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••••• - **European Commission's Antitrust case AT.39740 "Google Search (Shopping)"**

- Guidelines for BIE interactive classes and Case 1
- Executive summary of Case 1 (Commission's Press Release of 27.6.2017)
- The Commission's Decision of 27.6.2017 (selected parts)

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Guidelines for BIE interactive classes – 2019/2020

Interactive classrooms are attended by students on a voluntary basis.

- Students form teams of 4 at the beginning of the course.
- Each team is assigned 3 interactive classes of 1 hour and a half (Interactive classes – materials folder). Each student has to check the time slot and the case to which the team is assigned. Check the exact hours because this type of classes may start in advance and/or be longer than the usual classes.
- One week before the scheduled interactive class, the case study material and the “macro topics” for questions will be uploaded in the Beep site (check the Interactive classes – materials folder). Each student has to carefully read the case study material and guidelines before the class date.
- Around 2 days in advance, the team (corresponding student) receives an email that assigns 1 specific question on the case, and can start working on the question.

On the class date, the case discussion will have place in the virtual Team class. To keep the number of each interactive class manageable, each team will participate only to the three dates assigned. Since the environment is unusual for interactive classes, we all have to be ready to adapt to unforeseen problems, and to practice self-discipline during the discussion.

The time slot will be approximately subdivided in:

- Brief introduction by the teacher: 5 min.
- Team-work: Around 20 minutes to talk with teammates and teachers, to refine answers/comments to the question and to organize the discussion (for example, who will talk, with which order, etc.). The final contribution must be summarized in 1 slide (plus 1 possible additional slide with data tables/graphs). The slide should strictly focus on the question. Then the corresponding author of each team (the one who sent the email to form the team) should upload the presentations in the ad-hoc Beep folder we will create for each Case, and this will happen before starting the discussion. The slide file should be saved with “Team number Case number” as a name (e.g. “Team 21 Case 2”). Exceptionally, only if the Beep website is down, the presentation can be sent by email to the teacher. In case of further technical issues, we will give you directions during the class.
- Discussion: Around 60 minutes.
 - The teacher will pose the assigned questions one by one, and will invite one by one the teams that worked on the question to take the floor, and to answer and/or to discuss the answers given by other teams.
 - The invited team should switch their audio on. If possible, open the video too (blur the background if you prefer). Where necessary to support oral arguments, teams may use their presentation. Owing to time constraints and fairness between teams, teams must focus on own question, and should not interrupt other speakers. However, be aware that during the discussion, questions on main topics may be posed to all groups: it is therefore important to read carefully the whole case assigned.
 - In any case, the teacher will read all the presentations.
- Wrap up by the teacher: 5 minutes

Teachers will reward the discussions (and other class interactions) and presentations that show a deep understanding of the issues at stake and the capability to evaluate the causes and effects of real-world business contexts and conducts. This is evaluated through the following criteria: Quality

of discussion and presentation (linkages with the course content, clearness, completeness); Originality; Individual and team engagement in the interactive class [and as already said diversity of the team in terms of country and gender will be favourably kept into consideration].

Having said that this is more a learning opportunity rather than a mere way to increase your score, note that this activity can lead to max (max!) 3 extra points on the top of the exam grade. These extra-point(s) will result from the average grade over the 3 classes (published with the assessment of the first exam call).

Guidelines for Case 1 - European Commission's Antitrust case AT.39740 "Google Search (Shopping)"

Have you already read carefully the Guidelines for BIE interactive classes?

Materials

The following pages are the main source to refer. Please focus on economic analyses; legal arguments are out of the course scope.

Preparation

In preparation of the interactive class, students should read carefully the present document and learn about the following macro-topics (highlight concepts or data or any other information related to them).

1. Google's services and sources of revenues
2. Evidence of Google's dominant position in the national markets for general search services, with a focus on market shares and the presence of barriers to entry and expansion
3. Google's abusive conducts in general search services and their effects on the market for comparison shopping services

Question to answer

Each team will be assigned one specific question within one of the above macro-topics. In order to answer your team question

- You should rely on the contents of the BIE lectures and information included in the Case 1 - Google Search (Shopping).pdf document.
- You can also refer to other documents provided that
 - you cite the source
 - information sources are high-quality, e.g. well-reputed magazines newspapers or websites, academic journals, governmental offices, international organizations, business associations or corporations.
- Finally, you may also use your own personal arguments, provided that they are consistent with the BIE course contents.



European Commission - Press release

Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service

Brussels, 27 June 2017

The European Commission has fined Google €2.42 billion for breaching EU antitrust rules. Google has abused its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service.

The company must now end the conduct within 90 days or face penalty payments of up to 5% of the average daily worldwide turnover of Alphabet, Google's parent company.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"Google has come up with many innovative products and services that have made a difference to our lives. That's a good thing. But Google's strategy for its comparison shopping service wasn't just about attracting customers by making its product better than those of its rivals. Instead, Google abused its market dominance as a search engine by promoting its own comparison shopping service in its search results, and demoting those of competitors."*

What Google has done is illegal under EU antitrust rules. It denied other companies the chance to compete on the merits and to innovate. And most importantly, it denied European consumers a genuine choice of services and the full benefits of innovation."

Google's strategy for its comparison shopping service

Google's flagship product is the Google search engine, which provides search results to consumers, who pay for the service with their data. Almost 90% of Google's revenues stem from adverts, such as those it shows consumers in response to a search query.

In 2004 Google entered the separate market of comparison shopping in Europe, with a product that was initially called "Froogle", re-named "Google Product Search" in 2008 and since 2013 has been called "Google Shopping". It allows consumers to compare products and prices online and find deals from online retailers of all types, including online shops of manufacturers, platforms (such as Amazon and eBay), and other re-sellers.

When Google entered comparison shopping markets with Froogle, there were already a number of established players. Contemporary evidence from Google shows that the company was aware that Froogle's market performance was relatively poor (one internal document from 2006 stated *"Froogle simply doesn't work"*).

Comparison shopping services rely to a large extent on traffic to be competitive. More traffic leads to more clicks and generates revenue. Furthermore, more traffic also attracts more retailers that want to list their products with a comparison shopping service. Given Google's dominance in general internet search, its search engine is an important source of traffic for comparison shopping services.

From 2008, Google began to implement in European markets a fundamental change in strategy to push its comparison shopping service. This strategy relied on Google's dominance in general internet search, instead of competition on the merits in comparison shopping markets:

- **Google has systematically given prominent placement to its own comparison shopping service:** when a consumer enters a query into the Google search engine in relation to which Google's comparison shopping service wants to show results, these are displayed at or near the top of the search results.
- **Google has demoted rival comparison shopping services in its search results:** rival comparison shopping services appear in Google's search results on the basis of Google's generic search algorithms. Google has included a number of criteria in these algorithms, as a result of which rival comparison shopping services are demoted. Evidence shows that even the most highly ranked rival service appears on average only on page four of Google's search results, and others appear even further down. Google's own comparison shopping service is not subject to Google's

generic search algorithms, including such demotions.

As a result, Google's comparison shopping service is much more visible to consumers in Google's search results, whilst rival comparison shopping services are much less visible.

The evidence shows that consumers click far more often on results that are more visible, i.e. the results appearing higher up in Google's search results. Even on a desktop, the ten highest-ranking generic search results on page 1 together generally receive approximately 95% of all clicks on generic search results (with the top result receiving about 35% of all the clicks). The first result on page 2 of Google's generic search results receives only about 1% of all clicks. This cannot just be explained by the fact that the first result is more relevant, because evidence also shows that moving the first result to the third rank leads to a reduction in the number of clicks by about 50%. The effects on mobile devices are even more pronounced given the much smaller screen size.

This means that by giving prominent placement only to its own comparison shopping service and by demoting competitors, Google has given its own comparison shopping service a significant advantage compared to rivals.

Breach of EU antitrust rules

Google's practices amount to an abuse of Google's dominant position in general internet search by stifling competition in comparison shopping markets.

Market dominance is, as such, not illegal under EU antitrust rules. However, dominant companies have a special responsibility not to abuse their powerful market position by restricting competition, either in the market where they are dominant or in separate markets.

- Today's Decision concludes that **Google is dominant in general internet search markets throughout the European Economic Area (EEA)**, i.e. in all 31 EEA countries. It found Google to have been dominant in general internet search markets in all EEA countries since 2008, except in the Czech Republic where the Decision has established dominance since 2011. This assessment is based on the fact that Google's search engine has held very high market shares in all EEA countries, exceeding 90% in most. It has done so consistently since at least 2008, which is the period investigated by the Commission. There are also high barriers to entry in these markets, in part because of network effects: the more consumers use a search engine, the more attractive it becomes to advertisers. The profits generated can then be used to attract even more consumers. Similarly, the data a search engine gathers about consumers can in turn be used to improve results.
- **Google has abused this market dominance by giving its own comparison shopping service an illegal advantage.** It gave prominent placement in its search results only to its own comparison shopping service, whilst demoting rival services. It stifled competition on the merits in comparison shopping markets.

Google introduced this practice in all 13 EEA countries where Google has rolled out its comparison shopping service, starting in January 2008 in Germany and the United Kingdom. It subsequently extended the practice to France in October 2010, Italy, the Netherlands, and Spain in May 2011, the Czech Republic in February 2013 and Austria, Belgium, Denmark, Norway, Poland and Sweden in November 2013.



The effect of Google's illegal practices

Google's illegal practices have had a significant impact on competition between Google's own comparison shopping service and rival services. They allowed Google's comparison shopping service to make significant gains in traffic at the expense of its rivals and to the detriment of European consumers.

Given Google's dominance in general internet search, its search engine is an important source of traffic. As a result of Google's illegal practices, traffic to Google's comparison shopping service increased significantly, whilst rivals have suffered very substantial losses of traffic on a lasting basis.

- Since the beginning of each abuse, Google's comparison shopping service has increased its traffic 45-fold in the United Kingdom, 35-fold in Germany, 19-fold in France, 29-fold in the Netherlands, 17-fold in Spain and 14-fold in Italy.
- Following the demotions applied by Google, traffic to rival comparison shopping services on the other hand dropped significantly. For example, the Commission found specific evidence of sudden drops of traffic to certain rival websites of 85% in the United Kingdom, up to 92% in Germany and 80% in France. These sudden drops could also not be explained by other factors. Some competitors have adapted and managed to recover some traffic but never in full.

In combination with the Commission's other findings, this shows that Google's practices have stifled competition on the merits in comparison shopping markets, depriving European consumers of genuine choice and innovation.

Evidence gathered

In reaching its Decision, the Commission has gathered and comprehensively analysed a broad range of evidence, including:

- 1) contemporary documents from both Google and other market players;
- 2) very significant quantities of real-world data including 5.2 Terabytes of actual search results from Google (around 1.7 billion search queries);
- 3) experiments and surveys, analysing in particular the impact of visibility in search results on consumer behaviour and click-through rates;
- 4) financial and traffic data which outline the commercial importance of visibility in Google's search results and the impact of being demoted; and
- 5) an extensive market investigation of customers and competitors in the markets concerned (the Commission addressed questionnaires to several hundred companies).

Consequences of the Decision

The Commission's fine of €2 424 495 000 takes account of the duration and gravity of the infringement. In accordance with the [Commission's 2006 Guidelines on fines](#) (see [press release](#) and

[MEMO](#)), the fine has been calculated on the basis of the value of Google's revenue from its comparison shopping service in the 13 EEA countries concerned.

The Commission Decision requires Google to stop its illegal conduct within 90 days of the Decision and refrain from any measure that has the same or an equivalent object or effect. In particular, the Decision orders Google to comply with the simple principle of giving **equal treatment** to rival comparison shopping services and its own service:

Google has to apply the same processes and methods to position and display rival comparison shopping services in Google's search results pages as it gives to its own comparison shopping service.

It is Google's sole responsibility to ensure compliance and it is for Google to explain how it intends to do so. Regardless of which option Google chooses, the Commission will monitor Google's compliance closely and Google is under an obligation to keep the Commission informed of its actions (initially within 60 days of the Decision, followed by periodic reports).

If Google fails to comply with the Commission's Decision, it would be liable for non-compliance payments of up to 5% of the average daily worldwide turnover of Alphabet, Google's parent company. The Commission would have to determine such non-compliance in a separate decision, with any payment backdated to when the non-compliance started.

Finally, Google is also liable to face civil actions for damages that can be brought before the courts of the Member States by any person or business affected by its anti-competitive behaviour. The new EU [Antitrust Damages Directive](#) makes it [easier for victims of anti-competitive practices to obtain damages](#).

