foundem (and other leading Complainants) would be given an early opportunity to view and comment on any Google proposals well before they were made public or

⁹⁸ Paragraph 63 of the [Prohibition Decision](#)

⁹⁹ <http://www.searchneutrality.org/google/open-letter-to-almunia>

¹⁰⁰ <http://docshare.beuc.org/Common/GetFile.asp?ID=44729&mfd=off&LogonName=Guesten>

submitted to a formal Market Test, and in a departure from standard practice¹⁰¹, Commissioner Almunia began to reveal details of Google's proposals to the press.¹⁰² This from the Financial Times:

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

*Mr Almunia told the New York Times there should be a 'real choice' for users. 'Maybe we will ask Google to signal what are the relevant options, alternative options, in the way they present the results,' he said."*¹⁰³

9 April 2013

FairSearch filed an EC Competition Complaint regarding Google's Android Mobile Phone platform.¹⁰⁴

11 April 2013

Commissioner Almunia's spokesman, Antoine Colombani, confirmed Google's formal submission of commitment proposals:

*"In the last few weeks, the Commission completed its preliminary assessment formally setting out its concerns. On this basis, Google then made a formal submission of commitments to the Commission." He added that the EC was "now preparing the launch of a market test to seek feedback from market players, including complainants, on these commitment proposals."*¹⁰⁵

26 April 2013

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

The 26 May deadline was subsequently extended to 27 June, after several Complainants requested more time to allow them to conduct empirical studies of Google's proposals.

1 May 2013

The Canadian Competition Bureau opened an investigation into Google's search and search advertising practices.¹⁰⁶

1 May 2013

Just 3 working days after Google's remedy proposals were published, Foundem wrote to Commissioner Almunia to explain that, by compelling rivals to bid away the majority of their profits,

¹⁰¹ As Google's lawyers, Wilson Sonsini, wrote in a March 2013 Paper, *You Made a Pledge, Then Keep Your Promise: Article 9 Commitments Decisions in European Antitrust Law*:

*"...while, formally, commitments are offered by the business under investigation, staff in DG Competition and (later in the process) the Legal Service play a significant role in the drafting of commitments. The case team will invariably comment on consecutive drafts of the proposal and formally or informally consult complainants and interested third parties on the scope and likely efficacy of the proposed commitments **before** the Commission agrees to post the draft commitments for comment in the Official Journal and on its website."*

¹⁰² http://www.nytimes.com/2013/04/10/technology/eu-competition-chief-texting-with-the-enemy.html?_r=0

¹⁰³ <http://www.ft.com/cms/s/0/c308b656-a124-11e2-bae1-00144feabdc0.html?siteedition=uk#axzz2Q3Unl188>

¹⁰⁴ <http://www.fairsearch.org/fairsearch-announces-complaint-in-eu-on-googles-anti-competitive-mobile-strategy/>

¹⁰⁵ http://www.theregister.co.uk/2013/04/11/google_submits_package_of_concessions_to_brussels/

¹⁰⁶ <http://www.slideshare.net/gesterling/commissioner-ofcompetitionvgooglecanadacorp>

Google's proposals represented a substantial escalation of the abusive practices they purported to remedy:

"In the eleven months since the Commission offered Google the opportunity to volunteer remedies, we and other Complainants have had no opportunity to hear, comment on, or rebut any of the arguments that Google has made to the Commission. Several times during this period, we expressed concern about the asymmetry of this dialogue and its likely undesirable consequences. Given the inherent complexities of search and the unusual two-sided market in which it operates, negotiating and assessing appropriate remedies was always going to be challenging, especially with Google's vested interest in exaggerating, distorting, and exploiting these complexities. An opportunity to comment on Google's proposals is not a substitute for an opportunity to challenge the many false assumptions that must underpin them.

Having had a chance to review Google's proposals, we are alarmed to see that our worst fears appear to have been exceeded. Google's proposals would do nothing to address either aspect of the Commission's concerns regarding search manipulation, and in many important respects would make things considerably worse. We are, for example, deeply troubled by the Commission's decision to Market Test proposals that would not only grant Google the right to continue to profit from the traffic it hijacks from rivals, but would now also grant it the right to profit from any traffic it sends to rivals.

And this is not just a nominal profit—the economics of search advertising, which naturally drives prices up to the maximum that advertisers can afford to pay, means that Google would be siphoning off the vast majority of its rivals' profits. Any vertical search companies that survive in such a radically altered and unfavourable marketplace would be left eking a living on the slimmest of margins from the scraps left over from the traffic, and now revenues, that Google would be diverting to its own services."

12 May 2013

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

This document, published¹⁰⁷ and distributed well before the end of the Market Test, proved to be very influential. It is not easy to persuade multiple eminent lawyers to endorse the radical (but in this case accurate) view that a remedy proposal is "worse than doing nothing".

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

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

But even if we assume that, in any revised version of this proposal, Paid Rival Links would be populated by a variant of Google's existing AdWords bidding system, this would do nothing to mitigate the devastating anti-competitive impact of this new form of advertising-based abuse. Either bidding system would mark a dramatic escalation in Google's ability to divert the vast majority of vertical search profits to its own coffers rather than to anyone else's."

That is, just 16 days into the Market Test, Foundem had not only exposed the fatal flaw in Google's first proposals, it had also anticipated and pre-emptively exposed the fatal flaw in the next two iterations of Google's proposals.

¹⁰⁷ Published on 14 May 2013

21 May 2013

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

28 May 2013

With many of the Complainants yet to respond, Commissioner Almunia was already in a position to inform the European Parliament that Google's first proposals were not good enough and that Google was likely to be asked to improve them:¹⁰⁸

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

25 June 2013

At a press conference in Brussels, a panel of Complainants unanimously dismissed Google's proposals as positively harmful:

"It would be better for the Commission to do nothing than to accept these proposals," said Thomas Vinje, a spokesman for the FairSearch coalition."¹⁰⁹

28 June 2013

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

9 July 2013

Commissioner Almunia privately informed Google that it needed to "significantly improve" its proposals.¹¹⁰

1 October 2013

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

In a [speech](#)¹¹¹ at the opening of this event, Commissioner Almunia acknowledged the negative feedback from Google's first proposals and announced that Google had now offered "significant improvements":

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

...We have reached a key moment in this case. Following the first market test, I had serious doubts whether it was possible to continue the route towards a Commitment decision. I expressed my opinion to Google and in public. Now, with the significant improvements on the table, I think we have the possibility to work again and seek to find an effective solution based on a decision under Article 9 of the Antitrust Regulation.

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

¹⁰⁸ <http://www.telegraph.co.uk/technology/google/10083905/EU-competition-watchdogs-to-press-Google-for-more-concessions.html>

¹⁰⁹ <http://www.eubusiness.com/news-eu/competition-company.pev>

¹¹⁰ http://europa.eu/rapid/press-release_SPEECH-13-768_en.pdf

¹¹¹ http://europa.eu/rapid/press-release_SPEECH-13-768_en.pdf

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

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

21 October 2013

Google submitted its **Revised Commitment Proposals** to the Commission.

