



Comments on
Google's Revised Commitment Proposals

By Adam Raff and Shivaun Raff
Co-founders of [Foundem](#) and [SearchNeutrality.org](#)

Nov 21, 2013

Table of Contents

Introduction	1
Paid Rival Links are a New Form of Abuse – Not a Remedy	2
Google’s Revised Proposals Fail Commissioner Almunia’s Own Benchmark	2
Google’s Proposals Do Not Give Users a Choice of Services Based on Their Merits	3
Google’s Proposals Do Not Restore or Preserve Incentives to Innovate.....	3
The Effective, Straightforward, and Eminently Reasonable Alternative	4
Responses to the Commission’s Request for Information.....	5
Question 6:.....	5
Google’s Proposed Changes to the Bidding Process are Not a “Substantial Improvement”	6
There are Many Other Issues with Google’s Revised Proposals.....	7
Question 13.....	7
Question 14.....	8
Question 4.....	10
Question 5.....	10
Question 7.....	11
Question 8.....	11
Question 9.....	12
Question 11.....	12
Question 12.....	13
Missing Questions.....	14

Introduction

Google's revised proposals remain fundamentally unchanged and suffer from all of the same fatal flaws that rendered its previous proposals considerably more harmful than helpful. Once again, Google has presented a cynical attempt to entrench, extend, and escalate its abusive practices under the guise of remedies. Were the Commission to adopt anything like these proposals it would simply be aiding and abetting Google in its long running strategy to transition organic traffic into paid traffic.

We were troubled by the Commission's attempt to cloak this second "market test" in confidentiality, which would have suppressed debate and hindered a wider understanding of the dire implications of adopting such destructive proposals.

We are also troubled by the Commission's Request for Information (RFI), which asks many irrelevant questions but fails to ask the most important one: *would Google's revised proposals address the Commission's competition concerns?* Unfortunately, all of the RFI's questions around "visibility", "click through rates", potential loopholes and workarounds, "shading", "snippet text" and "eligibility criteria" are entirely irrelevant as long as the proposed Rival Links remain Paid Rival Links. This is because Google, not its rivals, would be the main beneficiary of any profits derived from these links.

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

The Paid Rival Links element of Google's first proposals was such a patently unjustifiable escalation of the abuse Google had been instructed to remedy that few of us expected it to be retained in any follow-on proposals. It was widely assumed that Google had only included Paid Rival Links as a bargaining chip, to be withdrawn later under the guise of a substantial concession. Clearly we underestimated Google's audacity.

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

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

Paid Rival Links are a New Form of Abuse – Not a Remedy

Google stands accused of manipulating its search results to systematically favour its own services and demote or exclude those of its rivals, thereby diverting vast quantities of traffic and revenues away from competitors and to its own growing stable of competing services. Given Google's overwhelming dominance of search and search advertising, these practices have a devastating impact on competition, consumer choice, and innovation wherever Google deploys them. These are not hypothetical risks: during the period of the Commission's investigation, Google has already all but eradicated the product-price-comparison market in Europe and the US, and it is now embarked on a similar destruction of travel search and financial price comparison.

Google's revised proposals suffer from exactly the same fundamental flaw as its previous proposals. Remarkably, neither version offers one word directed at ending or curtailing its abusive search-manipulation practices. Instead, Google proposes to continue these practices entirely unabated. The one so-called concession that Google offers is the addition of rival links. But, because rivals are forced to pay for these links, they are nothing more than a confidence trick. Under the guise of an attempt to partially dilute the anti-competitive impact of Google's systematic self-preferencing, Google is actually trying to get away with introducing an entirely new and extraordinarily lucrative form of abuse; one that, due to the economics of over-subscribed auctions, would force Google's rivals to hand Google the majority of any profit generated from these links. This is what we mean when we point out that adopting these proposals would be considerably worse than doing nothing.