Other Google cases

The Commission has already come to the preliminary conclusion that Google has abused a dominant position in two other cases, which are still being investigated. These concern:

- 1) the [Android operating system](#), where the Commission is concerned that Google has stifled choice and innovation in a range of mobile apps and services by pursuing an overall strategy on mobile devices to protect and expand its dominant position in general internet search; and
- 2) [AdSense](#), where the Commission is concerned that Google has reduced choice by preventing third-party websites from sourcing search ads from Google's competitors.

The Commission also continues to examine Google's treatment in its search results of other specialised Google search services. Today's Decision is a precedent which establishes the framework for the assessment of the legality of this type of conduct. At the same time, it does not replace the need for a case-specific analysis to account for the specific characteristics of each market.

Background

See also [Factsheet](#).

Today's Decision is addressed to Google Inc. and Alphabet Inc., Google's parent company.

Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement prohibit abuse of a dominant position. Today's Decision follows two Statements of Objections sent to Google in [April 2015](#) and [July 2016](#).

More information on this investigation is available on the Commission's [competition](#) website in the public [case register](#) under the case number [39740](#).

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Attachments

[Infographic Google_en.pdf](#)



EUROPEAN
COMMISSION

Brussels, 27.6.2017
C(2017) 4444 final

COMMISSION DECISION

of 27.6.2017

**relating to proceedings under Article 102 of the Treaty on the Functioning of the
European Union and Article 54 of the Agreement on the European Economic Area**

(AT.39740 - Google Search (Shopping))

(Only the English text is authentic)

1. INTRODUCTION

- (1) This Decision is addressed to Google Inc. (“Google”) and to Alphabet Inc. (“Alphabet”).
- (2) The Decision establishes that the more favourable positioning and display by Google, in its general search results pages, of its own comparison shopping service compared to competing comparison shopping services (the “Conduct”) infringes Article 102 of the Treaty and Article 54 of the Agreement on the European Economic Area (“EEA Agreement”).³
- (3) This Decision is structured as follows. Section 2 provides an overview of Google’s business activities. Section 3 summarises the procedure relating to the proceedings in this case to date. Section 4 addresses Google’s allegations that the Commission’s investigation has suffered from procedural irregularities. Sections 5 to 11 set out the Commission’s conclusions regarding the relevant product and geographic markets, Google’s dominant position, Google’s abuse of that dominant position, the Commission’s jurisdiction, the effect of the abuse on trade between Member States and between Contracting Parties to the EEA Agreement, the duration of the abuse and the addressees of this Decision. Sections 12 to 14 conclude by describing the remedies and periodic penalty payments necessary to bring the infringement to an end and explaining the amount of the fine.

2. GOOGLE’S BUSINESS ACTIVITIES

2.1. The undertaking

- (4) Google is a multinational technology company based in the United States of America (“the US”), specialising in internet-related services and products that include online advertising technologies, search, cloud computing, software and hardware. It offers various services in the territories of all the Contracting Parties to the EEA Agreement.
- (5) In August 2015, Google announced its intention to create a new holding company, Alphabet. The reorganisation was completed on 2 October 2015. Since that date, Google has been a wholly-owned subsidiary of Alphabet, which has continued to be the umbrella company for the internet interests of Alphabet.
- (6) According to the consolidated financial statements of Alphabet, its turnover was USD 90 272 million (approximately EUR 81 597 million⁴) for the year running from 1 January 2016 to 31 December 2016.⁵

³ Throughout this Decision, whenever the Commission refers to the more favourable positioning and display in Google’s general search results pages of Google’s own comparison shopping service compared to competing comparison shopping services, the Commission means the more favourable positioning and display of: (i) links to Google’s own comparison shopping service (see section 2.2.5, recital (29), and section 7.2.1.3, recitals (408) to (411)); and/or (ii) parts or all of Google’s own comparison shopping service (see section 2.2.5, recital (32), and section 7.2.1.3, recitals (412) to (423)).

⁴ Amount converted from USD into EUR using the average annual reference exchange rate published by the European Central Bank for the year 2016, i.e. 1 USD = 0.9039 EUR (https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-usd.en.html).

2.2. Overview of Google's business activities

(7) Google's business model is based on the interaction between the online products and services it offers free of charge and its online advertising services from which it generates the main source of its revenue.⁶

2.2.1. Google Search

(8) Google's flagship online service is its general search⁷ engine, Google Search, which is accessible either through Google's main website in the US (www.google.com), or through localised websites. Google also powers the search functions of certain third party websites.

(9) Google Search allows users to search for information across the internet. Google Search exists for static devices (personal computers and laptops) and for mobile devices (smartphones and tablets). While the user interface may vary depending on the type of device, the underlying technology is essentially the same.

(10) When a user enters a keyword or a string of keywords (a "query") in Google Search, Google's general search results pages return different categories of search results, including generic search results⁸ (as described in section 2.2.2) and specialised search results⁹ (as described in section 2.2.4). In addition, Google Search may return a third category of results, namely online search advertisements (as described in section 2.2.3).

(11) When a user enters a query, Google's programmes essentially run two sets of algorithms: generic search algorithms and specialised search algorithms.¹⁰

(12) Google's generic search algorithms are designed to rank pages containing any possible content. Google applies these algorithms to all types of pages, including the web pages of competing specialised search services. By contrast, specialised search algorithms "*are specifically optimized for identifying relevant results for a particular type of information*",¹¹ such as news, local businesses or product information.

(13) The results of these two sets of algorithms – the generic search results and the specialised search results – appear together on Google's general search results pages.

2.2.2. Generic search results

(14) Generic search results typically appear on the left side of Google's general search results pages in the form of blue links with short excerpts ("*snippets*") in order of

⁵ Alphabet's Form 10-K Annual Report for the US fiscal year ending 31 December 2016, available at https://abc.xyz/investor/pdf/20161231_alphabet_10K.pdf, downloaded on 3 March 2017.

⁶ Google's Form 10-K Annual Report for the US fiscal year ending 31 December 2015, available at <https://www.sec.gov/Archives/edgar/data/1288776/000165204416000012/goog10-k2015.htm>, downloaded on 3 March 2017.

⁷ "General search" is also known as "online search" or "horizontal search". The term "general search" is used throughout this Decision.

⁸ "Generic search results" are also known as "organic search results" or "natural search results". The term "generic search results" is used throughout this Decision.

⁹ "Specialised search" is also referred to as "vertical search" or "universal search". The terms "specialised search" and "specialised search results" are used throughout this Decision.

¹⁰ Google's submission [...].

¹¹ Google's submission [...].

their “*web rank*”. Generic search results can link to any page on the internet, including web pages of specialised search services competing with Google's specialised search services.

- (15) The delivery of generic search results involves three automated processes: crawling, indexing and serving.¹² Crawling is the process by which Google discovers new and updated web pages. Indexing is the process by which web pages and their content are catalogued and added to the Google index. Serving is the process by which, when a user enters a query, Google's programmes check the index for web pages that match the query, determine their relevance to the query and “*serve*” the results to the user.
- (16) To rank generic search results in response to a query, Google uses algorithms. It relies in particular on an algorithm called PageRank, which is “*a method for rating Web pages objectively and mechanically, effectively measuring the human interest and attention devoted to them*”.¹³ PageRank essentially measures the importance of a web page based on the number and quality of links to that page, the underlying assumption being that more important websites are likely to receive more links from other websites. Google applies a variety of adjustment mechanisms to the results of PageRank to improve the relevance of the generic search results on its general search results pages. PageRank and the adjustment mechanisms together determine the rank of a web page in generic search results on Google's general search results pages.
- (17) Google does not charge websites ranked in generic search results on its general search results pages and does not accept any payment that would allow websites to rank higher in these results.

2.2.3. *Online search advertising results*

- (18) In response to a user's query on Google Search, Google's general search results pages may also return search advertisements drawn from Google's auction-based online search advertising platform, AdWords (“AdWords results”).
- (19) AdWords results are not limited to specific categories of products, services or information. They typically appear on general search results pages above or below generic search results with a label informing users of their nature as advertisements (for example, “*Ads*”).¹⁴ AdWords results can be purchased by any advertiser and are not limited to particular categories of advertisers.
- (20) The appearance of AdWords results in response to a user's query involves two main elements. First, AdWords identifies a pool of relevant search advertisements by matching the keywords on which advertisers have associated their search advertisements with the keywords used in the query. Second, AdWords ranks the relevant search advertisements within the pool based on their “*Ad Rank*”. The ranking of a search advertisement depends on two factors: the maximum price an

¹² Google, “*Webmaster tools: How Google Search Works*”, available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=70897#content>, downloaded on 6 March 2015.

¹³ Sergey Brin and Larry Page, “*The PageRank Citation Ranking: Bringing Order to the Web*”, available at <http://ilpubs.stanford.edu:8090/422/1/1999-66.pdf>, downloaded on 6 March 2015.

¹⁴ Until February 2016, Google positioned AdWords results also on the right side of its general search results pages (see <https://searchenginewatch.com/2016/02/21/google-is-removing-all-right-hand-side-ads-on-serps-worldwide/>, downloaded on 21 March 2017).

advertiser has indicated it is willing to pay for each click on its search advertisement in a second-price auction¹⁵ and the quality rating of that search advertisement (known as “*Quality Score*”). The Quality Score is based among other things on a search advertisement’s predicted click-through rate.¹⁶ AdWords results that appear the most visibly on Google’s general search results pages are those with the highest Ad Rank scores.¹⁷

- (21) When a user clicks on an AdWords result, Google receives remuneration for that click from the advertiser owning the website to which the user is directed (known as the “*pay per click*” system).
- (22) AdWords results allow advertisers to lead interested users entering queries on Google Search to their websites, including in circumstances where these websites would otherwise not rank highly in generic search results on Google’s general search results pages. Specialised search services competing with services provided by Google often also purchase AdWords results.

2.2.4. *Specialised search results*

- (23) In response to a user query, Google’s general search results pages may also return specialised search results from Google’s specialised search services. In most instances, specialised search results are displayed with attractive graphical features, such as large scale pictures and dynamic information. Specialised search results in a particular category are positioned within sets referred to by Google as “*Universals*” or “*OneBoxes*”.¹⁸ They are in most instances positioned above generic search results, or among the first of them.
- (24) Google operates several search services that can be described as “specialised” because they group together results for a specific category of products, services or information (for example, “Google Shopping”, “Google Finance”, “Google Flights”, “Google Video”).¹⁹ In addition to the results returned in “*Universals*” or “*OneBoxes*”, Google’s specialised search services can also be accessed through menu-type links displayed at the top of Google’s search results pages.
- (25) Certain of Google’s specialised search services are based on paid inclusion. Third party websites have to enter into an agreement with Google in order to be listed in the search results of such a specialised search service. In most instances, such an agreement provides for a payment based on a pay per click system. This is the case for instance for Google Shopping (see section 2.2.5).

¹⁵ A second-price auction is an auction in which the bidder who submitted the highest bid is awarded the object (or service) being sold and pays a price equal to the amount bid by the second highest bidder.

¹⁶ The predicted click-through rate represents the probability that a search advertisement will receive a click if placed for a particular query (see Google’s reply to [...] the Commission’s request for information [...]).

¹⁷ Google’s reply to [...] the Commission’s request for information [...].

¹⁸ Google’s submission [...].

¹⁹ Google’s submission [...].