28 October 2013

Rather than conducting a full Market Test, the Commission opted for a more limited and less transparent assessment. Complainants and other respondents to the first Market Test were sent confidential copies of Google's Revised Commitments together with an RFI containing a set of tightly constrained, and largely misdirected, questions.

6 November 2013

Google's Revised Proposals were leaked to the media:

*"Google's latest proposals aimed at avoiding an antitrust fine from European authorities have been leaked amid growing anger over the secrecy surrounding the case."*¹¹²

8 November 2013

CEPIC (the Association of European Picture Agencies) submitted a Competition Complaint to the European Commission regarding Google's use of third-party images.¹¹³

21 November 2013

Foundem was the first to demonstrate that Google's revised proposals were not an improvement over its original proposals. Foundem highlighted that any "improvement" in the "visibility" of Rival Links was immaterial as long as these links remained paid advertisements rather than free, natural search results. The following is an extract from [Foundem's Comments on Google's Revised Proposals](#):¹¹⁴

"Unfortunately, all of the RFI's questions around 'visibility', 'click through rates'... and 'eligibility criteria' are entirely irrelevant as long as the proposed Rival Links remain Paid Rival Links. This is because Google, not its rivals, would be the main beneficiary of any profits derived from these links.

We disagree with any suggestion that Google's revised proposals are an improvement over Google's previous proposals, let alone a 'substantial improvement'. Google's revised proposals remain fundamentally unaltered, and, if anything, the few alterations there are tend to make the proposals worse rather than better. For example, the proposal of an AdWords-based bidding process for Paid Rival Links simply increases the efficiency with which Google would extract revenues from its competitors, and, in a further blow to consumers, it would also remove the last vestige of relevance-based placement.

The Paid Rival Links element of Google's first proposals was such a patently unjustifiable escalation of the abuse Google had been instructed to remedy that few of us expected it to be retained in any follow-on proposals. It was widely assumed that Google had only included Paid Rival Links as a

¹¹² <http://www.pcworld.com/article/2061420/googles-secret-proposals-leaked-as-dismay-over-eu-antitrust-inquiry-grows.html>

¹¹³ http://www.theregister.co.uk/2013/11/15/google_hit_with_eu_competition_complaint_over_images/

¹¹⁴ http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf

bargaining chip, to be withdrawn later under the guise of a substantial concession. Clearly, we underestimated Google's audacity.

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

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

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

December 2013

Following meetings with the Commission, Foundem and a number of other Complainants concluded that the Commission intended to reject Google's revised proposals and that the notion of an auction-based remedy was now off the table.

19 December 2013

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

"...Many respondents have expressed strong concerns with regard to the auction mechanism, notably because it would force rivals to bid almost the entirety of their profit margin."

20 December 2013

In an interview on Spanish Radio, Commissioner Almunia rejected Google's revised proposals, describing them as "not acceptable".¹¹⁵

15 January 2014

In response to Commissioner Almunia's 19 December letter, Google submitted a paper to the Commission that purported to demonstrate that the objections to its Paid Rival Links auction were unfounded. Unfortunately, many of the false or misleading arguments in this paper were subsequently adopted wholesale by the Commission and became the cornerstone of Commissioner Almunia's rationale for adopting Google's third set of proposals.

25 January 2014

According to [Bloomberg](#), Commissioner Almunia met privately with Eric Schmidt, David Drummond, Kent Walker, and two other Google Executives at the annual World Economic Forum in Davos, and agreed to get a Commitment Decision adopted before the end of his term¹¹⁶:

"The mood in the room was cordial but tense. Almunia's term was up in the fall, and Google didn't want to have to start over with his replacement...Any agreement would need the consensus of all 28 members of the European Commission, which is why Google hoped it had found its champion. Schmidt asked whether Almunia could get a settlement approved before the end of his term. Almunia said he was confident that he could. After two hours, everyone was satisfied. They shook hands."

¹¹⁵ <http://www.theguardian.com/technology/2013/dec/20/european-commission-rejects-google-proposals-antitrust-case>

¹¹⁶ <http://www.bloomberg.com/news/features/2015-08-06/google-s-6-billion-miscalculation-on-the-eu>

29 January 2014

Two days before Google submitted an unprecedented third set of proposals, Commissioner Almunia began to trail to the media that he was "close to settling" with Google and that "a deal" would be announced in a few days. Reuters quoted¹¹⁷ an unnamed Commission "official" stating that Google's latest proposal was "much better" than the previous "unacceptable" iteration.

31 January 2014

Google submitted its **Third** set of **Remedy Proposals** to the Commission.

It soon transpired that, barring a few minor cosmetic differences, these third proposals were essentially unchanged from the previous "unacceptable" iterations. The following is from Foundem's 5 February 2014 *Initial Response to Google's Third Set of Commitment Proposals*:

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

4 February 2014

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

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

From the Official Minutes¹¹⁸ of the 4 February Meeting:

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

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

5 February 2014

At a press briefing¹¹⁹, Commissioner Almunia announced that he had received Google's third set of proposals and intended to adopt them without any form of Market Test or further consultation. In response to a journalist's question, he conceded that Complainants would of course have a right to respond to the forthcoming pre-rejection letters and that these responses would be taken into account as a matter of procedure.

Commissioner Almunia's announcement was widely interpreted and reported as the closure of the European Commission's Google Search case.

¹¹⁷ <http://www.reuters.com/article/2014/01/29/eu-google-antitrust-idUSL5N0L242V20140129>

¹¹⁸ <http://ec.europa.eu/transparency/regdoc/rep/10061/2014/EN/10061-2014-2074-EN-F1-1.Pdf>

¹¹⁹ <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=1086129>

12 February 2014

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

14 February 2014

Google published¹²⁰ its third set of proposals, presenting them as a done deal:

“Following three rounds of negotiations and significant concessions, we are glad to have now reached an agreement with the European Commission that addresses its competition concerns.”¹²¹

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

18 February 2014

MEPs Ramon Tremosa and Andreas Schwab wrote¹²² to Commissioner Almunia raising concerns and asking him to appear before the Economic and Monetary Affairs (ECON) Committee:

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

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

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

20 February 2014

The Wall Street Journal reported:

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

In recent weeks, other members of the European Commission — including Viviane Reding, Michel Barnier and Günther Oettinger — complained in closed-door meetings that Mr. Almunia announced the Google settlement without fully consulting them beforehand, EU officials said. Now, the competition chief has been asked to appear before a European Parliament committee to explain the commission’s deal with the search giant.”¹²³

11 March 2014

Following publication of the minutes¹²⁴ of the 12 February meeting of the College of Commissioners, Foundem wrote an [open letter](#)¹²⁵ to Commissioner Almunia, CC'd to Commission President Barroso and the College of Commissioners.