We are concerned that the Commission may not yet have grasped three fundamental points about Google's proposals. First, although Google's proposals describe two varieties of rival links, the vast majority of these links would be **Paid** Rival Links¹. Second, there is no objective justification for making competitors pay for any of these links. Third, the costs to competitors of these Paid Rival Links would be substantial, not nominal; as is the case with Google's existing AdWords system, bidders will be compelled to bid away most of their anticipated profits—in the process, transferring most of their profit to Google.

To understand these three points is to understand that Google's proposals would do nothing to remedy Google's abusive search manipulation practices—instead, the proposals would entrench, extend, and escalate these practices.

Google's Revised Proposals Fail Commissioner Almunia's Own Benchmark

As recently as last week, in a speech at the *London School of Economics* on 11 November², Commissioner Almunia re-stated his concerns about Google's abusive search manipulation practices and set out his view of the benchmark against which Google's proposals should be measured:

¹ In our view, the few domains that may start off with Free Rival Links (such as local search and review sites) would rapidly be transitioned to Paid Rival Links, particularly given the very low bar that Google has set itself to qualify a domain for this transition. Certainly, Google would have a considerable financial and anti-competitive incentive to make this transition wherever possible.

² http://europa.eu/rapid/press-release_SPEECH-13-905_en.htm

"One of the competition concerns we have in this case is that Google may divert internet traffic through favourable treatment – within its web-search results – to its own specialised web search services as compared to the links of competing services; such as those specialised in helping users find restaurants and shops.

"Enforcing antitrust rules here means preserving choice so that users can pick their preferred services based on their merits. It also means preserving the incentives to innovate across the board, so that users can enjoy new and better services as they appear on the market."

In other words, Commissioner Almunia has suggested that, to be considered effective, any proposals must:

- 1) give users a choice based on merit, and
- 2) restore or preserve the incentives to innovate.

Even a cursory analysis of Google's revised proposals reveals that they fall spectacularly short of Commissioner Almunia's own benchmark. By contrast, remedies based on the even-handed/non-discrimination principle (see below) would, by definition, fulfil both of these objectives in full.

Google's Proposals Do Not Give Users a Choice of Services Based on Their Merits

Google's revised proposals offer nothing to end or mitigate the "favourable treatment" of Google's own services. There is not one word directed at ending or curtailing Google's systematic self-preferencing of its own services. And there is not one word directed at ending or curtailing Google's anti-competitive demotions or exclusions of competing services. Instead, Google proposes to introduce Paid Rival Links—a breathtakingly audacious attempt by Google to substantially amplify its abuse so that it can continue to profit from the traffic it diverts from rivals while now also profiting from the traffic it sends to rivals. Crucially, the selection and placement of Paid Rival Links would have nothing to do with relevance or merit; it would be based almost entirely on how much each competitor is willing to pay Google. In other words, Google's proposals do precisely nothing to allow users to find and select services "based on their merits".

Google's Proposals Do Not Restore or Preserve Incentives to Innovate

By eliminating free, relevance- and merit-based, natural search traffic for everyone but Google, as Google is proposing, Google becomes the main beneficiary of its competitors' endeavours. Any competing services that survive the transition to such a radically altered and unfavourable marketplace would become little more than advertising arbitrage services for Google, with few resources left over to fund or incentivise innovation

Moreover, by allowing Google to commandeer virtually any sector or geographic territory of its choosing through the abuse of its monopoly power, Google itself is left with little incentive to innovate. Innovation is difficult, slow, and costly, and success is ultimately uncertain. By contrast, abusing your monopoly of search to steer users to your own services irrespective of their merit or relevance is easy, instantaneous and guaranteed to succeed. In other words, Google's proposals do precisely nothing to restore or preserve the incentive to innovate for either competitors or Google.

The Effective, Straightforward, and Eminently Reasonable Alternative

Over the last year, a strong consensus has emerged around the minimum standard of remedies that would be required to end Google's abusive search manipulation practices. This straightforward alternative to Google's proposals is eminently reasonable and would immediately restore the unbiased level-playing field that search engine users expect and competition and innovation require.