2.2.5. *Google's comparison shopping service*

- (26) Google's comparison shopping service is one of Google's specialised search services. In response to queries, it returns product offers from merchant websites, enabling users to compare them.
- (27) Google launched the first version of its comparison shopping service in December 2002 in the US under the brand name "Froogle". Froogle operated as a standalone website. Merchants did not have to pay to be listed in Froogle as it was monetised by advertisements. Google launched Froogle in the United Kingdom in October 2004²⁰ and in Germany in November 2004.²¹
- (28) In April 2007, Google renamed Froogle as "Google Product Search"²² and subsequently launched along the standalone Google Product Search website a dedicated "Universal" or "OneBox" for Google Product Search, referred to as the "Product Universal". Google did not, however, change the business model of its comparison shopping service: like Froogle, merchants did not have to pay to be listed in Google Product Search as it was monetised by advertisements.
- (29) The Product Universal comprised specialised search results from Google Product Search, accompanied by one or several images and additional information such as the price of the relevant items. The results within the Product Universal, including the clickable images, in most cases led the user to the standalone Google Product Search websites. There was also a header link leading to the main website of Google Product Search.
- (30) The Product Universal was launched in October 2007 in the US, in January 2008 in the United Kingdom and Germany, in October 2010 in France and in May 2011 in Italy, the Netherlands and Spain.²³
- (31) In May 2012, Google renamed Google Product Search as "Google Shopping" and revamped the Product Universal which was renamed first "Commercial Unit" and then "Shopping Unit". At the same time, Google also changed the business model of its comparison shopping service (both the standalone website and the Universal) to a "paid inclusion" model, in which merchants pay Google when their product is clicked on in Google Shopping, to more closely reflect the industry standard.²⁴
- (32) In the same way as the Product Universal comprised specialised search results from Google Product Search, the Shopping Unit comprises specialised search results from Google Shopping, as illustrated by the screenshot below²⁵. Those results are commercially named "*Product Listing Ads*" – PLAs. Unlike for the Product

²⁰ Traffik, "Google Launches Froogle UK", 12 October 2004, available at <http://www.traffick.com/2004/10/google-launches-froogle-uk.asp>, downloaded on 6 March 2015.

²¹ Google blog, "Have a Very Froogle Friday", 25 November 2004, available at <https://googleblog.blogspot.be/2004/11/have-very-froogle-friday.html>, downloaded on 28 March 2017.

²² Google blog, "Back to Basics", 18 April 2007, available at <http://googleblog.blogspot.be/2007/04/back-to-basics.html>, downloaded on 6 March 2015.

²³ Google's submission [...].

²⁴ Google Commerce "Building a better shopping experience", 31 May 2012, available at <http://googlecommerce.blogspot.be/2012/05/building-better-shopping-experience.html>, downloaded on 6 March 2015.

²⁵ Screenshot taken on www.google.be on 21 June 2017.

Universal, however, the results within the Shopping Unit generally lead users directly to the pages of Google's merchant partners on which the user can purchase the relevant item.

The screenshot shows a Google search for "canon 70d". The search bar is at the top with the text "canon 70d" and a magnifying glass icon. Below the search bar are navigation tabs: "All", "Images", "Shopping", "Videos", "News", "More", "Settings", and "Tools". The "Shopping" tab is selected. Below the tabs, it says "About 7.540.000 results (0,56 seconds)".

The main content area is titled "Shop for canon 70d on Google" and is labeled "Sponsored". It contains five product listings, each with an image of the camera, a title, and a price:

- Canon EOS 70D body**: 899,00 € Kamera Express
- Reflexcamera Canon EOS 70D**: 919,00 € Fnac.be
- Canon EOS 700D + ...**: 479,00 € Kamera Express
- Canon EOS 70D Body + ...**: 1.079,00 € Art & Craft
- Canon EOS 70D**: 799,00 € Rhinocamera.nl

Below the shopping unit are several text-based search results:

- Canon® EOS 70D - La boutique officielle - canon.be**: (Ad) store.canon.be/70D. Quality of image and Full HD videos. Free delivery and return. Follow your order - Free delivery/return - Product help online. Offers: Gain 365 summer days, Canon novelties, Be inspired with Canon, Canon hybrid photo devices.
- DSLR | EOS 70D | Canon USA**: https://www.usa.canon.com/internet/portal/us/home/products/details/.../dslr/eos-70d. Changing the way users capture still images and video with a DSLR camera, Canon proudly introduces the EOS 70D – a trailblazing powerhouse featuring a ...
- Canon EOS 70D Body | Canon Online Store**: https://shop.usa.canon.com/shop/en/catalog/eos-70d-body. Rating: 4,4 - 141 reviews - 799,00 US\$ - Out of stock. Dual Pixel CMOS AF on the EOS 70D is a revolutionary Canon technology that raises Live View shooting to a convenient and comfortable complement to ...
- Canon 70D DSLR Camera Body 8469B002 B&H Photo Video**: https://www.bhphotovideo.com/c/.../canon_8469b002_canon_eos_70d_dslr.html. Rating: 4,5 - 645 reviews - 799,00 US\$ - In stock. Canon EOS 70D. ... Canon 70D overview. ... The Canon EOS 70D DSLR Camera features a 20.2 megapixel APS-C CMOS sensor and DIGIC 5+ image processor to ensure high-resolution images and excellent low-light sensitivity. Camera Format: APS-C (1.6x Crop Factor) Sensor Type / Size: CMOS, 22.5 x 15 mm. Lens Mount: Canon EF; Canon EF-S Memory Card Type: SD; SDHC; SDXC

- (33) The Shopping Unit and the standalone Google Shopping website were first launched in the US in May 2012, with the transition completed by autumn 2012.
- (34) Subsequently, the Shopping Unit was launched on Google's domains in the EEA as follows: (i) in February 2013 in the Czech Republic, France, Germany, Italy, the Netherlands, Spain and the United Kingdom; and (ii) in November 2013 in Austria,

Belgium, Denmark, Norway, Poland and Sweden.²⁶ Google also started running a Shopping Unit experiment in Ireland in September 2016.²⁷

- (35) As for the standalone Google Shopping website, it was launched (i) in February 2013 in the Czech Republic, France, Germany, Italy, the Netherlands, Spain and the United Kingdom;²⁸ (ii) in September 2016 in Austria, Belgium, Denmark, Norway, Poland and Sweden; and (iii) in Ireland in January 2017.²⁹

2.2.6. *Other Google products and services*

- (36) Google offers a number of other online products and services free of charge, including an open-source operating system for smartphones and tablets (“Android”), an app store for the Android operating system (“Google Play”), an internet browser (“Google Chrome”), a web-based email account service (“Gmail”), a web mapping service (“Google Maps”), a file storage and editing service offering a suite of office applications (“Google Drive”), an instant messaging and video chat platform (“Google Hangouts”), a set of search tools (“Google Toolbar”) and a video-sharing website (“YouTube”).
- (37) Google also sells hardware products such as digital media players (“Chromecast”), laptops (“Chromebooks”), smartphones and tablets (“Google Nexus”).

5.2. **The relevant product markets**

- (154) The Commission concludes that the relevant product markets for the purpose of this case are the market for general search services (section 5.2.1) and the market for comparison shopping services (section 5.2.2).

5.3.2. *The national markets for comparison shopping services*

- (256) For the reasons set out in recitals (257)-(263), the Commission concludes that the markets for comparison shopping services are national in scope.

²⁶ SO Response, paragraphs 76-77.

²⁷ Google's reply to [...] the Commission's request for information [...].

²⁸ SO Response, paragraphs 76-77.

²⁹ Google's reply to [...] the Commission's request for information [...].

³⁰ OJ C 101, 27.4.2004, p. 43.

6. DOMINANT POSITION

6.1. Principles

- (264) The dominant position referred to in Article 102 of the Treaty relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers.²⁵⁴
- (265) The existence of a dominant position derives in general from a combination of several factors which, taken separately, are not necessarily determinative.²⁵⁵
- (266) One important factor is the existence of very large market shares, which are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position.²⁵⁶ An undertaking which holds a very large market share for some time, without smaller competitors being able to meet rapidly the demand from those who would like to break away from that undertaking, is by virtue of that share in a position of strength which makes it an unavoidable trading partner and which, already because of this, secures for it, at the very least during relatively long periods, that freedom of action which is the special feature of a dominant position.²⁵⁷ That is the case where a company has a market share of 50% or above.²⁵⁸ Likewise, a share of between 70% and 80% is, in itself, a clear indication of the existence of a

²⁵⁴ Case C-27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 65; Case 85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 38; Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 229.

²⁵⁵ Case 27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 66.

²⁵⁶ Case 85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-65/98, *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154.

²⁵⁷ Case 85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-139/98, *AAMS v Commission*, EU:T:2001:272, paragraph 51; Case T-65/98, *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 149.

²⁵⁸ Case C-62/86, *Akzo v Commission*, EU:C:1991:286, paragraph 60; Case T-340/03, *France Télécom SA v Commission*, EU:T:2007:22, paragraph 100; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 150.

dominant position in a relevant market.²⁵⁹ The ratio between the market share held by the dominant undertaking and that of its nearest rivals is also a highly significant indicator.²⁶⁰

- (267) In fast-growing sectors characterised by short innovation cycles, large market shares may sometimes turn out to be ephemeral and not necessarily indicative of a dominant position.²⁶¹ However, this fact cannot preclude application of the competition rules, in particular Article 102 of the Treaty, especially if a fast-growing market does not show signs of marked instability during the period at issue and, on the contrary, a rather stable hierarchy is established.²⁶²
- (268) The fact that a service is offered free of charge is also a relevant factor to take into account in assessing dominance. In so far as users expect to receive a service free of charge, an undertaking that decides to stop innovating may run the risk of reducing its attractiveness, depending on the level of innovation on the market in question. In this respect, another relevant factor is whether there are technical or economic constraints that might prevent users from switching providers.²⁶³
- (269) Another important factor when assessing dominance is the existence of barriers to entry or expansion, preventing either potential competitors from having access to the market or actual ones from expanding their activities on the market.²⁶⁴
- (270) Such barriers may result from a number of factors, including exceptionally large capital investments that competitors would have to match, network externalities that would entail additional cost for attracting new customers, economies of scale from which newcomers to the market cannot derive any immediate benefit and the actual costs of entry incurred in penetrating the market.²⁶⁵ Switching costs are therefore only one possible type of barrier to entry and expansion.

6.2. Google's dominant position in the national markets for general search services

- (271) The Commission concludes that Google holds a dominant position in each national market for general search services since 2008, apart from in the Czech Republic, where Google holds a dominant position since 2011.
- (272) This conclusion is based on Google's market shares (section 6.2.1), the existence of barriers to expansion and entry (section 6.2.2), the infrequency of user multi-homing and the existence of brand effects (section 6.2.3) and the lack of countervailing buyer power (section 6.2.4). The conclusion holds notwithstanding the fact that general search services are offered free of charge (section 6.2.5), and regardless of whether

²⁵⁹ Case T-30/89, *Hilti v Commission*, EU:T:1991:70, paragraph 92; Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 907; Case T-66/01, *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraph 257; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 150.

²⁶⁰ Case T-219/99, *British Airways v Commission*, EU:T:2003:343, paragraph 210.

²⁶¹ Case T-79/12, *Cisco Systems, Inc. and Messagenet SpA v Commission*, EU:T:2013:635, paragraph 69.

²⁶² Case T-340/03, *France Telecom v Commission*, EU:T:2007:22, paragraphs 107-108.

²⁶³ Case T-79/12, *Cisco Systems, Inc. and Messagenet SpA v Commission*, EU:T:2013:635, paragraph 73.

²⁶⁴ Case 27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 122; Case 85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 48.

²⁶⁵ Case 27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraphs 91 and 122.

general search on static mobile devices constitutes a distinct market from general search on mobile devices (section 6.2.6).

6.2.1. *Market shares*

- (273) General search services have been offered in the EEA since the middle of the 1990s.²⁶⁶ Google has been active in each national market since September 1998.²⁶⁷
- (274) The Commission concludes that Google has enjoyed strong and stable market shares by volume across the EEA since 2008, and there has been no effective entry in any EEA country during that period. Contrary to Google's claim²⁶⁸, this provides a good indication of Google's competitive strength in the national markets for general search services.
- (275) The Commission has used market shares by volume as a proxy for four reasons. First, market shares by value cannot be computed because general search services are provided free of charge to the user. Second, despite its best efforts, the Commission has been unable to obtain precise and verifiable values regarding the Revenue Per Search ("RPS") of the main general search services. Third, advertisers look at usage shares when deciding where to place their search advertisements.²⁶⁹ Fourth, [...].²⁷⁰
- (276) There are several methods to calculate market shares by volume in the EEA.²⁷¹ All the methods indicate that since 2008, Google has enjoyed high market shares in all the relevant general search markets across the EEA, except for the Czech Republic.
- (277) 2010 data by Nielsen (based on page views) indicates that Google's share of the national markets for general search services in 2010 was 84.6% in France, 85.3% in Germany, 85.9% in Italy, 91.3% in Spain and 81.3% in the United Kingdom. None of Google's competitors had a market share exceeding 4.1% in any of these five countries.²⁷²
- (278) November 2014 data by AT Internet (based on site visits) similarly indicates that Google's share of the national markets for general search services in November 2014 was 93.5% in France, 94.1% in Germany, 96.6% in Spain and 92.6% in the United Kingdom.²⁷³ None of Google's competitors had a market share exceeding 3.9% in any of these four countries.
- (279) AT Internet data does not cover EEA countries other than France, Germany, Spain and the United Kingdom. The Commission has therefore also looked at data from StatCounter, which covers all EEA countries, for the period 2008-2016.²⁷⁴

²⁶⁶ Google's submission [...].