¹²⁰ https://drive.google.com/file/d/0Bw8Krij_Q8UaETUkxamxfMk02TUK/edit?usp=sharing

¹²¹ <http://googlepolicyeurope.blogspot.co.uk/2014/02/settlement-with-european-commission.html>

¹²² http://regmedia.co.uk/2014/02/20/google_case_almunia.pdf

¹²³ <http://blogs.wsj.com/brussels/2014/02/20/pressure-grows-on-almunia-over-eu-google-settlement/>

¹²⁴ <http://ec.europa.eu/transparency/regdoc/rep/10061/2014/EN/10061-2014-2075-EN-F1-1.Pdf>

¹²⁵ <http://www.searchneutrality.org/google/letter-to-almunia-and-college-of-commissioners>

Foundem pointed out that Commissioner Almunia's answers to the concerns of his fellow Commissioners, which included the reassuring but entirely inaccurate claim that under Google's proposals Google's own services would be subject to the same treatment and payments as those of its competitors, had been deeply misleading. Foundem also highlighted the additional consumer harm that would result directly from Google's proposals:

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

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

If Google's proposals were adopted, consumers would not only be harmed by the ensuing lack of competition and consumer choice, they would also be directly and immediately harmed by the transition from relevance-based ranking to auction-based pay-for-placement. In what might be the mother of all unintended consequences, this transition would all but eradicate the considerable value that vertical search services provide to consumers; services that direct users to merchants with the best prices or products cannot compete in an auction against rivals that direct users to merchants that pay them the most."

11 March 2014

During a private ("In Camera") meeting with MEPs, Commissioner Almunia distributed a *Key Points Position Paper*, setting out many of the reassuring-sounding but erroneous arguments he was relying on in his campaign to adopt Google's proposals.

Three months later (on 11 June), Commissioner Almunia distributed a similar paper to his fellow Commissioners. At no point did the Commission share or seek to validate any of the erroneous arguments contained in these papers with Complainants or other market participants. Fortunately, Foundem received a copy of the Commissioner's 11 March *Key Points Position Paper*, which allowed Foundem to produce and distribute a rebuttal (see 12 June 2014).¹²⁶

31 March 2014

The European Consumer Organisation, **BEUC**, submitted a formal EC Competition Complaint against Google:¹²⁷

*"The European Consumer Organisation has stepped up its involvement in the European Commission's antitrust investigation into how Google Inc puts its preferred services atop search results while demoting rivals, particularly in price comparison searches. Currently an 'interested party', essentially having observer status, BEUC has today applied to be a formal complainant."*¹²⁸

¹²⁶ http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf

¹²⁷ <http://news.yahoo.com/european-consumer-group-joins-case-against-google-144210170.html>

¹²⁸ http://www.beuc.eu/publications/beuc-pr-2014-010_eu_google_investigation-beuc_complaint.pdf

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

13 April 2014

The Washington Post published an exposé of Google's behind-the-scenes lobbying efforts in 2012 regarding the FTC investigation.¹²⁹

15 April 2014

The **Open Internet Project** (OIP)—a newly formed coalition of 400 French and German start-ups, online publishers, consumer associations, and digital rights groups—lodged a complaint against Google with the European Commission:

*"The complaint relates to the Commission's investigation in Case 39.740 Foundem & others and demonstrates why the commitments proposed by Google to bring this investigation to an end are not sufficient to safeguard a competitive online market."*¹³⁰

16 May 2014

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

16 May 2014

The French Economic Minister, Arnaud Montebourg, and the German Minister for Economic Affairs, Sigmar Gabriel, wrote a joint letter to Commissioner Almunia expressing their concerns about the Commission's plans to adopt Google's proposed settlement without any form of meaningful market test.¹³¹ The following is an extract from this letter (from an unofficial French-to-English translation):

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

20 May 2014

Commissioner Almunia responded¹³² to the French and German Ministers' 16 May letter reciting many of the same erroneous arguments set out in his 11 March *Key Points Position Paper*.¹³³

22 May 2014

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

June-July 2014

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

¹²⁹ <http://tinyurl.com/q2p5p6l>

¹³⁰ <http://www.openinternetproject.net/about-the-project>

¹³¹ http://www.nytimes.com/2014/05/21/business/international/eu-antitrust-chief-casts-doubt-on-google-deal-over-rivals-links.html?_r=0

¹³² <http://www.slideshare.net/lesechos2/reply-letter-vp-to-ministers-gabriel-and-montebourg>

¹³³ [http://www.foundem.co.uk/Foundem Response to Commissioner Almunia Key Points Paper.pdf](http://www.foundem.co.uk/Foundem%20Response%20to%20Commissioner%20Almunia%20Key%20Points%20Paper.pdf)

As Streetmap and nntp did not submit written responses to their letters within the time limit, their complaints were deemed to have been withdrawn.¹³⁴

2 June 2014

Yelp lodged a complaint against Google with the European Commission.¹³⁵

3 June 2014

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

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

Among the supporting documents provided to Foundem was the paper that seemed to provide the answer: Google's persuasive, but immensely misleading, 15 January 2014 submission. This document set out the erroneous arguments that the Commission was now using to try to justify the adoption of Google's proposals.

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

6 June 2014

MEPs Ramon Tremosa and Andreas Schwab called on the Commission to consider state-of-play meetings as an *"opportunity for real exchange and not as a false front"*:

*"There is no doubt that the outcome of this case will have a broad economic, political and societal impact. We thus trust that Vice-President Almunia will reconsider the critical points of the commitments raised by expert scrutiny and act as the guardian of competition to the benefit of consumers."*¹³⁶

10 June 2014

Foundem emailed the European Commission to request a four-week extension to its deadline and a copy of the March 2013 *Preliminary Assessment* the Commission's letter was relying on:

"The Preliminary Assessment is referred to and relied on throughout the letter, particularly in cases where assertions are made without any description of the basis or evidence supporting the assertion. We will therefore need access to the Preliminary Assessment."

11 June 2014

Commissioner Almunia wrote to his fellow Commissioners reiterating many of the same erroneous arguments and assertions featured in his March 2014 *Key Points Position Paper*.