As eleven Complainants wrote in an [open letter](#)³ to Commissioner Almunia in March 2013:

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

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

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

This even-handed principle has been [endorsed by BEUC](#)⁴, the European consumer organisation representing the views of 39 national consumer organisations from across 30 European countries, as well as by an [unprecedented coalition of European Publishers](#).

Remedies that implement this even-handed principle would directly address the abusive practices the Commission has identified. They would be straightforward to define, implement, and monitor (for example, see [here](#)⁵ and [here](#)⁶), and would start acting to restore competition from the moment Google committed to them.

It is clear that Google's proposals fall far short of this even-handed-principle minimum standard.

Google likes to suggest that a call for remedies based on the even-handed principle is a call for an end to innovation and a return to the “ten blue links of old”. But the reverse is true. As we pointed out above, allowing Google to force-feed users its own services, irrespective of their merits or relevance, removes Google's incentive to innovate; it does not encourage it. What the even-handed principle would look like in practice would be entirely up to Google. Google would be left free to pursue any and all developments that improve the quality of its search results or enrich or enhance their display. The only difference would be that, under a non-discrimination remedy, the search results afforded these enhancements would be based on their relevance to the users' query rather than Google's financial interests.

³ <http://www.searchneutrality.org/google/open-letter-to-almunia>

⁴ <http://docshare.beuc.org/Common/GetFile.asp?ID=44729&mfd=off&LogonName=Guesten>

⁵ http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedies.pdf

⁶ http://www.foundem.co.uk/Foundem_Remedies_Proposals.pdf

Responses to the Commission's Request for Information

Please reply to questions 6 to 14 if you operate one or several specialised web search services in the EEA.

Question 6: Please provide an analysis of the visibility of rival links as defined in paragraphs 2(c) and 3(c) of the revised proposed commitments and displayed in Annex 3 thereof, as compared to the visibility of rival links in the version of the proposed commitments that was market tested on 26 April 2013.

Contrary to Commissioner Almunia's remarks on the 1st of October, the "visibility" of Google's proposed rival links has never been the issue. In the vast majority of cases, the Rival Links Google proposes will be **Paid** Rival Links, negating any conceivable competition-restoring benefit of these links. Indeed, Paid Rival Links represent a substantial escalation of Google's anti-competitive abuse; one that would directly and immediately cause significant additional harm to competition and consumers.

To be clear: even if the "visibility" of these Paid Rival Links was increased to a point where they occupied 90% of the page and attracted 90% of all "clicks", they would still be considerably more harmful than helpful. Google—not rivals—would be the main beneficiary of any profit derived from these links. As such, it would often be in Google's interest to make these links highly visible. Indeed, there will inevitably be cases where it would prove more profitable for Google to send paid traffic to rivals than to its own services.

So, how did Google manage to persuade the Commission to market test what amounts to a grave escalation of Google's abusive practices, rather than a genuine attempt to end them? And how did Google pull this off not once, but twice?

We suggest that at least part of the answer lies in an acute asymmetry of dialogue with the Commission. During the last eighteen months of the investigation—the period in which Google has been ostensibly negotiating with the Commission to end its abusive practices—the Commission has talked extensively to Google with little substantive dialogue with Complainants or other stakeholders.

As we wrote to Commissioner Almunia on May 1st this year:

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

Unfortunately, we once again find ourselves having to guess at what specific false or misleading arguments Google might have used to impair or distort the Commission’s understanding of the implications of Paid Rival Links. One possibility is that Google might have presented the Commission with real-world but misleading data designed to create the false impression that the costs of Paid Rival Links would be nominal—somewhere in the region of the maximum reserve price, for example⁷. We note that, following a recent background briefing with the Commission, several journalists pointed to Google’s proposed lowering of this maximum reserve price for Paid Rival Links, from 10 cents to 3 cents, as though it were a significant concession. In reality, any decrease in this maximum reserve price would have little or no discernible effect on the actual costs paid by rivals. In an over-subscribed auction the reserve price is entirely irrelevant for all but a tiny fraction of long-tail, low-volume keywords.