²⁶⁷ Google's submission [...].

²⁶⁸ SO Response, paragraph 438.

²⁶⁹ [...] Report for DG COMP [...].

²⁷⁰ [...]

²⁷¹ Including per number of queries, users, page views or per number of sessions.

²⁷² Google's reply to [...] the Commission's request for information [...]. The Nielsen data includes data until August 2010.

²⁷³ AT Internet search engine barometer, available at <http://www.atinternet.com/en/documents/search-engine-barometer-november-2014/>, downloaded on 6 March 2015.

²⁷⁴ The Commission has not therefore relied on outdated data, contrary to Google's claim (SO Response, paragraph 432 and SSO Response, paragraph 374).

Table 2: Google, Bing and Yahoo market shares in general search on static devices in other EEA countries in 2016²⁷⁵

Country in the EEA	Google	Bing	Yahoo!
Austria	91.7%	5.4%	2.2%
Belgium	92.0%	5.5%	1.3%
Bulgaria	97.1%	1.3%	0.9%
Croatia	96.7%	1.6%	1.4%
Cyprus	93.6%	3.5%	1.6%
Czech Republic	79.7%	2.2%	0.8%
Denmark	94.0%	4.1%	1.4%
Estonia	91.9%	2.3%	0.7%
Finland	94.9%	3.3%	1.1%
France	92.8%	4.7%	2.1%
Germany	90.0%	6.4%	1.9%
Greece	97.1%	1.5%	1.0%
Hungary	97.2%	1.6%	0.9%
Iceland	93.4%	3.9%	2.0%
Ireland	92.6%	4.4%	2.4%
Italy	93.0%	4.3%	1.9%
Latvia	93.8%	2.1%	1.2%
Lichtenstein	91.1%	7.1%	1.0%
Lithuania	95.5%	2.2%	1.1%
Luxembourg	92.4%	4.9%	1.9%
Malta	91.0%	5.3%	3.1%
The Netherlands	90.1%	6.6%	1.5%
Norway	89.0%	7.8%	2.2%
Poland	95.6%	2.3%	0.8%

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StatCounter data for 2016, downloaded on 7 February 2017, <http://gs.statcounter.com/>.

Country in the EEA	Google	Bing	Yahoo!
Portugal	96.2%	2.3%	1.1%
Romania	97.0%	1.2%	1.3%
Slovakia	96.0%	2.4%	1.0%
Slovenia	96.4%	2.1%	1.0%
Spain	93.7%	4.0%	1.8%
Sweden	90.6%	6.9%	1.9%
United Kingdom	86.0%	9.7%	3.3%

- (280) The only EEA countries in which Google did not hold a market share above 90% in 2016 were therefore the Czech Republic, the United Kingdom and Norway. It should be noted, however, that in those countries, Google was by far the market leader, having overtaken Seznam²⁷⁶ in the Czech Republic since at least January 2011.²⁷⁷
- (281) Google has also enjoyed high market shares across the EEA for a longer period than Alta Vista and Lycos, which maintained their leading position for 2 years (1997 to 1999)²⁷⁸ and 1 year (1999 to 2000), respectively.²⁷⁹

6.2.2. *Barriers to entry and expansion*

- (285) The Commission concludes that the national markets for general search services are characterised by the existence of a number of barriers to entry and expansion.
- (286) First, the establishment of a fully-fledged general search engine requires significant investments in terms of time and resources. For example, each year since at least 2009, Microsoft has invested [a significant amount] in R&D and capital expenditure in the development and maintenance of the latest version of its general search engine launched in June 2009 under the brand name “Bing”.²⁸³ Other companies indicate that the costs associated with the establishment of a fully-fledged general search engine constitute a barrier to entry. For example, [...] argues that it only operates its own general search technology for [...] language websites because “*investments are too large to develop such technology for [...] language websites*”.²⁸⁴ [...] says that “*the incremental costs of converting [...] into a viable, competitive broad search service would [...] require years of development*”.²⁸⁵ As for [...], a company that already has substantial server capacities in place [...], it says: “*Investment in equipment and personnel would likely be the primary costs, and they would be very high. In addition, obtaining the large quantity of data necessary to develop an effective [general] search engine (e.g., the information upon which relevancy algorithms can be built and improved) would be a significant barrier to entry*”.²⁸⁶
- (287) Second, because a general search service uses search data to refine the relevance of its general search results pages, it needs to receive a certain volume of queries in order to compete viably. The greater the number of queries a general search service receives, the quicker it is able to detect a change in user behaviour patterns and update and improve its relevance. This is supported by internal Google documents²⁸⁷ and by evidence from a number of other general search services.²⁸⁸
- (288) A general search service also needs to receive a certain volume of queries in order to improve the relevance of its results for uncommon (“tail”) queries. Tail queries are important because users evaluate the relevance of a general search service on a holistic basis and expect to obtain relevant results for both common (“head”) and uncommon tail queries.²⁸⁹ The greater the volume of data a general search service

²⁸² StatCounter data for 2011-2014, <http://gs.statcounter.com/>, downloaded on 3 April 2015.

²⁸³ [...] reply to [...] the Commission's request for information [...].

²⁸⁴ [...] reply to [...] the Commission's request for information [...].

²⁸⁵ [...] reply to [...] the Commission's search related request for information [...].

²⁸⁶ [...] reply to [...] the Commission's search related request for information [...].

²⁸⁷ Google's reply to [...] the Commission's request for information [...].

²⁸⁸ [...] reply to [...] the Commission's request for information [...]; [...] reply to [...] the Commission's request for information [...]; and [...] reply to [...] the Commission's request for information [...].

²⁸⁹ [...] complaint, and [...] submission of [...].

possesses for rare tail queries, the more users will perceive it as providing more relevant results for all types of queries.²⁹⁰

- (289) In that regard, there may be diminishing returns to scale in terms of improvements in relevance once the volume of queries a general search service receives exceeds a certain volume.²⁹¹ It may also be that the lower success and relevance of a general search service can be explained by other reasons, such as the fact that it does not localise its search results in different countries, that its web index is more limited in depth, or that it is slower in updating its index in order to deliver fresh content to users.²⁹² Regardless of the veracity of such arguments, however, they remain of limited relevance for the assessment of barriers to entry and expansion on the national markets for general search services because of the underlying fact that a general search service has to receive at least a certain minimum volume of queries in order to compete viably.
- (290) The relevance of scale is also not called into question by the fact that in the late 1990s, Google was able to overtake the former market leaders, AltaVista and Lycos. At that time, scale was less of a critical factor because the indexing technology of general search engines was not yet able to assess user behaviour.²⁹³
- (291) Third, general search services constantly invest to improve their product and a new entrant would have no choice but to attempt to match these investments. The following chart shows worldwide capital investments made by Google²⁹⁴ and Yahoo²⁹⁵ in their general search services between 2006 and 2015.

²⁹⁰ [...] reply to [...] the Commission's request for information [...]; and [...] reply to [...] the Commission's request for information [...].

²⁹¹ Google's submission [...].

²⁹² Google's submission [...].

²⁹³ See http://www.sics.se/~aho/tor/Volker_Tresp_ToR-101125.pdf, downloaded on 6 March 2015. As indicated in the document, machine learning was only introduced by general search engines in April 2003, p. 6.

²⁹⁴ Google's form 10-K filing for the year 2015, p. 23, (available on <https://abc.xyz/investor/>) states that Google's capital expenditures comprise research and development (R&D) investments in areas of strategic focus for Google, as well as investments in their systems, data centres, real estate and facilities, and information technology infrastructure.

²⁹⁵ [...] Yahoo's capital expenditures are generally comprised of purchases of computer hardware, server equipment, furniture and fixtures, real estate, and capitalised software and labour.

Table 4: Google's and Yahoo's worldwide capital investments (in millions of USD) in their general search services between 2006 and 2015²⁹⁶

	2006	2007	2008	2009	2010
Google	1 903	2 403	2 360	809	4 018 ²⁹⁷
Yahoo	689	602	674	433	714
	2011	2012	2013	2014	2015
Google	3 438	3 273	7 358	10 959	9 915
Yahoo	593	506	338	372	543

- (292) Fourth, the existence of positive feedback effects on both sides of the two-sided platform formed by general search services and online search advertising creates an additional barrier to entry.
- (293) The positive feedback effects on the online search advertising side are due to the link between the number of users of a general search service and the value of the online search advertisements shown by that general search engine. The higher the number of users of a general search service, the greater the likelihood that a given search advertisement is matched to a user and converted into a sale. This in turn increases the price that a general search engine can charge advertisers if their search advertisements are clicked on. The general search engine can then reinvest that revenue in seeking to attract new users of its general search service.
- (294) As regards the positive feedback effects on the general search side of the general search engine platform, they derive from both direct and indirect network effects.
- (295) The direct network effects stem from the fact that a substantial minority of users of a general search service derive a benefit from search advertisements. The fact that advertisers are willing to bid for AdWords results on Google's general search results pages is evidence that at least some users value these advertisements. This is further supported by [...].²⁹⁸ [...]²⁹⁹
- (296) The indirect network effects stem from the link between the attractiveness of the online search advertising side of a general search engine platform and the revenue of that platform. The higher the number of advertisers using an online search advertising service, the higher the revenue of the general search engine platform;

²⁹⁶ Sources: [...] official Yahoo's form 10-K filings available on <https://investor.yahoo.net/sec.cfm?DocType=Annual&Year=&FormatFilter=>, downloaded on 2 February 2017.

For Google, the data are based on Google's form 10-K filings as included in [...] submission, as well as form 10-K filings available on <https://abc.xyz/investor/> and <https://www.sec.gov/edgar/searchedgar/companysearch.html>, downloaded on 2 and 3 February 2017.

²⁹⁷ Of which USD 1.8 billion relating to the purchase of a building.

²⁹⁸ [...]

²⁹⁹ [...]

revenue which can be reinvested in the maintenance and improvement of the general search service so as to attract more users (see also recital (293)).³⁰⁰ Google generates substantial revenues from its online search advertisement business. In the years 2013-2016 its advertising revenues rose from USD 50.6 billion to USD 79.4 billion.³⁰¹

- (297) The existence of barriers to entry and expansion is supported by a number of additional factors.
- (298) First, since 2007, a number of companies have exited the national markets for general search services, either completely or by abandoning their general search technology in favour of third party technology. For example, Yahoo abandoned its general search technology, including in the EEA, in 2009 and now relies on Bing's general search technology to power its portal.³⁰² Equally, Ask.com abandoned its general search technology, including in the EEA, in November 2010 and started using Google's general search technology to power its portal.³⁰³
- (299) Second, a number of smaller players still present on the national markets for general search services have been unable to expand and are contemplating interrupting their general search services in the EEA in the near future. This is the case of [...], one of the first general search services in [...], which currently offers general search services restricted to [...] language websites.³⁰⁴
- (300) Third, since 2007, there has been only one significant entrant in the national markets for general search services, Microsoft, which launched the latest version of its general search service, Bing, in 2009.³⁰⁵ Since 2009, however, Bing's market shares have never exceeded 10% in any EEA country.³⁰⁶ [...]³⁰⁷
- (301) A number of start-ups have also attempted to launch competing general search services since 2007. None of these companies have, however, been able to establish a significant market presence. Many have either stopped providing general search services or chosen instead to provide complementary types of services that do not compete with Google's general search service in the EEA.

300 [...]

301 Google's Form 10-K Annual Report for the US fiscal year ending 31 December 2013, available at <http://www.sec.gov/Archives/edgar/data/1288776/000128877614000020/goog2013123110-k.htm>, downloaded on 6 March 2015; and Google's Form 10-K Annual Report for the US fiscal year ending 31 December 2016, available at <https://abc.xyz/investor/>, downloaded on 6 March 2017.

302 Google's submission [...].

303 http://news.cnet.com/8301-30684_3-20022253-265.html?tag=mncol;4n, downloaded on 6 March 2015. The agreement with Google was extended until 31 March 2020, as stated in the IAC/InterActiveCorporation 8-k report filed with the SEC on 26 October 2015, available here: <http://ir.iac.com/sec.cfm?DocType=&DocTypeExclude=&SortOrder=Date%20Descending&Year=2015&PageNum=2&FormatFilter=&CIK=&NumberPerPage=10>, downloaded on 2 February 2017.