¹³⁴ See paragraph 72 of the [Prohibition Decision](#)

¹³⁵ <http://www.nytimes.com/2014/07/09/technology/yelp-joins-critics-of-european-union-settlement-with-google.html>

¹³⁶ <http://tremosa.cat/noticies/ramon-tremosa-catalonia-and-andreas-schwab-germany-call-ec-meet-complainant-companies-against-google>

12 June 2014

Foundem wrote to President Barroso and the College of Commissioners with [A Brief Response to Commissioner Almunia's March 2014 Key Points Position Paper](#).¹³⁷

From the introduction:

"Despite our numerous attempts to hear and respond to the Commission's thinking over the past two years, Commissioner Almunia's leaked March 12 Key Points position paper was the first indication that any of the Complainants had of the Commission's internal analysis of Google's remedy proposals. Not only does this paper reveal fundamental errors in the Commission's understanding of the economics and mechanics of the online search market, it also reveals that, after two years of talking almost exclusively to Google on this topic, the Commission may have lost sight of the problem it was trying to solve in the first place. This has never been about the ability of vertical search services to compete amongst themselves. It has always been about the inability of vertical search (and other) services to compete against Google's own growing stable of often inferior services in the face of Google's anti-competitive and immensely powerful search manipulation practices.

Notably, the Commission's paper makes no attempt to explain why Google's proposals would do anything other than make it impossible for Google's vertical search competitors to compete against Google's services, which would now—as a direct result of these proposals—take sole possession of the free, relevance-based traffic that has always been the lifeblood of the Internet. Google's competitors will still have to contend with the systematic self-preferencing and anti-competitive demotions and exclusions that Google was instructed to remedy, and they will now also have to contend with a devastating new form of abuse that will force them to bid away the majority of their profits to Google..."

Friday 20 June 2014

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

20 June 2014

With less than two weeks of Foundem's allotted four-week deadline remaining, the Commission responded with a copy of the requested Preliminary Assessment but declined Foundem's request for an extension.

Although several Complainants were provided with the Commission's March 2013 *Preliminary Assessment*, it was Foundem that recognised the seismic implications of one of its fundamental conclusions, as described in this extract from [Foundem's Response to the Pre-Rejection Letter](#):¹³⁸

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

'... As for paid search traffic, while it can be a significant source of traffic to vertical web search services, it cannot be a substitute for natural search traffic from Google's horizontal web search services.' The Commission's March 2013 Preliminary Assessment, Paragraph 94 (Emphasis added)

According to Google's own description, 'the proposed Rival Links Auction is closely modelled on the AdWords auction'.¹³⁹ That is, by Google's own admission, its proposed remedy for the illegal diversion of natural search traffic is to substitute it with precisely the kind of 'paid search traffic' the Commission had already concluded could not be a substitute for that traffic."

¹³⁷ http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf

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

¹³⁹ From Google's January 15 2014 submission

23 June 2014

Foundem appealed to the Hearing Officer for an extension to its deadline.

24 June 2014

The Hearing Officer granted Foundem an eight-day extension of its deadline (to 11 July).

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

Foundem also understands that Google's pivotal 15 January 2014 submission, the document on which the Commission had based so many of its erroneous assumptions and assertions, was only provided to Foundem and one other Complainant. All requests by other Complainants for this document were declined.

11 July 2014

Foundem submitted its formal [Response to the Commission's Pre-Rejection Letter](#).¹⁴⁰

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

"The Commission's Letter makes clear that it has upheld both halves of our search manipulation Complaint—anti-competitive demotions and self-preferencing—and that its sole grounds for rejection are that Google's proposals adequately address these concerns. But, as we demonstrate below, the Commission's stated rationale and key arguments for adopting Google's proposals are erroneous and directly contradict the fundamental conclusions of its own March 2013 Preliminary Assessment...

Debunking Google's January 15 2014 Submission

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

As the lead Complainant, and one with a proven track record¹⁴¹ of deconstructing and debunking Google's previous submissions and assertions, we are surprised and disappointed that the Commission elected not to offer us (or anyone else) an earlier opportunity to review and comment on this pivotal January 15 submission (or on any of the fallacious arguments or misappropriated "evidence" it contains). This is a particularly serious oversight because, in the intervening months, the Commission has taken several of Google's false or misleading assertions and inferences and adopted them as its own. Indeed, several of the paper's most disingenuous claims have become the cornerstone of the Commission's defence of Google's proposals.

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

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

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

¹⁴⁰ http://www.foundem.co.uk/Foundem_Response_to_Commission_Letter_July_2014.pdf

¹⁴¹ For some examples see [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#)

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

Individually, any one of the significant revelations in Foundem’s Response would have made it difficult for the Commission to proceed with an Article 9 Commitments Decision. Together, however, they left the Commission with little choice but to reject Google’s proposals.

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

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

22 July 2014

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

This from the Wall Street Journal:

*“...The commission has decided that some concerns raised by complainants in response to letters explaining the EU’s settlement decision may be valid, the person said. The concerns relate to the possible preferential treatment of Google’s services beyond their visibility on the search page, and the design of an auction mechanism aimed at allowing rivals to bid for better placement on the page...”*¹⁴²

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

As any analysis will confirm, while there undoubtedly was political pressure, it was directed at trying to ensure that the Commission conduct a meaningful market test; not at whether the Commission should adopt or reject Google’s proposals.

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

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

24 July 2014

HolidayCheck lodged a complaint against Google with the European Commission.

4 September 2014

The Commission notified Google that it was rejecting Google’s third proposals.

8 September 2014

The *Financial Times* reported¹⁴³ that Commissioner Almunia had rejected Google’s third proposals:

¹⁴² <http://online.wsj.com/articles/eu-may-revise-googles-antitrust-settlement-says-source-1406046253>

¹⁴³ <http://on.ft.com/YqxGKZ>

"Google's tortuous four-year attempt to escape competition sanctions in Europe was on the brink of collapse on Monday as Brussels took the unprecedented step of rejecting a third tentative peace settlement.

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

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

10 September 2014

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

23 September 2014

At his final appearance before the European Parliament's ECON Committee, **Commissioner Almunia officially rejected Google's third set of proposals.** Remarkably, he suggested that a fourth set of proposals might be an option:

"...As part of our standard practice in an Article 9 procedure – which leads to a commitments decision – and in response to our pre-rejection letters sent before the summer, some of the twenty formal complainants have given us fresh evidence and solid arguments against several aspects of the latest proposals put forward by Google.

At the beginning of the month, I have communicated this to the company asking them to improve its proposals. We now need to see if Google can address these issues and allay our concerns.

*If Google's reply goes in the right direction, Article 9 proceedings will continue. Otherwise, the logical next step is to prepare a Statement of Objections."*¹⁴⁴

2 October 2014

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

1 November 2014

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

27 November 2014

The European Parliament voted overwhelmingly in favour of a non-binding resolution *"supporting consumer rights in the digital single market"*.¹⁴⁵

Although widely reported as a call to break up Google—by "unbundling search engines from other commercial services"—in reality the resolution only suggested this as "one potential long-term means of achieving the aforementioned aims".

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

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

¹⁴⁴ http://europa.eu/rapid/press-release_SPEECH-14-615_en.htm

¹⁴⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2014-0286+0+DOC+XML+V0//EN>

The resolution also added the weight of the European Parliament to the now overwhelming list of stakeholders who endorse the even-handed/equal-treatment principle¹⁴⁶ as the over-arching remedy:

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

December 2014

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

December 2014

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

12 January 2015

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

26 January 2015

Trivago lodged a complaint against Google with the European Commission.