Google’s Proposed Changes to the Bidding Process are Not a “Substantial Improvement”

We disagree with any suggestion that Google’s proposed change to the granularity of its Paid Rival Link bidding process is an improvement over Google’s previous proposals, let alone a “substantial improvement”. Our comments on Google’s first proposals anticipated this change, pointed out that it would be Google’s preferred option rather than a concession, and explained that it would do nothing to mitigate the devastating impact of this new form of abuse.

From *Foundem’s Analysis of Google’s Remedy Proposals*, May 2013:

“Mending the Bidding Process Will Not Mend Google’s Proposals

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

But even if we assume that, in any revised version of this proposal, Paid Rival Links would be populated by a variant of Google’s existing AdWords bidding system, this would do nothing to mitigate the devastating anti-competitive impact of this new form of advertising-based abuse.

⁷ Google might, for example, have shown the Commission AdWords data derived from several million real-world price-comparison-related keywords and highlighted that the average CPC for each of these keywords was low (something approaching the reserve price, for example). Google might then have pointed out that the average CPC across all of these keywords was somewhat higher but still reasonably low. To the uninitiated, this might sound like compelling evidence that Google’s Paid Rival Links charges would indeed be nominal. But it would be highly misleading, because it deftly ignores the fact that the vast majority of these keywords would be “long tail” queries that are rarely searched for or clicked on. To get an accurate measure of what advertisers actually end up paying, each keyword must be weighted by volume (i.e. by the number of times it is searched for and clicked on). In other words, Google would need to provide the average CPC that advertisers actually end up paying across all of the keywords they bid on. This will be substantially higher than any reserve bid price and will typically reach a value that hands Google most of the anticipated profit. Put simply, in an over-subscribed auction, where there are considerably more advertisers than available ad slots, if you’re not prepared to hand over the majority of your profits to Google, the next rival will be.

Either bidding system would mark a dramatic escalation in Google’s ability to divert the vast majority of vertical search profits to its own coffers rather than to anyone else’s.”

There are Many Other Issues with Google’s Revised Proposals

If we assume that Google removes all of the paid elements of its rival links in some future iteration of proposals, it would then be necessary to address a whole host of other problems with its proposals that are currently moot.

As with Google’s previous proposals, these revised proposals are awash with gaping loopholes too numerous to mention that would probably require hundreds of pages to pin down and address. The simple reason for this is that Google’s proposals are a terrible fit for the problems they are purporting to solve. Everything is a bodge. By contrast, remedies based on the Even-Handed/Non-Discrimination Principle, which the vast majority of stakeholders have resoundingly endorsed, would naturally close all of these loopholes, because they are naturally suited to the problems they are trying to solve.

As just one example of the many issues that we did not address previously and cannot possibly address comprehensively in the limited time available, we note that Google’s proposals do not appear to make any mention of branded or navigational queries. Thus, adopting these proposals would, by omission, hand Google a five year mandate to extend its abusive practices by forcing rivals to pay Google for traffic even when users have clearly indicated that they are searching for these rivals.

If you operate in the EEA one or several specialised web search services which are in your opinion covered by the provisions of paragraph 2 of the revised proposed commitments, please reply to questions 13 to 14.

Question 13: Please provide the average revenue per visit on each of your specialised web search services for traffic coming from Google. Please split this per EEA country where your service is active, and distinguish between natural search traffic and paid search traffic.

This is a particularly troubling question, which, as worded, risks eliciting highly misleading data. The question asks only about revenue, completely ignoring profit.

In order to assess the importance and efficacy of a particular channel to market, it is clearly essential to consider both the profitability and the revenue of that channel. This is particularly important in the case of Paid Search (and Paid Rival Links), where the economics of an over-subscribed auction naturally drives prices up to the point where the majority of any profit is handed to Google.

