EUROPEAN COMMISSION
Competition DG

CASE AT.40411

Google Search (AdSense)

(Only the English text is authentic)

ANTITRUST PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 20/03/2019

EUROPEAN
COMMISSION

Brussels, 20.3.2019
C(2019) 2173 final

COMMISSION DECISION

of 20.3.2019

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (the Treaty) and Article 54 of the EEA Agreement

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(AT. 40411 - Google Search (AdSense))

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1],

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003, of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[2], and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission Decision of 30 November 2010 and 14 July 2016 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty[3],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

1. INTRODUCTION

(1) This Decision is addressed to Google LLC (formerly Google Inc.) (“Google”) and to Alphabet Inc. (“Alphabet”).

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1 OJ, C 115, 9.5.2008, p.47.

2 OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (the "Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the Treaty will be used throughout this Decision.

3 OJ L 123, 27.4.2004, p. 18.

(2) This Decision establishes that the following conduct by Google regarding certain clauses in its agreements with third party websites (the "publishers") constituted a single and continuous infringement of Article 102 of the Treaty and Article 54 of the Agreement on the European Economic Area (the "EEA Agreement").

(3) This Decision also establishes that Google's conduct constituted three separate infringements of Article 102 of the Treaty and Article 54 of the EEA Agreement, each of which is also part of the single and continuous infringement referred to in recital ([1]).

(4) The three separate infringements were as follows, namely that Google entered into agreements with certain publishers requiring them:

(1) to source all or most of their search advertising (the "search ads") requirements from Google.

(2) to reserve the most prominent space on their search results pages for a minimum number of search ads from Google.

(3) to seek Google's approval before making changes to the display of competing search ads.

(5) Section 2 of this Decision provides an overview of Google's 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. Section 5 explains the different types of agreements that Google had entered into with publishers. Sections 6 to 13 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 single and continuous nature of the infringement, the duration of that infringement, the Commission's jurisdiction, the effect of the single and continuous infringement on trade between Member States and between Contracting Parties to the EEA Agreement and the addressees of this Decision. Section 14 discusses remedies. Section 15 concludes by setting out the method for calculating the fine and the amount of the fine imposed.

2. THE UNDERTAKING CONCERNED

2.1. Google and Alphabet

(6) Google is a multinational technology company 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.

(7) In August 2015, Google announced its intention to create a new holding company, Alphabet. Google completed the reorganisation on 2 October 2015. Consequently, Google became a wholly-owned subsidiary of Alphabet as of that date.

(8) On 30 September 2017, Google converted from an incorporated entity (Google Inc.) to a limited liability company (Google LLC). In addition, a new holding company

(XXVI Holdings Inc.) is now the sole shareholder of Google. XXVI Holdings Inc. is itself a wholly-owned subsidiary of Alphabet.[4]

(9) According to the consolidated financial statements of Alphabet, its turnover was USD 136 819 million (approximately EUR 115 968 million[5]) for the year running from 1 January 2018 to 31 December 2018.[6]

2.2. Overview of Google's business activities

(10) 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 derives the main source of its revenues.[7]

(11) Google offers a wide range of products including its general search service,[8] "Google Search" (Section 2.2.1), its auction-based online search advertising platform, "AdWords" (Section 2.2.2) and its online search advertising intermediation platform, "AdSense" (Section 2.2.3).

2.2.1. Google Search

(12) Google's flagship online service is its general search engine, 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.

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

(14) When a user enters a keyword or a string of keywords (the "query") in Google Search, Google's general search results pages return different categories of search results, including generic search results[9] and specialised search results.[10] In addition, Google Search may return a third category of results, namely online search ads, as described in Section 2.2.2.

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4 See Google's response to Question 4 of the Commission's request for information of 8 October 2018. Google LLC is therefore the same legal entity as, and the legal successor of, Google Inc.

5 Amount converted from USD into EUR on the basis of the average annual reference exchange rate published by the ECB (https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-usd.en html), i.e. for 2018, 1 USD = 0.8476 EUR.