19 March 2015

The Wall Street Journal revealed that the FTC Commissioners might have acted against the advice of the FTC investigators when closing the Google investigation in January 2013.¹⁴⁷

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

...The 160-page critique, which was supposed to remain private but was inadvertently disclosed in an open-records request, concluded that Google’s ‘conduct has resulted—and will result—in real harm to consumers and to innovation in the online search and advertising markets.’

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

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

20 March 2015

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

23 March 2015

Google’s Director of Public Policy, Johanna Shelton, privately emailed the FTC’s chief of staff, Heather Hipsley, urging the FTC to issue a public statement.¹⁴⁸

“...We believe it is critical for the FTC to defend its reputation, showing that it followed a thorough process and fully took into account the Bureau of Competition staff memo, among other internal agency opinions including the Bureau of Economics. A public statement standing by the FTC’s ability

¹⁴⁶ <http://www.searchneutrality.org/google/open-letter-to-almunia>

¹⁴⁷ <http://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274>

¹⁴⁸ <http://www.buzzfeed.com/williamalden/how-googles-lobbyists-get-things-done-in-washington#.pdrmygeg4>

to make a final decision after assessing differing internal views would go far in the international space to restore the reputation of the FTC, especially on due process....

We understand the Chairwoman will be in Europe this week and may have opportunities to express that the staff memo was fully taken into account and not inconsistent with the final agency action.”¹⁴⁹

24 March 2015

The Wall Street Journal published an article revealing the extraordinary degree of access Google had enjoyed with the FTC and senior officials in the White House in the lead-up to the FTC’s decision to close the Google investigation.¹⁵⁰

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

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

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

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

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

The same day, Mr. Schmidt and Google’s chief legal officer, David Drummond, joined other technology companies for a meeting with then-White House Chief of Staff Bill Daley. Mr. Daley met with the FTC chairman at the White House the next day, while Ms. Shelton and Mr. Drummond met with Obama senior adviser Valerie Jarrett, visitor logs show...

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

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

The Wall Street Journal also published the inadvertently released, even-numbered, pages from the FTC’s 160-page report.¹⁵¹

25 March 2015

Two days after Google's Johanna Shelton privately urged the FTC to issue a statement, the FTC did just that:

“The Federal Trade Commission conducted an exhaustive investigation of Google’s internet search practices during 2011 and 2012. Based on a comprehensive review of the voluminous record and extensive internal analysis, of which the inadvertently disclosed memo is only a fraction, all five Commissioners (three Democrats and two Republicans) agreed that there was no legal basis for action with respect to the main focus of the investigation – search. As we stated when the

¹⁴⁹ <https://s3.amazonaws.com/s3.documentcloud.org/documents/2082181/shelton-email.pdf>

¹⁵⁰ <http://www.wsj.com/articles/google-makes-most-of-close-ties-to-white-house-1427242076?tesla=y>

¹⁵¹ <http://graphics.wsj.com/google-ftc-report/img/ftc-ocr-watermark.pdf>

investigation was closed, the Commission concluded that Google's search practices were not, 'on balance, demonstrably anticompetitive.'

*Contrary to recent press reports, the Commission's decision on the search allegations was in accord with the recommendations of the FTC's Bureau of Competition, Bureau of Economics, and Office of General Counsel."*¹⁵²

7 April 2015

Charles Arthur of *The Guardian* newspaper wrote about the inadvertently released FTC report:¹⁵³

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

The FTC report says Google:

- demoted rivals for vertical business (such as Shopping) in its search engine results pages (SERPS), and promoted its own businesses above those rivals, even when its own offered worse options...*
- crucially, acted in a way that (the report says) resulted 'in real harm to consumers and to innovation in the online search and advertising markets. Google has strengthened its monopolies over search and search advertising through anticompetitive means, and has forestalled competitors and would-be competitors' ability to challenge those monopolies, and this will have lasting negative effects on consumer welfare.'*

...Particularly worth looking at is 'footnote 154'...This is where it shows how Google put its thumb on the scale when it came to competing with rival vertical sites...

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

Footnote 154: the smoking gun

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

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

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

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

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

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

¹⁵² <https://www.ftc.gov/news-events/press-releases/2015/03/statement-chairwoman-edith-ramirez-commissioners-julie-brill>

¹⁵³ <https://theoverspill.wordpress.com/2015/04/07/why-googles-struggles-with-the-ec-and-ftc-matter/>

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

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

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

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

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

13 April 2015

Company AC, “a company that wishes to remain anonymous”¹⁵⁴ applied to become an Interested Third Party. This application was granted on 21 April 2015, as was Company AC’s request for anonymity.

15 April 2015 – The Statement of Objections (SO)

The European Commission formally charged Google with an abuse of its dominant position.¹⁵⁵

Having previously outlined four areas of concern regarding Google’s conduct, the Commission’s **Statement of Objections (SO)** focused exclusively on the search manipulation concerns first raised by Foundem’s Complaint. The Commission explained that it was continuing to investigate the other three areas of concern (scraping, advertising exclusivity, and advertiser restrictions). The Commission also explained that the current SO was focussed exclusively on the effects of Google’s search manipulation practices on the product price comparison vertical, with a view to setting a precedent that could then be applied to other verticals.

The Commission made clear that its SO upheld both halves of Foundem’s search manipulation allegations—self-preferencing and anti-competitive penalties.¹⁵⁶ The Commission also made clear that it intended to pursue a remedy based on the non-discrimination/even-handed principle widely endorsed by complainants, interested third parties, and consumer groups.

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

15 April 2015

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

15 April 2015

Google publicly responded to the European Commission’s Statement of Objections with a blog post entitled *The Search for Harm*.¹⁵⁷ This post purported to show that competition was “thriving” and that the European Commission’s charges were therefore unfounded.