A hypothetical but reasonably representative example might help to illustrate this crucial point. A company that devotes considerable resources to its Paid Search advertising campaigns might generate twice as much traffic and revenue from Paid Search as it does from Natural Search—perhaps generating £20M revenue from Paid Search compared to £10M from Natural Search. The economics of Paid Search, however, means that the advertising costs of generating that £20M might be something in the region of £18M, whereas the costs of generating the £10M from Natural Search would be considerably smaller, even negligible. Thus, even a company with twice as much Paid

Search revenue as Natural Search revenue would typically earn the vast majority of its profits from its smaller, but vastly more profitable, free traffic—in this case, somewhere in excess of 80%.

Note that, in the above scenario, the main beneficiary of the company's considerable Paid Search efforts would be Google, which would pocket around £18M of the company's £20M of revenue. These harsh economic realities of Paid Search (for everyone but Google) hold true for the smallest to the largest of Google's advertisers:

*“MoneySupermarket hire the brightest and best digital marketers who spend in the region of £40M a year with Google. Every day, the MoneySupermarket team bid on more than 8 million different terms through complex and sophisticated bid management systems. As such, every day we adjust and flex our spend based on efficiency and profitability. **Paid search is a difficult marketing tool for businesses to make profitable because of its auction-based methodology; it contributes very little to our overall profitability.**”*

MoneySupermarket CEO Peter Plumb, [Insurance Times](#), 1 February 2013 [emphasis added]

If the Commission allows Google to all but eliminate free Natural Search traffic for all businesses but Google's own, as Google proposes, the harsh economic realities of Paid Search become apocalyptic. Were the Commission to adopt Google's proposals it would be falling for a breathtakingly audacious confidence trick—one that would leave Google in sole possession of the efficient, low-overhead business model that has characterised and fuelled the Internet revolution.

By becoming the main beneficiary of its competitors' services, as well as the sole beneficiary of its own, Google's monopoly would become even more entrenched and unassailable. Any competitors that survive the transition to such a radically altered and unfavourable marketplace would become little more than advertising arbitrage services for Google.

If adopted, Google's proposals would effectively hand Google a five-year mandate to extend its monopolisation of horizontal search into a monopolisation of Internet commerce. It is easy to understand why Google is doggedly pursuing a settlement based on these proposals, but it is inexplicable that the Commission would even entertain it.

Question 14: Annex 1, paragraphs 15 to 22, of the revised proposed commitments describe the mechanism that Google will use in order to select and rank Rival Links showing the best relevance as well as exclude Rival Links of low quality from showing in the Rival Links space.

In your opinion, does this mechanism appropriately select between high and low quality Rival Links? Please elaborate (please provide concrete examples) on (i) the machine-learning regression model to calculate the pCTR of a Rival Link, (ii) the minimum cost-per-click threshold and (iii) the minimum pCTR threshold.

For the reasons explained above, it is a red herring to discuss how Paid Rival Links are selected and ranked in the context of a remedy. Under Google's proposals, click-throughs will be paid for rather than free for everyone but Google, rendering them *anti-competitive* rather than *pro-competitive*.

That said, there are several troubling aspects to this question, which we note refers exclusively to the proposed Paid Rival Links (Paragraphs 15 to 22 of Annex 1 describe the Auction Mechanism) rather than to the largely redundant Rival Links.

The Commission's question is couched in terms of "relevance" and "quality", but the proposed selection and ranking mechanism for Paid Rival Links bears almost no relation to either of these criteria. The whole point about Paid Rival Links is that their selection and placement is based primarily on payment not relevance. Paid Rival Links are a significant and immensely damaging departure from relevance- or merit-based organic search results.

Under Google's proposals, the selection and ranking of Paid Rival Links would be based on the keywords that advertisers choose to bid on, the amount advertisers are willing to pay, and the predicted efficacy of the related ad text.