6 Alphabet Form 10-K Annual Report for the US fiscal year ending 31 December 2018, available at https://abc.xyz/investor/static/pdf/20180204_alphabet_10K.pdf?cache=11336e3, downloaded and printed on 7 February 2019.

7 Alphabet fiscal year 2018 results, available at https://abc.xyz/investor/static/pdf/20180204_alphabet_10K.pdf?cache=11336e3 downloaded and printed on 7 February 2019.

8 "General search" is also known as "online search" or "horizontal search". The Commission will use the term "general search" throughout this Decision.

9 "Generic search results" are also known as "organic search results" or "natural search results". The Commission will use the term "generic search results" throughout this Decision.

10 "Specialised search results" are also known as "vertical search results" or "universal search results". The Commission will use the term "specialised search results" throughout this Decision.

(15) Generic search results typically appear on the left side of Google's general search results page, in the form of blue links with short excerpts ("snippets") and in order of their "web rank".

2.2.2. AdWords

(16) In response to a user query on Google Search, Google's general search results pages may also return search ads ("Google search ads") drawn from Google's auction-based online search advertising platform, AdWords ("AdWords results").

(17) AdWords results are not limited to specific categories of products, services or information. Currently they typically appear above or below Google's generic search results with a label informing users of their nature as search ads (for example, "Ads").[11] Any advertiser can purchase AdWords results because such results are not limited to particular categories of advertisers.

(18) The appearance of AdWords results in response to a user query involves two main elements. First, AdWords identifies a pool of relevant search ads by matching the two elements: (i) keywords with which advertisers have associated their search ads and (ii) keywords used in the query by the user. Second, AdWords ranks the relevant search ads within the pool based on their "Ad Rank". The ranking of a search ad depends on two factors: the maximum price an advertiser is willing to pay for each click on its search ad, as it indicated in a second-price auction,[12] and the quality rating of that search ad (known as "Quality Score"). Google bases the Quality Score on, among other things, a search ad's predicted click-through rate ("CTR").[13] AdWords results that appear the most visibly on Google's general search results pages are those with the highest Ad Rank scores.[14]

(19) When a user clicks on an AdWords result, Google receives remuneration for that click from the advertiser that owns the website to which the user is directed (known as the "pay per click" system).

(20) AdWords results allow advertisers to lead users entering queries on Google Search to their websites, including in circumstances where those websites would otherwise not rank highly in generic search results on Google's general search results pages.

2.2.3. AdSense

(21) Since 2003, Google has operated an online advertising intermediation platform called AdSense, which delivers Google ads on the websites of publishers.[15] Over the years, Google has developed a number of different online advertising intermediation services, including AdSense for Search ("AFS"), AdSense for Content ("AFC"), AdSense for Domains, AdSense for mobile applications ("AdMob") and AdSense for Shopping ("AFSh").

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11 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 and printed on 27 June 2017).

12 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.

13 The predicted CTR represents the probability that a search ad will receive a click (see Google's reply to Question 16 of the Commission's request for information of 10 February 2010, paragraph 5).

14 Google's reply to Question 16 of the Commission's request for information of 10 February 2010.

15 Google's submission of 17 September 2011, "*Google's AdSense And Distribution Agreements Do Not Have Anti-Competitive Foreclosure Effects - An Analytical Framework*", paragraph 2.17.

(22) AFS delivers Google search ads on the websites of publishers in response to search queries typed by users in a search box on those websites. Users can type the queries on desktop and mobile devices. While Google typically provides the technology powering the search box, publishers wishing to rely on non-Google technology can take AFS on a stand-alone basis.