¹⁵⁴ Paragraph 75 of the [Prohibition Decision](#)

¹⁵⁵ http://europa.eu/rapid/press-release_IP-15-4780_en.htm

¹⁵⁶ http://europa.eu/rapid/press-release_MEMO-15-4781_en.htm

¹⁵⁷ <http://googleblog.blogspot.co.uk/2015/04/the-search-for-harm.html>

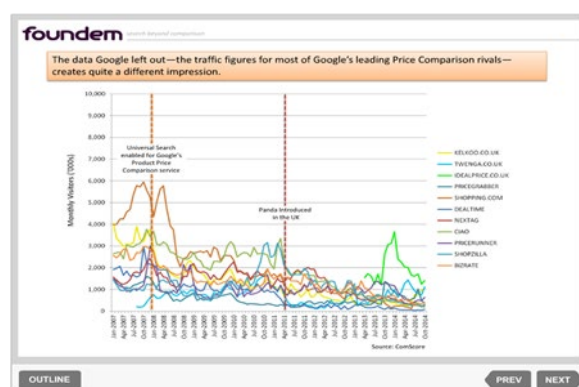
April to July 2015

The following applied to become Interested Third Parties:

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

10 June 2015

Foundem published an [online presentation](#)¹⁵⁸ rebutting Google's 15 April public response to the European Commission's SO:



Foundem's rebuttal significantly undermined what had, until then, been a surprisingly effective (if extraordinarily misleading) public defence by Google:

*"Foundem, the British company that was the original complainant to the EC, demolished Google's response in its rebuttal analysis in June 2015. It's very clear. Nothing has changed since then except that Google has grabbed more of the online advertising business. (Just to start you off: Google talks about "shopping" but the EC's Statement of Objections is about "price comparison". Because misdirection works.)"*¹⁵⁹

18 June 2015

Complainants were invited to comment on the Commission's Statement of Objections.

2 July 2015

TradeComet lodged a complaint against Google with the European Commission.

29 July 2015

Foundem submitted its formal Comments on the Commission's Statement of Objections.

¹⁵⁸ http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis

¹⁵⁹ <https://theoverspill.wordpress.com/2016/11/04/start-up-googles-endless-ec-case-here-comes-usb-c-mobo-no-go-south-koreas-weird-scandal-and-more/>

10 August 2015

Google announced its *Alphabet* restructuring.

20 August 2015

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

27 August 2015

Google submitted its formal Response to the Commission's April 2015 Statement of Objections. Tellingly, Google did not exercise its right to request an oral hearing.

2 October 2015

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

October-November 2015

Complainants were invited to comment on Google's Response to the Statement of Objections.

4-16 November 2015

The Streetmap trial in the UK High Court.

24 November 2015

Salon published an exposé of some of Google's academia-based lobbying tactics¹⁶⁰:

"Google's insidious shadow lobbying: How the Internet giant is bankrolling friendly academics—and skirting federal investigations"

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

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

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

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

2 December 2015

During the second half of 2015, Microsoft and Google privately reached an entente cordiale. As part of this, Microsoft agreed to end its active participation in any of the ongoing Google antitrust investigations. Microsoft resigned from FairSearch and presented ICOMP members with a choice: carry on as before, but without any further funding from Microsoft (the main sponsor), or agree to reposition ICOMP to focus exclusively on issues that do not concern Google's dominance or anti-competitive practices.¹⁶¹

¹⁶⁰ http://www.salon.com/2015/11/24/googles_insidious_shadow_lobbying_how_the_internet_giant_is_bankrolling_friendly_academics_and_skirting_federal_investigations/

¹⁶¹ <http://www.politico.eu/pro/icomps-drops-google-fight/>

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

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

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

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

10 December 2015

The fifth CMC in Foundem's civil action against Google in the UK High Court.

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

17 December 2015

The Guardian published an exposé of some of Google's European lobbying tactics¹⁶³:

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

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

An investigation by the Guardian into Google's multifaceted lobbying campaign in Europe has uncovered fresh details of its activities and methods..."

24 December 2015

Foundem submitted its formal Reply to Google's Response to the Statement of Objections.

Unfortunately, confidentiality restrictions prevent us from publicly commenting on either the SO or Google's extraordinarily comment-worthy Response to it.

12 February 2016

Streetmap lost its civil case against Google in the UK High Court¹⁶⁴.

The first thing to note is that, under European Law, national courts are prohibited from reaching judgments that conflict (or risk conflicting) with decisions of the European Commission. For the Streetmap trial to proceed (rather than be stayed pending the outcome of the European investigation), both Google and Streetmap had to agree that there was no overlap between the issues to be tried and those under investigation by the European Commission.

¹⁶² From Foundem's 2 December 2015 resignation letter to ICOMP members

¹⁶³ <http://www.theguardian.com/world/2015/dec/17/google-lobbyists-congress-antitrust-brussels-eu>

¹⁶⁴ <http://www.theguardian.com/technology/2016/feb/12/streetmap-loses-google-anticompetitive-search-abuse-case>

The second thing to note is that, in contrast to most other verticals, incorporating a map into search results often delivers a clear user benefit; for example, as a means of displaying local search results.

The third thing to note is that Streetmap failed to challenge Google's thoroughly misleading misappropriation of the most pivotal evidence in the case, which purported to demonstrate that the presence or absence of a large clickable map at the top of Google's search results made little or no difference to the traffic delivered to rival mapping services. See [Foundem's Analysis of the Pivotal Evidence in the Streetmap Trial](#)¹⁶⁵ for further details.

On the pivotal question of whether or not the introduction of Google's new-style Maps Onebox had an appreciable effect on competition, Mr Justice Roth's Judgment stated:

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

1-2 March 2016

At the first ICOMP council meeting following the 2 December 2015 vote, Microsoft tabled a resolution that ICOMP withdraw its EC Competition Complaint. When only Microsoft voted in favour of the resolution, Microsoft resigned from ICOMP.

20 April 2016 – Android SO

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

21 April 2016

Presumably in accordance with the terms of Microsoft's agreement with Google, Microsoft informed the Commission that it was withdrawing its and Ciao's complaints against Google.¹⁶⁶

26 April 2016

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

4 May 2016

Prompt lodged a complaint against Google with the European Commission.

14 July 2016 – Supplementary Statement of Objections (SSO)

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

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

19 July 2016

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

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

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

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

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

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

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

14 October 2016

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

19 October 2016

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

3 November 2016

Google submitted its private formal Response to the Commission’s 14 July SSO and published a public response in the form of a blog post.¹⁷⁰

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

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

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

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

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

5 November 2016

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

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

3 December 2016

Foundem temporarily suspended the remaining parts of its service¹⁷²:

“In March 2012, we suspended parts of our service pending the outcome of the European Commission’s antitrust investigation into Google’s search manipulation practices. We have now reluctantly taken the decision to temporarily suspend all remaining aspects of our service.”

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

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

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

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

12 December 2016

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

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

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

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

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

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

19 December 2016

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

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

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

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

“Google’s Efforts to Prevent Whistleblowing

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

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

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

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

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

31 March 2017

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

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

27 June 2017 – The Prohibition Decision

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

Contrary to some reports, the Commission did not leave it to Google to propose a remedy. The Prohibition Decision made clear¹⁷⁹ that the Commission required the principle-based *equal-treatment*

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

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

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

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

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

remedy widely endorsed by Complainants and consumer groups. It was, however, left to Google to propose precisely how it intended to *implement* this remedy.

As we wrote in November 2013¹⁸⁰:

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

30 August 2017

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

September 2017

Google began privately briefing a number of European comparison shopping services about its proposed “remedy”.