While the changes to the bidding process between Google's first and second proposals make no material difference to the extent to which Paid Rival Links are anti-competitive rather than pro-competitive, they do have some significant implications for the assumptions underpinning the Commission's question. By ditching the coarse and gratuitously impractical bidding process of Google's first proposals in favour of its more granular AdWords system, there is no longer a significant "relevance-based" component to Google's decision about which Paid Rival Links to display and in what order. Under Google's first proposals, which only allowed rivals to bid against entire domains, Google would have had some work to do to calculate who from the bidding pool might be relevant to each specific query and how to combine that information with who was willing to pay Google the most. But under the proposed more granular AdWords system, the advertisers (in this case, Google's competitors) would assume most of this burden. Each advertiser would have to individually bid on every specific combination of keywords for which their service is relevant, leaving Google free to focus almost exclusively on maximising its revenues.

Not surprisingly, Google's mechanism for selecting and ranking AdWords or Paid Rival Links has little to do with quality or relevance and a lot to do with maximising Google's ad revenues. As Google explains, Paid Rival Links are ranked according to the following simple formula:

Bid multiplied by Predicted Click-Through-Rate (pCTR)

This formula tells Google how much money it can expect to make by displaying each particular ad. By Google's own admission, it selects the three most likely to earn Google the most money. Not the three most relevant and not the three highest quality.

Sadly, there is nothing new in Google attempting to disguise its anti-competitive pursuit of profit as the pursuit of quality.

In your opinion, is this mechanism objective, neutral and non-discriminatory or can it be subject to manipulation? Please elaborate. If your answer is no, could you describe alternative mechanisms that reduce the risk of potential manipulation?

Although this question is constrained to the pay-for-placement algorithms of Paid Rival Links and ignores the wider issues of subjective, non-neutral discrimination at the heart of the Commission's competition concerns, it is important to note that Google does not apply any of the criteria the

Commission is enquiring about to Google's own services. In fact, to the best of our knowledge, Google makes no attempt to reconcile the relative quality or relevance of its own services compared to those of its competitors, either in general or in relation to specific queries. Instead, Google's self-serving Universal Search mechanism has been designed and calibrated to simply assume that Google's own services will be the most relevant in nearly all cases. By using an entirely separate mechanism to insert its own services than it uses to rank everyone else's, Google's own services are not subject to the same penalties, ranking criteria, or "quality thresholds" as its competitors.

As we explain above, Google's selection and ranking criteria for Paid Rival Links are almost exclusively concerned with maximising Google's revenues. This renders any discussion of the extent to which this mechanism is objective, neutral and non-discriminatory effectively moot. Barring anti-competitive LPQ-style penalties, access to these Paid Rival Links would be based almost exclusively on who is willing to pay Google the most money.

It is important to note that remedies based on the *Even-Handed Principle* described above would, by definition, render all of Google's mechanisms objective, neutral and non discriminatory.

Question 4: Based on the provisions of paragraphs 1 to 9 and the definitions of paragraph 25 of the revised proposed commitments, do you consider that there are entry points for searches on Google which are not covered by the revised proposed commitments? If so, please explain and give concrete examples.

As was the case with Google's previous proposals, if Google's revised proposals were adopted, they would result in a significant increase in consumer harm, a considerable further weakening of competition, and a substantial increase in the revenues Google derives from its abusive practices. It is therefore unlikely that Google would seek to circumvent its proposed commitments by way of a loophole or omission in the entry points covered by the proposals.

Nonetheless, there are likely to be entry points for Google searches that are not adequately covered by Google's revised proposals. As an example, it is not clear to us whether the "google.com" domain is covered by the proposals. If not, then this could be a significant loophole, as Google could easily configure its services so that all web-based entry to its search service would be automatically redirected through its "google.com" domain. Country-specific versions of Google's services could then be served according to a cookie, or a parameter or pathname in the URL.

Question 5: Based on the provisions of paragraphs 1 to 9 and the definitions of paragraph 25 of the revised proposed commitments, do you consider that there are specialised web search services of Google which are not covered by the revised proposed commitments, in part or whole? If so, please explain and give concrete examples.

Because adoption of anything like Google's revised proposals would result in a significant increase in consumer harm, a considerable further weakening of competition, and a substantial increase in the revenues Google derives from its abusive practices, it is unlikely that Google would seek to circumvent its proposed commitments by way of a loophole or omission in the covered vertical search services.