304 [...] reply to [...] the Commission's request for information [...]. [...] share of the [...] general search market decreased from 3.6% in 2005 to 0.3% in December 2014. [...].

305 The latest version of Microsoft's general search engine launched in June 2009 is called "Bing". Previous versions were called Live Search, Windows Live Search, and MSN Search.

306 Nielsen rating's figures as quoted in Google's reply to [...] the Commission's request for information [...], and StatCounter data, available at <http://gs.statcounter.com>.

307 [...]

7. ABUSE OF A DOMINANT POSITION

7.1. Principles

- (331) Dominant undertakings have a special responsibility not to impair, by conduct falling outside the scope of competition on the merits, genuine undistorted competition in the internal market.³⁴³ A system of undistorted competition can be guaranteed only if equality of opportunity is secured as between the various economic operators.³⁴⁴ The scope of the special responsibility of the dominant undertaking has to be considered in light of the specific circumstances of the case.³⁴⁵
- (332) Article 102 of the Treaty and Article 54 of the EEA Agreement prohibit abusive practices which may cause damage to consumers directly, but also those which harm them indirectly through their impact on an effective competition structure.³⁴⁶
- (333) The concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition on the merits, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.³⁴⁷

7.2. The abusive conduct: the more favourable positioning and display, in Google's general search results pages, of Google's own comparison shopping service compared to competing comparison shopping services

- (341) The Commission concludes that the Conduct constitutes an abuse of Google's dominant position in each of the thirteen national markets for general search services where Google either launched the Product Universal or, if the Product Universal was never launched in that market, the Shopping Unit. The Conduct is abusive because it constitutes a practice falling outside the scope of competition on the merits as it: (i) diverts traffic in the sense that it decreases traffic from Google's general search results pages to competing comparison shopping services and increases traffic from Google's general search results pages to Google's own comparison shopping service; and (ii) is capable of having, or likely to have, anti-competitive effects in the national markets for comparison shopping services and general search services.

³⁵⁸ Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraphs 19-22.

³⁵⁹ Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 68.

³⁶⁰ Case T-321/05, *AstraZeneca*, EU:T:2010:266, paragraph 347, confirmed on appeal in Case C-457/10 P, *AstraZeneca v Commission*, EU:C:2012:770, paragraphs 109 and 111. See also Case T-286/09, *Intel v Commission*, EU:T:2014:547, paragraph 186 (and case-law cited therein).

³⁶¹ Case C-52/09, *Konkurrensverket v TeliaSonera Sverige AB*, EU:C:2011:83, paragraph 63; Case T-286/09, *Intel v Commission*, EU:T:2014:547, paragraphs 88, 149 and 201.

³⁶² Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 42; Case T-286/09, *Intel v Commission*, EU:T:2014:547, paragraphs 117 and 132.

³⁶³ Case T-286/09, *Intel v Commission*, EU:T:2014:547, paragraph 132.

³⁶⁴ Case C-209/10, *Post Danmark A/S v Konkurrenserådet*, EU:C:2012:172, paragraphs 40-41.

(342) To demonstrate why the Conduct is abusive and falls outside the scope of competition on the merits, the Commission first describes how Google positions and displays more favourably, in its general search results pages, its own comparison shopping service compared to competing comparison shopping services (section 7.2.1). Second, it illustrates the importance of traffic for comparison shopping services (section 7.2.2) and how the Conduct diverts traffic in the sense that it decreases traffic from Google's general results pages to competing comparison shopping services and increases traffic from Google's general search results pages to Google's own comparison shopping service (section 7.2.3). Third, it shows that the generic search traffic from Google's general search results pages accounts for a large proportion of traffic for competing comparison shopping services and cannot be effectively replaced by other sources of traffic currently available to competing comparison shopping services (section 7.2.4). Fourth, it explains how the Conduct is capable of extending Google's dominant position in the national markets for general search services to the national markets for comparison shopping services (section 7.3.1), and of protecting Google's dominant position in the national markets for general search services (section 7.3.3). It also explains that, even if the alternative product market definition proposed by Google, comprising both comparison shopping services and merchant platforms, were to be followed, the Conduct would be capable of having, or likely to have, anti-competitive effects in at least the comparison shopping services segments of the possible national markets comprising both comparison shopping services and merchant platforms (section 7.3.2). Finally, it rejects Google's arguments with regard to the applicable legal test (section 7.4) and to potential objective justifications for the Conduct (section 7.5).

(343) In summary, Google has artificially reaped the benefits of the Conduct. Google did not invent comparison shopping. Google's first comparison shopping service, Froogle, was not gaining traffic as it did not appear visibly in Google's general search results pages. It was only after Google started the Conduct in each of the thirteen national markets for general search services that traffic to Google's comparison shopping service from Google's general search results pages began to increase on a lasting basis whereas traffic to almost all competing comparison shopping services began to decrease on a lasting basis.

7.2.1. *Google positions and displays, in its general search results pages, its own comparison shopping service more favourably compared to competing comparison shopping services*

(344) The Commission concludes that notwithstanding Google's arguments to the contrary (section 7.2.1.3), Google positions and displays, in its general search results pages, its own comparison shopping service (section 7.2.1.2) more favourably compared to competing comparison shopping services (section 7.2.1.1). While competing comparison shopping services can appear only as generic search results and are prone to the ranking of their web pages in generic search results on Google's general search results pages being reduced (“demoted”) by certain algorithms, Google's own comparison shopping service is prominently positioned, displayed in rich format and is never demoted by those algorithms.

- 7.2.1.1. The way competing comparison shopping services are positioned and displayed in Google's general search results pages
- 7.2.1.1.1. The way competing comparison shopping services are positioned in Google's general search results pages
- (345) In response to a user query in Google's general search engine, Google uses generic search algorithms to rank web pages, including those of competing comparison shopping services. These algorithms include the PageRank algorithm (see recital (16)).³⁶⁵ Google also applies a variety of adjustment mechanisms to the results of the PageRank algorithm “to improve the user experience”.³⁶⁶
- (346) Google has issued Webmaster Guidelines that outline the “core concepts for maintaining a Google-friendly site”.³⁶⁷ Websites that do not comply with Google's Webmaster Guidelines are prone to being demoted or even removed altogether from Google's index, in which case a website's pages will no longer appear at all in generic search results on Google's general search results pages.³⁶⁸
- (347) Google's Webmaster Guidelines warn in particular against hidden text or hidden links, automated queries to Google, pages loaded with irrelevant keywords, duplicate content, malware (e.g. viruses), and pages with little or no original content.³⁶⁹ They also note that “Google may respond negatively to other misleading practices not listed here”.³⁷⁰
- (348) Google uses dedicated algorithms to identify and demote automatically websites that do not comply with its Webmaster Guidelines.³⁷¹ In a minority of cases, Google employees that are part of its “Webspam Team” and “Bad Urls Team” also identify and apply manually demotions to websites that do not comply with the Webmaster Guidelines.³⁷²
- (349) Competing comparison shopping services in the EEA are prone to being demoted by [...] dedicated algorithms: [...] and “Panda” (which, since May 2014, is known as “Panda 4.0” [...]).

³⁶⁵ Sergey Brin and Larry Page, “*The PageRank Citation Ranking: Bringing Order to the Web*”, available at <http://ilpubs.stanford.edu:8090/422/1/1999-66.pdf>, downloaded on 6 March 2015.

³⁶⁶ Google, “*Webmaster tools: Google Basics*”, available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=70897#content>, downloaded on 6 March 2015.

³⁶⁷ Google, “*Webmaster Tools: Ranking*”, available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=34432&topic=2370570&ctx=topic>, downloaded on 6 March 2015.

³⁶⁸ Google, “*Webmaster Tools: Webmaster Guidelines*”, available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=35769>, downloaded on 6 March 2015. See also Google's reply to [...] the Commission's request for information [...].

³⁶⁹ Google, “*Webmaster Tools: Webmaster Guidelines*”, available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=35769>, downloaded on 6 March 2015.

³⁷⁰ Google, “*Webmaster Tools: Webmaster Guidelines*”, available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=35769>, downloaded on 6 March 2015.

³⁷¹ Google's reply to [...] the Commission's request for information [...].

³⁷² Google's reply to [...] the Commission's request for information [...].

- (356) The Panda algorithm was introduced in the United States in February 2011. It was subsequently extended to all English language queries worldwide on 11 April 2011 and to all general search queries across the EEA on 12 August 2011.³⁸⁴ Regular updates of the Panda algorithm have also subsequently been rolled out. As of 20 May 2014, 27 updates of the Panda algorithm had been implemented.³⁸⁵ [...].³⁸⁶
- (358) Like in the case of [...], set out in recitals (353)-(355), comparison shopping services are prone to being demoted by the Panda algorithm due to the characteristics inherent to those services. This is confirmed by the following Google documents:
- (a) A Google blogpost of 21 January 2011 regarding the introduction of the Panda algorithm, which stated that: *“we’re evaluating multiple changes that should help drive spam levels even lower, including one change that primarily affects sites that copy others’ content and sites with low levels of original content”*.³⁸⁹

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<http://googlewebmastercentral.blogspot.com/2011/08/high-quality-sites-algorithm-launched.html>, downloaded on 6 March 2015 and Google's reply to [...] the Commission's request for information [...].

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<http://searchengineland.com/panda-update-rolling-204313>, downloaded on 20 January 2015.

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“Google search and search engine spam”, 21 January 2011, <https://googleblog.blogspot.be/2011/01/google-search-and-search-engine-spam.html>, downloaded on 22 April 2016.

- (b) A blogpost by Matt Cutts of 28 January 2011 regarding the introduction of the Panda algorithm which stated that: *“the change was approved at our weekly quality launch meeting last Thursday and launched earlier this week. [...] The net effect is that searchers are more likely to see the sites that wrote the original content rather than a site that scraped or copied the original site’s content”*.³⁹⁰
- (c) A Google blogpost of 24 February 2011 (updated in April 2011) in relation to the introduction of the Panda algorithm for all English language queries, which stated that: *“This update is designed to reduce rankings for low-quality sites—sites which are low-value add for users, copy content from other websites or sites that are just not very useful. At the same time, it will provide better rankings for high-quality sites—sites with original content and information such as research, in-depth reports, thoughtful analysis and so on”*.³⁹¹
- (d) A Google document of 6 May 2011 entitled *“More guidance on building high-quality sites”*, which stated that one of the elements that Google takes into account to assess the quality of a website is: *“original content or information, original reporting, original research, or original analysis; whether the page provides substantial value when compared to other pages in search results; whether the content mass-produced by or outsourced to a large number of creators, or spread across a large network of sites, so that individual pages or sites don’t get as much attention or care”*.³⁹²
- (359) Contrary to Google's claim that the Commission overstates the impact of the Panda algorithm on competing comparison shopping services and their positioning in Google's general search results pages³⁹³, the fact that competing comparison shopping services are prone to being demoted in Google's general search results pages by the [...] and Panda algorithms is further supported by evidence on (i) the number of comparison shopping services to which those algorithms have been applied; (ii) the impact of the application of the Panda algorithm on the visibility³⁹⁴ of competing comparison shopping services; (iii) the impact of the application of the Panda algorithm on the trigger rates³⁹⁵ of competing comparison shopping services; and (iv) the impact of the application of the Panda algorithm on the average ranking of competing comparison shopping services.
- (360) First, since their rollout, the [...] and Panda algorithms have been applied [...] to over [...] of the 361 SO Response Aggregators. In particular, the [...] algorithm have

³⁹⁰ *“Algorithm change launched”*, 28 January 2011, <https://www.mattcutts.com/blog/algorithm-change-launched>, downloaded on 22 April 2016.

³⁹¹ *“Finding more high-quality sites in search”*, 24 February 2011, http://googleblog.blogspot.be/2011/02/01_archive.html - US launch, downloaded on 22 April 2016.

³⁹² *“More guidance on building high-quality sites”*, 6 May 2011, <https://googlewebmastercentral.blogspot.be/2011/05/more-guidance-on-building-high-quality.html>, downloaded on 22 April 2016.

³⁹³ SSO Response, paragraphs 75-80.

³⁹⁴ The visibility of websites in Google's general search results reflects both the triggering (i.e. rate of appearance) of websites in Google's general search results pages and their ranking.