Remarkably, despite the Prohibition Decision making it clear¹⁸¹ that pay-for-placement, auction-based traffic cannot be a substitute for the free, natural search traffic Google had been illegally commandeering, Google was once again proposing to do precisely that. The only notable difference between this auction-based proposal and Google’s previous auction-based proposals, which had all been resoundingly rejected under Commissioner Almunia, was that, this time, Google’s own comparison shopping service would also “participate” in the auction.

But, as we demonstrated over the ensuing weeks and months, Google Shopping’s “participation” in the auction isn’t real; its bids are just meaningless internal accounting, where every purported “cost” has a corresponding and equal “credit”.¹⁸²

11 September 2017 – Google’s Appeal

Google lodged an appeal with the General Court against the EC’s June 2017 Prohibition Decision¹⁸³.

A summary of Google’s appeal was published in the [Official Journal of the EU](#) on 30 October 2017¹⁸⁴.

14 September 2017

After a fresh wave of revelations about Google’s extensive and often clandestine network of academic influencers¹⁸⁵, Foundem published its thoughts on this topic:

“We accept that many of the academics and other professionals within Google’s extensive network of influencers sincerely believe that their pro-Google opinions are their own and are not influenced by their (or their institution’s) financial ties to Google. However, it is noteworthy how often these opinions are underpinned by an eerily consistent misrepresentation of the basic facts of the Google

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

¹⁸¹ E.g., see paragraphs 544 and 551 of the [Prohibition Decision](#)

¹⁸² http://www.foundem.co.uk/fmedia/Foundem_Apr_2018_Final_Debunking_of_Google_Auction_Remedies/

¹⁸³ <https://www.theguardian.com/technology/2017/sep/11/google-appeals-eu-fine-search-engine-results-shopping-service>

¹⁸⁴ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.369.01.0037.01.ENG&toc=OJ:C:2017:369:TOC

¹⁸⁵ E.g. <http://www.googletransparencyproject.org/articles/google-academics-inc>, <https://www.nytimes.com/2017/08/30/us/politics/eric-schmidt-google-new-america.html>, and <https://www.wsj.com/amp/articles/think-tank-fires-scholar-who-praised-large-antitrust-fine-against-google-1504139004>

case that belies, at the very least, a failure to treat Google's representations of the case with the healthy scepticism one would normally reserve for a defendant.

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

- They tend to focus exclusively on Google's anti-competitive promotion of its own services (through Universal Search), while ignoring Google's anti-competitive demotions and exclusions of competing services (through anti-competitive penalties)...
- They neglect to point out that pay-for-placement advertisements are not a substitute for the relevance-based search results they are anti-competitively replacing...[and]
- They ignore the inconvenient yet immutable fact that Google only introduced these pay-for-placement advertisements (which underpin all of Google's misleading ad-based arguments) in February 2013—at least 7 years after the introduction of Google's anti-competitive practices, 3 years after the start of the EC's investigation, and 11 months after the commencement of "settlement" negotiations with Commissioner Almunia..."¹⁸⁶

18 September 2017

After Reuters [broke the story](#)¹⁸⁷ that Google's proposed remedy to the Commission's Prohibition Decision was based on yet another version of a pay-for-placement auction, Foundem responded with a brief paper entitled [The Return of the Undead Auction](#):

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

In our [March 2017 Remedy Paper](#), we set out the various options available to Google for implementing a solution that would be both effective and compliant with the Commission's stated requirements for an equal-treatment remedy. It is no coincidence that none of these options involved a paid auction. We will reserve final judgement until we have seen the details of Google's proposal, but it is difficult to imagine how Google could devise an auction mechanism that would not inflict significant additional consumer harm, both by further restricting competition and by aiding and abetting Google in its long-term goal to substitute unprofitable, relevance-based natural search results with highly-profitable, pay-for-placement¹⁸⁸ advertisements. It is also difficult to imagine how Google could devise an auction that Google's own comparison shopping service could meaningfully participate in (without full-blown structural separation), or that would not result in Google's competitors being compelled to bid away the majority of their profits to Google. In other words, it is difficult to imagine how Google could devise an auction-based remedy that does not fall far short of the Commission's stipulated requirements for an equal treatment remedy."

21 September 2017

BEUC wrote an [open-letter](#)¹⁸⁹ to Commissioner Vestager urging the Commission to reject Google's auction-based proposal:

¹⁸⁶ Extract from [Google's Influence over its Network of Influencers](#)

¹⁸⁷ <https://uk.reuters.com/article/uk-eu-google-antitrust-exclusive/exclusive-google-offers-to-treat-rivals-equally-via-auction-sources-idUKKCN1BT141>

¹⁸⁸ In a pay-for-placement model, merchants bid for placement and the amount a merchant is willing to pay is a determining factor in where its offers are placed. In such models, product listings are not sorted by price, but instead prioritise offers from merchants willing to pay Google the most money for a click.

¹⁸⁹ http://www.beuc.eu/publications/beuc-x-2017-098_google_case-consumer_concerns_on_auction-based_model_for_shopping_services.pdf

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

28 September 2017 – Google’s CSS Auction

Google’s auction-based “Compliance Mechanism” (the CSS Auction) went live.

Foundem published a brief [interactive presentation](#)¹⁹⁰ explaining why Google’s CSS Auction is brazenly non-compliant with the Decision’s required equal treatment remedy.

On 7 November, Foundem followed up with a more detailed [second presentation](#)¹⁹¹ on the same topic.

December 2017

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

Prestige Gifting and the *CCIA* applied for leave to Intervene in support of Google.

18 December 2017

The Commission published a [Non-Confidential Version](#)¹⁹² of the Prohibition Decision.

31 January 2018

The Commission filed its *Defence* of the Prohibition Decision with the Court.

8 February 2018

Wired Magazine published an article on Foundem: [Google’s nemesis: meet the British couple who took on a giant, won... and cost it £2.1 billion](#)¹⁹³.

And here is the accompanying [podcast interview](#)¹⁹⁴.

20 February 2018

The New York Times Magazine published a cover story on [The Case Against Google](#)¹⁹⁵.