Nonetheless, as we pointed out in our analysis of Google's previous proposals, Google's anti-competitive practices are not restricted to vertical search services (or "specialised web search

services”, as described in this question). Google can and will use these same anti-competitive practices to favour its own services and harm competitors in any sector where it chooses to deploy them. If these proposals were adopted, Google would continue these abusive practices across an ever-expanding portfolio of vertical search services, as well as in other sectors such as digital mapping, social networking, and e-commerce.

Question 7: In your experience, does the presence of additional text describing the content of a search result affect the click-through rate on that result compared to the situation when such additional text is not present? Please substantiate your answer.

As long as these rival links remain Paid Rival Links, it is meaningless to discuss click-through rates in the context of a remedy.

Clearly, the addition of relevant text would result in higher click-through rates. But this question misses the point: under these proposals, click-throughs would be paid for rather than free (for everyone but Google), rendering them *anti*-competitive rather than *pro*-competitive.

Paid Rival Links introduces an entirely new form of abuse, whereby Google becomes the *main* beneficiary of the traffic it sends to its rivals, as well as the *sole* beneficiary of the traffic it continues to divert from them. Under these conditions, it doesn’t matter how high or low the click-through-rate is—Google either retains all of the profit generated by the traffic to its own services or it is handed the majority of the profit generated by the traffic it sends to competitors.

Question 8: In your experience, does the shading of search results affect the click-through rate on that result? Please substantiate your answer.

For the reasons stated above, as long as the Rival Links remain Paid rather than Free, any discussion of their relative click-through rates is meaningless.

We note, however, that (following background briefings by the Commission) MLex characterised this part of Google's revised proposals as “making rivals’ services more visible by putting them in a shaded box”. But this is a misrepresentation of the clause (page 3, paragraph 6) in which Google has actually reserved the right to “distinguish Rival Links from Google Search Results”.

Historically, coloured panels have been reserved for distinguishing paid advertisements from organic search results. Most users have therefore learned to avoid, rather than be attracted to, these distinguishing features. Presumably, this is one of the reasons why Google’s Universal Search inserts have always been designed to blend in innocuously, posing as search results rather than being clearly distinguished from them.

Moreover, the notion that Google is proposing to colour the rival links panels in order to increase click-through rates is undermined by the evolution of its own AdWords panels. Google’s business model requires that users regularly click on its AdWords ads rather than on its natural search results, which is why, over time, it has chosen to distinguish these ads with increasingly more subtle background colours, rather than more garish ones.

Question 9: Would your specialised web search service(s) be eligible for participation in the Vertical Sites Pools provided for in Annex 1, article 1(a), of the revised proposed commitments? If so, please specify which ones. If not, please explain why. In particular, if you consider that your service(s) would not be eligible because it does not meet all eligibility criteria listed in Annex 1, paragraphs 3 and 4, of the revised proposed commitments, please specify which criteria and why you consider that your service(s) would not meet them. Please also specify whether, in your opinion, the relevant competing Google specialised search service(s) meet(s) these criteria.

As long as these rival links remain Paid Rival Links, it is essentially meaningless to talk about eligibility criteria in the context of a remedy. Because Paid Rival Links are more harmful than helpful, ensuring competitors' access to them does not contribute to the effectiveness of the proposed remedies.

If we assume that Google removes all of the paid elements of its rival links in some future iteration of proposals, we would then need to consider the substantial impact of Google's Panda and various follow-on updates on these eligibility criteria. Since the introduction of the anti-competitive elements of Google's Panda update more than two years ago, many of Google's leading competitors may no longer meet the minimum traffic thresholds required to be eligible to participate in the Vertical Sites Pools.