³⁹⁵ The trigger rates are defined as the proportion of queries/keywords for which a particular website or service is displayed (“triggered”) among generic search results on Google's general search results pages.

been applied to [...] of the [...] of the 361 SO Response Aggregators ([...]), the Panda algorithm³⁹⁶ to [...], and [...] algorithm to [...].³⁹⁷

(361) Second, the weekly Visibility Index³⁹⁸ calculated by the independent market monitoring company Sistrix in the United Kingdom, Germany, France, Italy and Spain, as well as analyses carried out by the Commission based on data from Sistrix, indicates that during the period between 2 August 2010 and 2 December 2016, for the vast majority of the most important comparison shopping services in terms of traffic, their visibility in Google's general search results pages (i) was at its highest at the end of 2010 and beginning of 2011, (ii) was followed by a sudden drop after the launch of the Panda algorithm in the respective EEA country and (iii) no sustainable recovery occurred afterwards:

- (a) In the United Kingdom, the Sistrix Visibility Index indicates that: (i) the visibility of the most important comparison shopping services in terms of traffic in Google's general search results pages was at its highest at the end of 2010 and the beginning of 2011; (ii) this was followed by a sudden decline, after April 2011 when the Panda algorithm was extended to all English language queries worldwide. The visibility of competing comparison shopping services has not since recovered; (iii) even when a limited number of comparison shopping services subsequently recovered some visibility (e.g. twenga.co.uk in April 2013) this was limited, and did not result in visibility returning to the level prior to the end of 2010/beginning of 2011; and (iv) such limited recovery was followed by another decline, which persisted at least until 2 December 2016.

The above trends are illustrated by Graphs 1 and 2.

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[...]

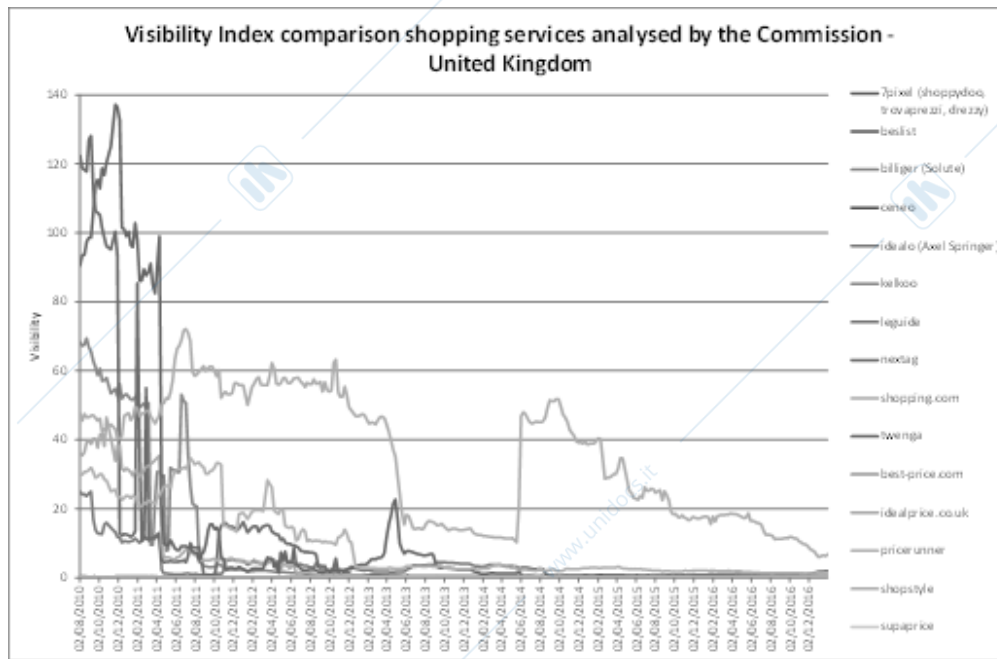
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The weekly Visibility Index developed by Sistrix follows the changes in the ranking of individual sites and a large number of keywords in generic search results on Google's general search results pages. The Index reflects in an aggregate form both the triggering (i.e. rate of appearance) and ranking of sites in generic search results on Google's general search results pages, and it is based on an automatic check of the rankings of millions of keywords every week in more than 10 countries, enriched with additional data and a specially developed algorithm to calculate an individual website's visibility in generic search results on Google's general search results pages. As indicated in a Sistrix blogpost (<https://www.sistrix.com/blog/uk-top-100-domains-the-most-visible-websites-in-google-co-uk/>, downloaded on 18 May 2017), for the Visibility Index, Sistrix uses a keyword set of 1 000 000 keywords (search phrases) and crawls the first 100 search results on Google's country domains, once a week for both Desktop and Mobile Search. The keywords are chosen in such a way that they reflect the average search behaviour for each country. Week after week, Sistrix obtains 200 million points of data (2x (1 million keywords x the first 100 search results)) which they can attribute to the individual domains. The results are then weighed by position and search volume for each keyword, so that a ranking on the 10th spot for a keyword with a high search volume has a higher bearing on the calculations. Sistrix also incorporates the differing click-through rates for different keywords and then accumulates all the values for all the rankings found for a domain, which results in the Sistrix Visibility Index. The estimation of the click-through rate depends only on the visibility of the generic search result in Google's general search results page (including its rank and the layout of the page), and not on the website ("domain") that it links to.

Graph 2: United Kingdom - Sistrix Visibility Index for the sample of comparison shopping services the evolution of the total traffic of which was analysed in the SO and the SSO⁴⁰⁰



- (b) In Germany, the Sistrix Visibility Index indicates that: (i) the visibility of the majority of the most important comparison shopping services in terms of traffic in Google's general search results pages declined after August 2011 when the Panda algorithm was extended to all queries across the EEA; and (ii) the visibility of the vast majority of competing comparison shopping services had not returned to the level prior to August 2011 by 2 December 2016.

In the case of ciao.de, the Sistrix Visibility Index indicates a similar trend: (i) its visibility level declined suddenly after August 2011; and (ii) that decline persisted until 2 December 2016.

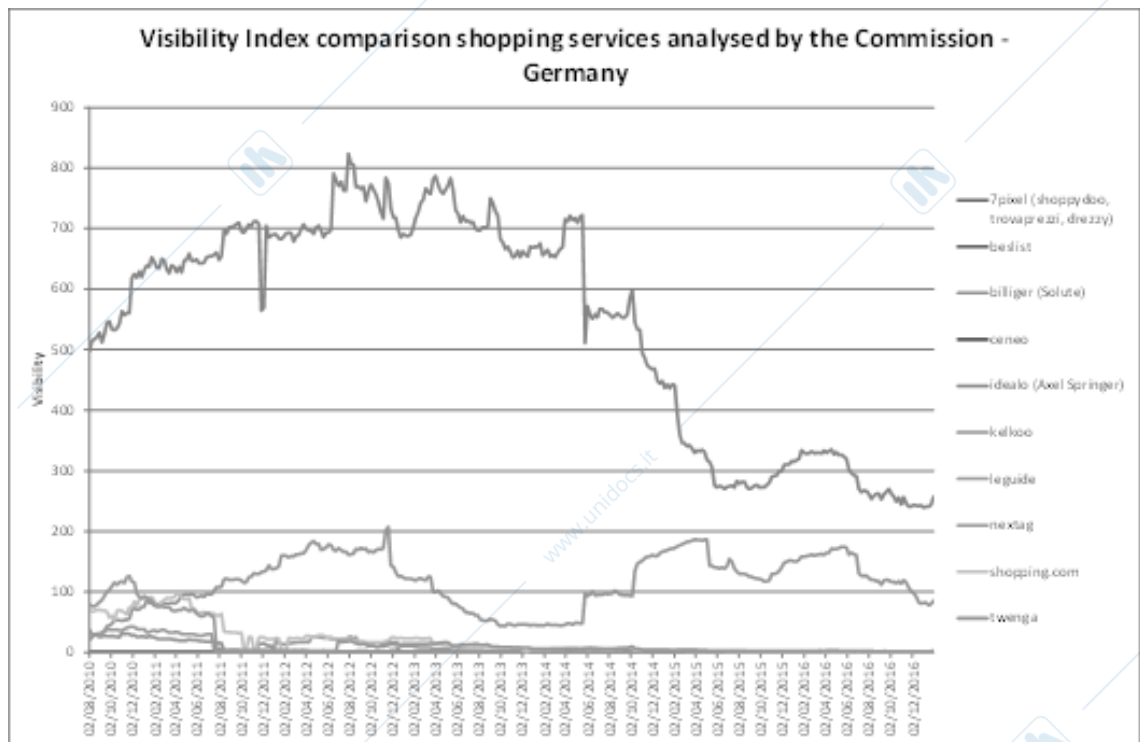
In the case of idealo.de, the Sistrix Visibility Index indicates: (i) an overall increase in visibility until mid-2013; (ii) followed by a sudden decline, which persisted at least until 2 December 2016. [...] ⁴⁰¹

The above trends are illustrated by Graphs 3 and 4.

⁴⁰⁰ The SSO complemented the analysis of the SO for the United Kingdom, which had taken into account a sample of six comparison shopping service, with five additional comparison shopping services. Graph 2 takes account of all the comparison shopping services analysed both in the SO and the SSO. The comparison shopping services in the Commission's sample represent approximately [...] % of traffic from Google's general search results pages to the 361 SO Response Aggregators active in the United Kingdom in 2014 (see also recital (488)).

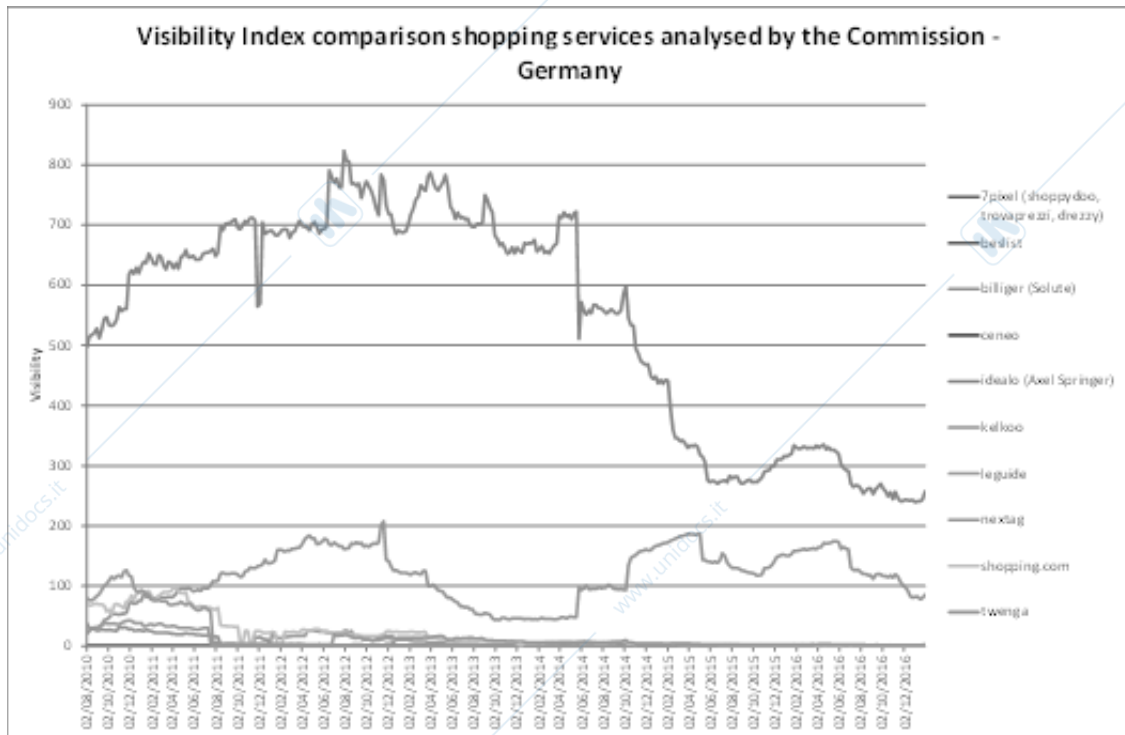
⁴⁰¹ [...]

Graph 3: Germany- Sistrix Visibility Index for the comparison shopping services with the highest volume of traffic based on ComScore data⁴⁰²



⁴⁰² Google submission [...] and Google's reply to the Commission's request for information [...].