28 February 2018

Foundem wrote an [open letter](#)¹⁹⁶ to Commissioner Vestager, signed by 19 companies and associations from across the comparison shopping, travel search, local search, digital mapping, and publishing sectors:

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

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

¹⁹⁰ http://www.foundem.co.uk/fmedia/Foundem_Sep_2017_Undead_Auction/

¹⁹¹ http://www.foundem.co.uk/fmedia/Foundem_Nov_2017_Undead_Auction_Part_2/

¹⁹² http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

¹⁹³ <http://www.wired.co.uk/article/fine-google-competition-eu-shivaun-adam-raff>

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

¹⁹⁵ <https://www.nytimes.com/2018/02/20/magazine/the-case-against-google.html>

¹⁹⁶ <http://www.searchneutrality.org/google/open-letter-to-commissioner-vestager-feb-2018>

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

March 2018

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

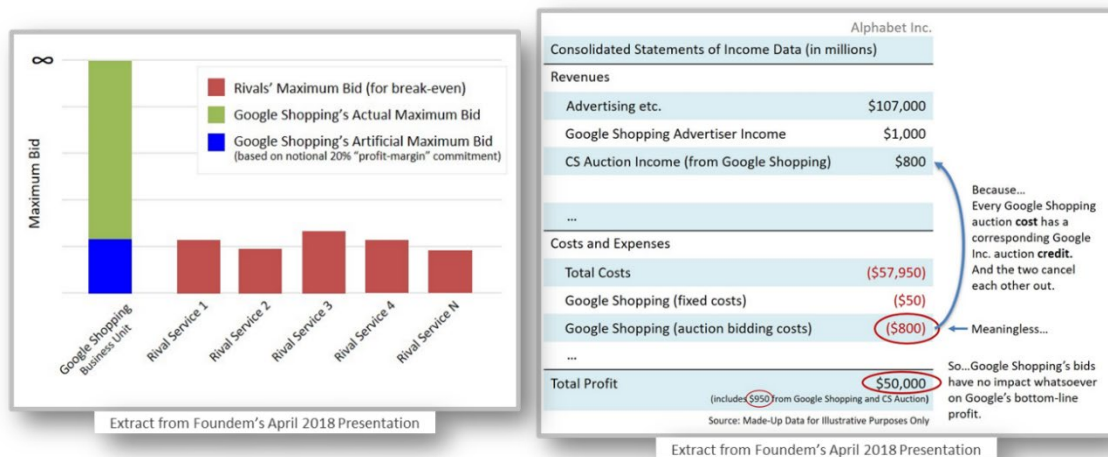
In March 2018, Google started to trial a CSS Partner Programme, offering rivals a 20-30% rebate on their Google auction costs. Presumably, the expectation was that this time-limited offer would, at least temporarily, allow more rivals to win the auctions and thereby create the illusion of a functioning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

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

18 April 2018

Foundem published an [online presentation](#)¹⁹⁷, demonstrating that Google's participation in its own CSS auction wasn't real. Whereas rival CSSs are compelled to bid away their profits to Google (and with it their incentive and ability to innovate and grow), Google Shopping's bids cost it nothing—its bids are just meaningless internal accounting, paid from one Google pocket into another.

Indeed, the only real purpose of these Google Shopping "bids" is to impose an artificial limit on Google's otherwise unlimited ability to outbid its rivals and win the auction:



7 May 2018

Google filed its *Reply* to the Commission's Defence with the Court.

June 2018 – The Birth of the Fake CSSs

After the cash-back incentives of Google's CSS Partner Programme failed to either attract more CSSs or allow them to consistently outbid the meaningless, internal accounting, bids of Google's own CSS, Google began quietly reaching out to Ad Agencies and encouraging them to participate in the CSS Auction by posing as CSSs. By becoming a "Google certified Comparison Shopping Partner" these ad agencies could benefit from the cash-back incentives offered to CSSs, without making any substantial

¹⁹⁷ http://www.foundem.co.uk/fmedia/Foundem_Apr_2018_Final_Debunking_of_Google_Auction_Remedy/

changes to their business model or websites. As one of these Ad Agencies (Croud) explained to its merchant clients:¹⁹⁸

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

After privately notifying the Commission of this profoundly troubling development, Foundem published a [blog post](#)¹⁹⁹ to expose some of the motivations and behind the scenes machinations of this highly secretive process.

18 July 2018 – Android Prohibition Decision

The European Commission adopted a Prohibition Decision²⁰⁰ in the Google Android case, fining Google €4.34 billion for imposing illegal restrictions on Android device manufacturers and mobile network operators to cement its dominant position in general internet search.

20 July 2018

The Commission filed its *Rejoinder* to Google’s Reply.

5 October 2018

[Sky News piece](#) on the rise of the Fake CSSs in Google’s CSS Auction²⁰¹.

22 November 2018

Foundem wrote an [open letter](#)²⁰² to Commissioner Vestager urging the Commission to commence non-compliance proceedings against Google’s CSS Auction. This letter, which was signed by 14 leading European CSSs, reaffirmed that Google’s CSS Auction was neither compliant nor effective and pointed out the dangers of allowing Google’s growing use of Fake CSSs to create the veneer of a functioning comparison shopping market:

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

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

¹⁹⁸ <https://croud.com/blog/croud/google-comparison-shopping-croud-becomes-first-accredited-uk-agency-partner/>

¹⁹⁹ http://www.foundem.co.uk/The_Google_SpendMatch_Debacle.pdf

²⁰⁰ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581

²⁰¹ https://www.youtube.com/watch?v=9ES8F_idAJI&feature=youtu.be

²⁰² <http://www.searchneutrality.org/google/comparison-shopping-services-open-letter-to-commissioner-vestager>

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

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

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

7 December 2018

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

17 December 2018

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

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

15 March 2019

The deadline for Interveners to submit their Statements in Intervention.

1 June 2019

The *WSJ* reports that the U.S. DOJ is planning to revisit the issues examined by the failed FTC investigation five years earlier and open a fresh antitrust investigation into Google/Alphabet.

21 June 2019

Google submitted its Observations on the Statements in Intervention.

10 September 2019

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

October 2019

Foundem met with the U.S. DOJ and various lawmakers to highlight the immensely harmful and anti-competitive power of Google's two-headed search manipulation practices. In particular, Foundem explained Google's 2013 transition from the link-based, traffic-diverting abuse of Product Universals to the link-and-ad-based, traffic-and-revenue diverting abuse of Shopping Units, all of which had taken place since the FTC had prematurely closed its investigation.

1 November 2019

Foundem published an [online presentation](#)²⁰³ demonstrating that Google's CSS Auction was not only non-compliant with the required equal-treatment standard set out in the Decision, but was in fact a direct continuation of the same ad-based abuse identified and prohibited by the Decision.

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



29 November 2019

The New Commission was approved by the European Parliament. Vice-President Vestager, began her second term as EU Competition Commissioner.

3 December 2019

Google founders Larry Page and Sergey Brin announced that Google CEO Sundar Pichai would now also become the CEO of parent company Alphabet.²⁰⁴

19 December 2019

Google and the EC received a set of written questions from the General Court. Some of these questions required written answers by 20 January 2020, and the remainder were to be answered during the oral submissions at the Hearing itself, scheduled for 12-14 February 2020.

12-14 February 2020 – The Appeal Hearing before the General Court in Luxembourg

The three-day hearing of Google's Appeal of the EC's June 2017 Prohibition Decision took place in Luxembourg.

²⁰³ http://www.foundem.co.uk/fmedia/Foundem_Google_CSS_Auction_Revenue_Counts_As_Traffic_Nov_2019

²⁰⁴ <https://techcrunch.com/2019/12/03/sundar-pichai-alphabet-ceo/>