Of course, any minimum traffic threshold provides an arbitrary and artificial barrier to entry for potentially innovative new entrants. It is difficult to reconcile these minimum thresholds with Commissioner Almunia's stated objective that users should be able to "enjoy new and better services as they appear on the market."⁸

The sole qualification criteria for access to a search engine's search results (let alone one whose dominance of the European search market exceeds 90%) should be relevance to the users' queries. The only remedy that will ensure a level playing field for incumbents and innovative new entrants is a remedy based on the Even-Handed Principle described above. Such a remedy would be proportionate, principle-based and future-proofed. It would also be straightforward to define, implement, and monitor, and is the only remedy (short of structural separation) capable of ending Google's anti-competitive search manipulation practices.

Question 11: Annex 1, paragraphs 12 and 14, of the revised proposed commitments provide that Google will display next to Rival Links text up to a maximum length of two lines of 13 "m" characters each.

With regard to industry practice, how does this maximum size compare with the typical maximum size for text displayed next to free and/or commercial links within search results or search advertisements?

It is unclear exactly what Google or the Commission means by "a maximum length of two lines of 13 'm' characters". Does this mean that each line must not exceed the space required to display 13 lower-case "m" characters? Is it an oblique reference to the typographical "em" unit, or the CSS "em" measurement? Won't this maximum length vary depending on the specific font Google chooses? Is it safe to assume that Google will always use a variable-width font rather than a fixed-

⁸ http://europa.eu/rapid/press-release_SPEECH-13-905_en.htm

width font? And don't variable width fonts vary from font to font in the amount of space consumed by each letter? Won't this mean that some advertisements might be truncated if Google changed the font?

Whatever the interpretation of this maximum-length stipulation, it is clear that it represents a significant reduction from the maximum length of Google's regular AdWords ads, which typically limits the second and third lines of an ad to 35 alpha-numeric characters each.

If you operate in the EEA one or several specialised web search services which are in your opinion covered by the provisions of paragraph 3 of the revised proposed commitments, please reply to question 12.

Question 12: Annex 1, paragraph 12, of the revised proposed commitments provides that Google will display together with Rival Links dynamically generated snippet text derived from the Vertical Search Sites.

In your opinion, would static text, provided by the Vertical Search Sites but independent of the query, be more relevant for the user than generated snippet text derived by Google from the Vertical Search Site as proposed in the revised proposed commitments? Please substantiate your answer.

It is important to bear in mind that this question refers exclusively to the snippet text that would be displayed alongside the proposed Free Rival Links, not the text that would be displayed alongside the proposed Paid Rival Links.

As we explained above, and in our response to Google's previous proposals, this Free variety of Rival Link would only appear in a small number of domains. Moreover, because of the substantial financial and anti-competitive incentives for Google to transition these domains from Free to Paid, it is likely that most or all domains would rapidly become Paid domains, rendering the Free variety of Rival Link all but obsolete.

Missing Questions

We feel that this RFI is missing a number of important questions, including the following:

- To what extent, if any, would adoption of Google’s proposals address the Commission’s competition concerns, restore competition, and protect consumers?
- Are there additional or alternative measures that Google could take in order to address the Commission’s competition concerns, restore competition, and protect consumers?
- If the adoption of Google’s revised commitment proposals resulted in a substantial reduction or even a removal of your organic traffic from Google, leaving your Google-originated traffic substantially or entirely derived from AdWords and/or Paid Rival Links, what effect would this have on:
 - The viability and profitability of your business?
 - Your ability to compete effectively against Google’s competing services (which would not be subject to any of these costs)?
 - Your ability and/or incentive to invest in innovation?
- In your opinion, what effect, if any, would Google’s transition from primarily relevance-based-placement to primarily paid-placement have on consumers in your sector?
- In your opinion, would the adoption of Google’s revised commitment proposals make it easier or more difficult to launch a new competing service in your sector? Please explain your answer.
- In your opinion, to what extent would remedies based on non-discrimination (also known as the Even-Handed Principle) be effective in addressing the Commission’s competition concerns?
- Do you feel that you have had sufficient opportunity to exchange views with the Commission? Do you feel that you have had sufficient opportunity to hear and respond to Google’s arguments and representations?