Graph 4: Germany - Sistrix Visibility Index for the sample of comparison shopping services the evolution of the total traffic of which was analysed in the SO⁴⁰³



- (c) In France, the Sistrix Visibility Index indicates that: (i) the visibility of the majority of the most important comparison shopping services in terms of traffic in Google's general search results pages declined after August 2011 when the Panda algorithm was extended to all queries across the EEA; and (ii) the visibility of the vast majority of competing comparison shopping services had not returned to the level prior to August 2011 by 2 December 2016.

In the case of Twenga, the Sistrix Visibility Index indicates: (i) a sudden decline in visibility after August 2011; (ii) a recovery in visibility at the beginning of 2013; and (iii) a subsequent constant decline in visibility, which persisted until 2 December 2016.

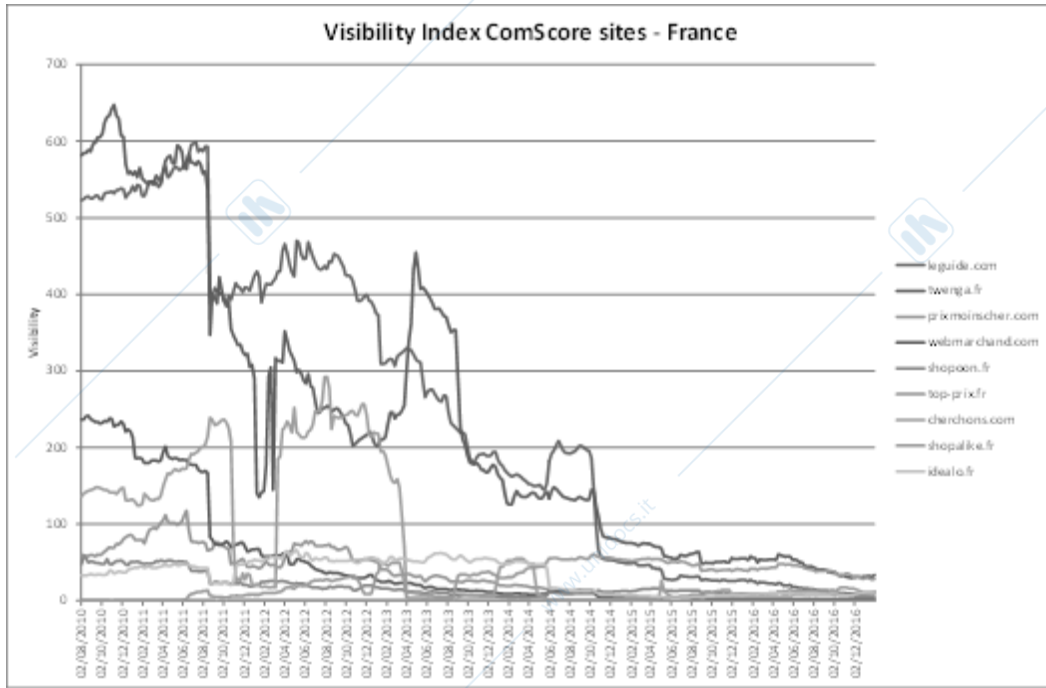
In the case of LeGuide, the Sistrix Visibility Index indicates: (i) a sudden decline in visibility around August 2011; (ii) a slight recovery of visibility until the second half of 2012; and (iii) a subsequent constant decline in visibility, which persisted at least until 2 December 2016.

The above trends are illustrated by Graphs 5 and 6.

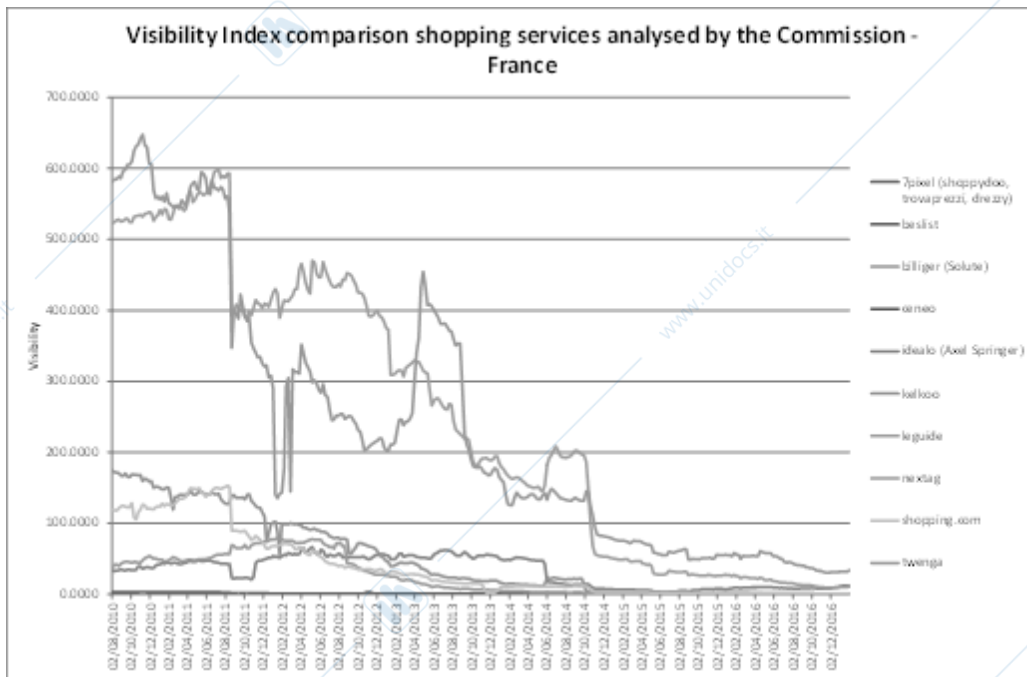
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The comparison shopping services in the Commission's sample represent approximately [...] % of traffic from Google's general search results pages to the 361 SO Response Aggregators active in Germany in 2014. See also recital (488).

Graph 5: France - Sistrix Visibility Index for the comparison shopping services with the highest volume of traffic based on ComScore data⁴⁰⁴



Graph 6: France - Sistrix Visibility Index for the sample of comparison shopping services the evolution of the total traffic of which was analysed in the SO⁴⁰⁵



⁴⁰⁴ Google submission [...] and Google's reply to the Commission's request for information [...].

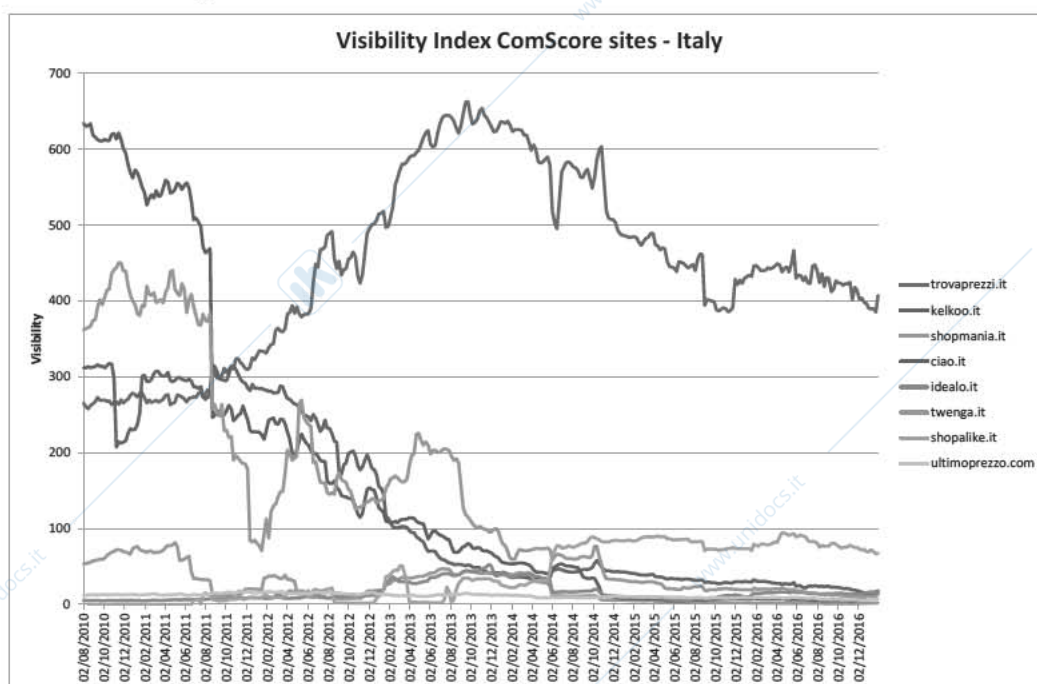
⁴⁰⁵ The comparison shopping services in the Commission's sample represent approximately [...] % of traffic from Google's general search results pages to the 361 SO Response Aggregators active in France in 2014. See also recital (488).

- (d) In Italy, the Sistrix Visibility Index indicates that: (i) the visibility of the most important comparison shopping services in terms of traffic in Google's general search results pages was at its highest at the end of 2010 and first half of 2011; (ii) this was followed by a sudden decline after August 2011 when the Panda algorithm was extended to all queries across the EEA. The visibility of competing comparison shopping services has not since recovered; (iii) even when a limited number of comparison shopping services subsequently recovered some visibility (e.g.: twenga.it in April 2012 and April 2013), this was limited, and did not result in visibility returning to the level prior to the end of 2010/first half of 2011; and (iv) such limited recovery was followed by another decline, which persisted at least until 2 December 2016.

In the case of trovaprezzi.it, the Sistrix Visibility Index indicates: (i) an overall increase in visibility until mid-2013; (ii) followed by a decline starting September 2013, which persisted at least until 2 December 2016.

The above trends are illustrated by Graph 7.

Graph 7: Italy - Sistrix Visibility Index for the comparison shopping services with the highest volume of traffic based on ComScore data⁴⁰⁶



- (e) In Spain, the Sistrix Visibility Index indicates that: (i) the visibility of the most important comparison shopping services in terms of traffic in Google's general search results pages was at its highest at the end of 2010 and first half of 2011; (ii) this was followed by a sudden decline, after August 2011 when the Panda algorithm was extended to all queries across the EEA. The visibility of competing comparison shopping services has not since recovered; (iii) even when a limited number of comparison shopping services subsequently recovered some visibility (e.g.: twenga.es in April 2013), this was limited, and did not result in visibility returning to the level prior to the end of 2010/first

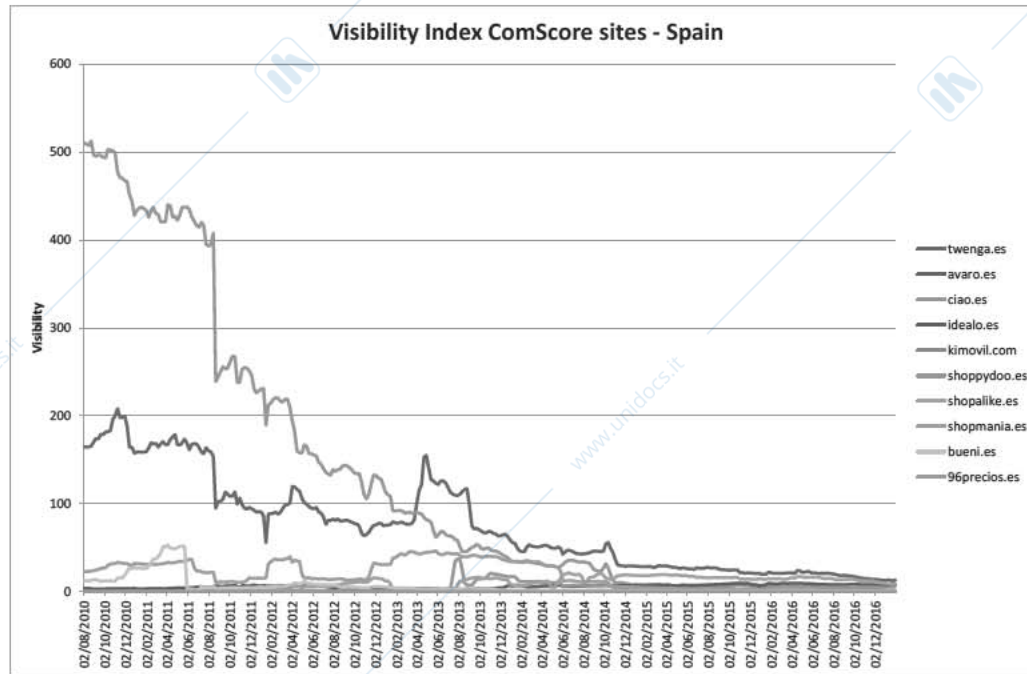
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Google submission [...] and Google's reply to the Commission's request for information [...].

half of 2011; and (iv) such limited recovery was followed by another constant decline, which persisted at least until 2 December 2016.

