

Brussels, 27 April 2017

Johannes Laitenberger, Director General
DG Competition
European Commission

Cc: Linsey McCallum, Cecilio Madero Villarejo, Guillaume Lorient, Nicholas Banasevic,
Brice Allibert, Friedrich Wenzel Bulst

Dear Mr Laitenberger

We, the undersigned companies and associations, from a variety of different vertical search businesses, yet all similarly negatively affected by Google's abusive conduct outlined in the Statement of Objections ("SO") and the Supplementary Statement of Objections ("SSO") by the European Commission ("EC") in Case *COMP/C3/MP/se/AT.39740 – Google Search (Shopping)*, share a common view of the most appropriate remedies in this case.

We fully endorse the SO and SSO in the aforementioned case. The EC has correctly identified the relevant market for general search services, which is distinct from any and all specialised search services, and has properly outlined the nature and effect of the abusive conduct in which Google has engaged in that market. While the SO and SSO clearly note conduct on Google's part which is intended to divert traffic from rival comparison shopping services to Google's own competing service, we note that the same conduct applies to other categories of specialised search.

The EC is able in the comparison shopping case to craft remedies addressing Google's abusive conduct in the general search market that will bring Google's abusive behaviour to an end regardless of the specialised search market in which the effect of the abusive behaviour manifests itself.

We, therefore, urge the EC simply to adopt a prohibition decision that prevents Google from continuing its abusive behaviour in the market for general search services. The decision should set out unambiguous principles that prohibit future anti-competitive conduct by Google as it relates to specialised search services. There is no need for the Commission to prescribe any detailed search layout. The obligation should be on Google – and Google alone – to alter its conduct and to bring itself into compliance with the EC's prohibition order. As active industry participants, we stand ready to assist the EC with its efforts to ensure Google's compliance.

Google has vast engineering resources such that it can move as quickly as it wishes to bring its abuse to an end. Accordingly, the EC should specify a deadline for implementation of the remedy of maximum 90 days, and in case of non-compliance with the prescribed remedy within that period, impose the highest possible daily fines.

At this point we also see no need to prescribe specific user interface implementations, and instead to assess whether Google's implementations are compliant with the principles set out by the EC in its prohibition decision. Such prescriptions may make it more difficult to adopt a principles-based remedy in relation to abuses in the market for general search services that have effects other than in the relevant adjacent market. They would also likely be used by Google to circumvent the remedy. The EC must provide for solid anti-circumvention mechanisms and ensure that the remedy remains flexible enough to accommodate and address equivalent anti-competitive conduct across multiple specialised search services, as well as technology shifts and competitive developments.

The principles identified by the EC in the SO and the SSO are appropriate. In view of this, we urge the EC to ensure that its prohibition decision requires Google to implement the following principles in altering its SERP to cease its current abusive behaviour:

— Non-discrimination

Google must not discriminate in favour of its own vertical products over those of rivals. This means that its own specialised search services must not benefit from different hardwiring and/or more favourable presentation compared to those of rivals – in terms of placement on the SERP, location on the page, ranking (*e.g.*, by subjecting rival products to penalties, criteria, rules, or other conditions that are not applied equally to its own services), or the quality of the display (*e.g.*, features, colour, images, map, size, and prominence). The display of search results on the SERP should reflect the non-discriminatory relevance of those results to each search query based on neutral search algorithms. Google's search algorithms must use a non-discriminatory mechanism to crawl, index, rank, display, and present all specialised services, including Google's own.

— Transparency *vis-à-vis* users

In addition to non-discrimination, Google must make clear to users on the SERP what constitutes: (i) organic/natural/relevance-based search results, and (ii) "pay-for-placement" advertising *i.e.*, where the amount an advertiser is willing to pay can have a material effect on placement. For example, in the context of AdWords or any successor.

We believe these principles provide a robust but appropriately flexible framework to secure access to search results for Internet users and fair competition among websites, including for smaller, newer or more specific service providers. They can easily be implemented by Google and monitored by the EC. Furthermore, they can be applied equally both to desktop and mobile and to all kinds of search queries (*e.g.*, voice search). They also leave Google the possibility to innovate within its own specialised search products and in the display of the SERP results without disturbing the integrity of Google's general search algorithms.

We urge the EC to take rapid action against Google in relation to the concerns it has identified in both the SO and SSO. A promptly implemented remedy and consistent compliance with that remedy are crucial to restoring competition. Indeed, immediate and durable relief is essential to the survival of all the

specialised search services concerned, which rely on the organic results appearing on the first results page. Further delays will cause irreparable harm to consumer choice and to a competitive internet, in particular to SMEs (such as, e.g., Twenga and Foundem) whose presence is fundamental to a dynamic and innovative economy. The EC should also closely monitor Google's compliance with the remedy to be imposed, and consider applying the highest possible periodic penalty payments in the case of non-compliance with its prohibition decision.

Thank you very much for your consideration.

We remain at your disposal to discuss any questions you may have.

Kind regards.



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Sylvie Fodor, Executive Director
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