The above trends are illustrated by Graph 8.

Graph 8: Spain - Sistrix Visibility Index for the comparison shopping services with the highest volume of traffic based on ComScore data⁴⁰⁷



- (362) This trend of evolution of the individual Sistrix Visibility Indexes of the most important comparison shopping services in terms of traffic is consistent with the sum of Sistrix Visibility Indexes for the 361 SO Response Aggregators in the United Kingdom, France and Germany, calculated and submitted by [...].⁴⁰⁸ This sum provides a view of the aggregated visibility in Google's general search results of all competing comparison shopping services identified by Google. It indicates: (i) a significant decline in the United Kingdom of the visibility of competing comparison shopping services in Google's general search results pages after the extension of the Panda algorithm to all English language queries worldwide in April 2011; (ii) a significant decline in France and Germany of the visibility of competing comparison shopping services in Google's general search results pages after the extension of the Panda algorithm to all queries across the EEA in August 2011; and (iii) no subsequent recovery of the visibility of SO Response Aggregators in Google's general search results pages up until 16 November 2015 in the United Kingdom, 30 November 2015 in France and 7 September 2015 in Germany. This is illustrated by Graphs 9 and 10.⁴⁰⁹

⁴⁰⁷ Google submission [...] and Google's reply to the Commission's request for information [...].

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⁴⁰⁹ "EC-featured PC sites" stand for the sample of comparison shopping services the evolution of the total traffic of which was analysed by the Commission in the SO.

7.2.1.2. The way that Google's comparison shopping service is positioned and displayed in its general search results pages

(378) Google's comparison shopping service is both positioned and displayed differently to competing comparison shopping services in its general search results pages, despite Google having similar characteristics to those of competitors.

7.2.1.2.1. The different ways that Google's comparison shopping service is positioned in its general search results pages

(379) There are two main differences in the way that Google's own comparison shopping service and competing comparison shopping services are positioned in Google's general search results pages, despite Google's comparison shopping service having similar characteristics to competing comparison shopping services: (i) Google's own comparison shopping service is not subject to the same ranking mechanisms as its competitors, including adjustment algorithms such as [...] and Panda; and (ii) when triggered, Google positions results from its own comparison shopping service on its first general results page in a highly visible place (i.e. either above all generic search results or, in the majority of cases, within or at the level of the first generic few search results).

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<https://support.google.com/adwords/answer/2454022?hl=en>, downloaded on 6 March 2015.

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[...] submission [...].

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Company X's submission [...].

(380) First, Google's own comparison shopping service is not subject to the same ranking mechanisms as competing comparison shopping services, including adjustment algorithms such as [...] and Panda. This is despite the fact that Google's own comparison shopping service exhibits several of the characteristics that make competing comparison shopping services prone to being demoted by the [...] and Panda algorithms.

(382) In the second place, Google was aware that its comparison shopping service would not rank highly in Google's general search pages if it were subject to the same ranking mechanisms that apply to competing comparison shopping services. This is confirmed by an internal Google email of 6 May 2009 by [...] related to Google Product Search, which stated that: *"From a principal perspective it would be good if we could actually just crawl our product pages and then have the[m] rank organically (...) Problem is that today if we crawl it will never rank"*.⁴³³

428 Google's reply to [...] the Commission's request for information [...].

429 [...]

430 [...] reply to [...] the Commission's request for information [...].

431 [...] reply to [...] the Commission's request for information [...].

432 [...] reply to [...] the Commission's request for information [...].

433 [...]

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7.3.1. *Potential anti-competitive effects in the national markets for comparison shopping services*

- (591) In section 7.2.3 the Commission concluded that the Conduct decreases traffic from Google's general results pages to competing comparison shopping services and increases traffic from Google's general search results pages to Google's own comparison shopping service. In section 7.2.4 the Commission concluded that generic search traffic from Google's general search results pages accounts for a large proportion of traffic to competing comparison shopping services and cannot be effectively replaced by other sources currently available to comparison shopping services.
- (592) In light of the above (recital (591), and also for the reasons outlined in this section (recitals (593)-(607)), the Conduct is capable of having, or likely to have, anti-competitive effects, in the national markets for comparison shopping services.
- (593) First, the Conduct has the potential to foreclose competing comparison shopping services, which may lead to higher fees for merchants, higher prices for consumers, and less innovation for the reasons explained below.
- (594) In the first place, the Conduct is capable of leading competing comparison shopping services to cease providing their services. This would allow Google to impose and maintain higher fees on merchants for participation in its own comparison shopping service. These higher costs for merchants are capable of leading to higher product prices for consumers.
- (595) In the second place, the Conduct is likely to reduce the incentives of competing comparison shopping services to innovate. Competing comparison shopping services will have an incentive to invest in developing innovative services, improving the relevance of their existing services and creating new types of services, only if they can reasonably expect that their services will be able to attract a sufficient volume of user traffic to compete with Google's comparison shopping service. Moreover, even if competing comparison shopping services may try to compensate to some extent the decrease in traffic by relying more on paid sources of traffic, this will also reduce the revenue available to invest in developing innovative services, improving the relevance of their existing services and creating new types of services.⁷¹³

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Since April 2014, [...] has made cumulated losses of approximately EUR [...]. See [...] reply to [...] the Commission's request for information [...]. [...] turnover in 2014 compared to 2013 decreased by 14% to EUR 39 million. See [...]. Since October 2013, [...] has closed its London and Irish offices and has reduced its Hamburg office. [...] has also ceased work on its websites in Italy, Spain and the Netherlands and will cease work on its websites in France and in the United Kingdom. [...] response to [...] the Commission's request for information [...].

- (596) In the third place, the Conduct is likely to reduce the incentives of Google to improve the quality of its comparison shopping service as it does not currently need to compete on the merits with competing comparison shopping services.
- (597) Second, the Conduct is likely to reduce the ability of consumers to access the most relevant comparison shopping services. This is for two reasons.
- (598) In the first place, as explained in section 7.2.3.1, users tend to consider that search results that are ranked highly in generic search results on Google's general search results pages are the most relevant for their queries and click on them irrespective of whether other results would be more relevant for their queries. For example, prior to Google beginning the Conduct in October 2007, Google's comparison shopping service was losing traffic at a pace of 21% year on year while Google's general search service was gaining 23% in the same time frame⁷¹⁴ (see also recital (535)). Google started the Conduct even though as a result, it did not always show to users the most relevant results (as ranked by its generic search algorithms) at least for certain queries.
- (599) In the second place, Google did not inform users that the Product Universal was positioned and displayed in its general search results pages using different underlying mechanisms than those used to rank generic search results. As for the Shopping Unit, while the "Sponsored" label may suggest that different positioning and display mechanisms are used, that information is likely to be understandable only by the most knowledgeable users (see also recital (536)).
- (600) The Conduct therefore risks undermining the competitive structure of the national markets for comparison shopping services. The prospects of commercial success of Google's comparison shopping service are enhanced not because of the merits of that service, but because Google applies different underlying mechanisms on the basis of the advantages provided to it by its dominant position in the national markets for general search services.⁷¹⁵
- (601) Third, the Commission's conclusions are not called into question by Google's claims that (i) despite the duration of the Conduct, the Commission has not identified any competing comparison shopping service that has ceased to offer its service,⁷¹⁶ and (ii) it has identified "*hundreds of aggregators*" from the list of the 361 SO Response Aggregators that remain active.⁷¹⁷
- (602) In the first place, the Commission is not required to prove that the Conduct has the actual effect of leading certain competing comparison shopping services to cease

⁷¹⁴ Pulse, "Google Velocity: Froogle and Local are dying while Video and Blog are surging", 20 February 2007, available at <http://blog.compete.com/2007/02/20/google-properties-froogle-local-video-blog/>, downloaded on 6 March 2015.

⁷¹⁵ The Conduct has similar effects to the tying practice whereby Microsoft used the Windows PC operating system as a distribution channel to ensure for itself a significant competitive advantage on the streaming media player market. See by analogy Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 982 and 1088.

⁷¹⁶ SO Response, paragraph 366.

⁷¹⁷ SO Response, paragraphs 94, 95 and 367.

offering their services. Rather, it is sufficient for the Commission to demonstrate that the Conduct is capable of having, or likely to have, such an effect.⁷¹⁸

- (603) In the second place, the absolute number of comparison shopping services that remain active is irrelevant. In the absence of the Conduct, the number of comparison shopping services that would remain active and their ability to compete might be even greater.⁷¹⁹
- (604) In the third place, a large percentage of the competing comparison services included in Google's list of 361 SO Response Aggregators have never offered, or no longer offer, comparison shopping services:
- (1) As indicated by [...], the majority of the 361 SO Response Aggregators do not provide comparison shopping services but instead arbitrate traffic⁷²⁰ between comparison shopping services and paid search traffic, and approximately 38% of the 361 SO Response Aggregators are no longer active.⁷²¹
 - (2) As indicated by [...], certain of the 361 SO Response Aggregators (e.g. 2good.info, checkoutspy.com, smartdeal.co.uk) do not provide comparison shopping services but instead redistribute traffic from other established comparison shopping services or merchant platforms.⁷²²
 - (3) As indicated by [...], approximately 21% of the 361 SO Response Aggregators are inactive,⁷²³ and approximately 37% receive traffic that is too low to be sustainable.⁷²³
 - (4) As indicated by [...], it provides only product reviews and no comparison shopping services.⁷²⁴
 - (5) As indicated by [...], it is not a comparison shopping service itself as it relies on data from [...] comparison shopping service and [...] is included in the list of 361 SO Response Aggregators.⁷²⁵
- (605) Fourth, the Commission's conclusion is not called into question by Google's claim that the Commission has failed to demonstrate, as part of its analysis of anti-competitive effects, a causal link between, on the one hand, the Conduct and the decrease in traffic to competing comparison shopping services and, on the other

⁷¹⁸ Case C-52/09, *Konkurrensverket v TeliaSonera Sverige AB*, EU:C:2011:83, paragraph 64; Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 79; Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 272, upheld on appeal in Case C-295/12 P, EU:C:2014:2062, paragraph 124; Case C-23/14 *Post Danmark*, EU:C:2015:651, paragraph 66.

⁷¹⁹ Case T-203/01 *Michelin v Commission*, EU:T:2003:250, paragraph 245; Case T-219/99 *British Airways v Commission*, EU:T:2003:343, paragraph 298; Case T-286/09 *Intel v Commission*, EU:T:2014:547, paragraph 186.

⁷²⁰ Traffic arbitrage consists of buying and selling paid traffic for a profit.

⁷²¹ [...] submission [...].

⁷²² [...] submission [...].

⁷²³ [...] submission [...].

⁷²⁴ [...] reply [...] to [...] the Commission's request for information [...].

⁷²⁵ [...] reply [...] to [...] the Commission's request for information [...].

hand, the Conduct and the increase in traffic to Google's comparison shopping service.⁷²⁶

- (606) In the first place, the Commission is not required to prove that the Conduct has the actual effect of decreasing traffic to competing comparison shopping services and increasing traffic to Google's comparison shopping service. Rather, it is sufficient for the Commission to demonstrate that the Conduct is capable of having, or likely to have, such effects.⁷²⁷
- (607) In the second place, and in any event, the Commission has demonstrated by “tangible evidence”⁷²⁸ that the Conduct decreases traffic to competing comparison shopping services (section 7.2.3.2) and increases traffic to Google's own comparison shopping service (section 7.2.3.3).

⁷²⁶ SSO Response, paragraphs 228-237.

⁷²⁷ Case C-52/09, *Konkurrensverket v TeliaSonera Sverige AB*, EU:C:2011:83, paragraph 64; Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 79; Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 272, upheld on appeal in Case C-295/12 P *Telefónica and Telefónica de España v Commission*, EU:C:2014:2062, paragraph 124; Case C-23/14 *Post Danmark*, EU:C:2015:651, paragraph 66.

⁷²⁸ Case C-457/10 P *AstraZeneca v Commission*, EU:C:2012:770, paragraphs 196 and 202.

⁷²⁹ The Commission concludes that the possible markets comprising both comparison shopping services and merchant platforms would also be national in scope. This is for the same reasons as outlined in section 5.3.1, which equally apply to merchant platforms. See reply of Fnac to Question 1 of the Commission's request for information of 29 October 2015. Google did not dispute this conclusion.

⁷³⁰ SSO Response, paragraphs 178-182, 193-219, 293-304; 181-214.