(23) Google shares the revenue generated by Google search ads between it and publishers. Publishers receive a Traffic Acquisition Cost ("TAC") from Google, which is a percentage of the revenue generated by users' clicks on the search ads shown on the publisher's website.[16]

(24) AFC delivers Google ads that relate to the content of a given publisher's website and to certain website properties pre-selected by the advertiser. When a publisher implements AFC on a webpage, AFC periodically crawls the content of that page and delivers Google ads that are relevant to the partner's audience and to the partner's site content. Google also shares the revenue generated by those ads between it and the publisher.[17]

(25) Google also allowed its partners to generate earnings from the display of Google ads on their websites on mobile devices using its intermediation network via mobile AFS ("mAFS") and mobile AFC ("mAFC").[18] Google now offers these services as part of AFS and AFC respectively.[19] Until mid-2014, Google's agreements with publishers regarding AFS made no distinction between desktop and mobile devices. However, since mid-2014, Google introduced new arrangements with distinct categories for mobile devices, [redacted].[20]

(26) AdSense for Domains allows publishers to provide advertisements on unused domains.[21]

(27) AdMob provides advertising solutions for mobile applications. Among other things, AdMob allows publishers to monetise their mobile applications with ads placed through Google's intermediation network.[22]

(28) In September 2014, Google launched AFSh, a service allowing partners to place paid product results from Google's comparison shopping service (Google Shopping) on their websites. Paid product results, which Google calls Product Listing Ads ("PLAs"), show product information (*e.g.* product name, price and company name),

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16 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraph 28.6.

17 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraph 28.7.

18 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraph 28.8 and footnote 5

19 Google's reply to Question 14 of the Commission's request for information of 19 December 2014, page 37.

20 Google's reply to Question 8 of the Commission's request for information of 2 February 2016, paragraphs 8.1-8.3.

21 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraph 28.8 and footnote 4. An unused domain is a domain without content.

22 AdMob has replaced Google's prior service AdSense for Mobile Applications, see Google's reply to Question 14 of the Commission's request for information of 19 December 2014, page 37; and Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraph 28.8 and footnote 6.

a link to the web site of the merchant where the product can be acquired and generate revenue on a cost-per-click basis.[23]

3. PROCEDURE

(29) In January 2010, the Bundeskartellamt (Germany) exchanged information with the Commission on a complaint submitted by Ciao GmbH ("Ciao") pursuant to Article 12 of Regulation (EC) No 1/2003. Ciao's complaint was re-allocated to the Commission on 22 January 2010 in accordance with the Commission's Notice on Cooperation within the Network of Competition Authorities.[24] On 10 February 2010, the Commission sent Ciao's complaint to Google for comments. On 20 March 2010, Google responded with comments on the complaint.

(30) On 30 November 2010, the Commission initiated proceedings against Google pursuant to Article 2(1) of Regulation (EC) No 773/2004.[25] The initiation of proceedings relieved the competition authorities of the Member States of their competence to apply Articles 101 and 102 of the Treaty to the same practices.

(31) On 31 March 2011, Microsoft Corporation ("Microsoft") lodged a complaint with the Commission. On 1 April 2011, the Commission sent a non-confidential version of the complaint to Google. On 16 September 2011, Google provided comments on the complaint.

(32) On 30 March 2012, Expedia Inc. ("Expedia") lodged a complaint with the Commission. On 12 April 2012, the Commission sent a non-confidential version of the complaint to Google. On 24 May 2012, Google provided comments on the complaint.

(33) On 30 January 2013, the Initiative for a Competitive Online Marketplace ("ICOMP") lodged a complaint with the Commission. On 22 February 2013, the Commission sent a non-confidential version of the complaint to Google. On 1 June 2013, Google provided comments on the complaint.

(34) On 13 March 2013, the Commission adopted a preliminary assessment addressed to Google under Article 9 of Regulation (EC) No 1/2003 ("Preliminary Assessment") and notified it on 18 March 2013. In the Preliminary Assessment, the Commission found that Google engages in the following business practices that may violate Article 102 of the Treaty and Article 54 of the EEA Agreement:

(1) The favourable treatment, within Google's general search results pages, of links to Google's own specialised search services as compared to links to competing specialised search services ("first business practice");

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[23] Google's reply to Question 14 of the Commission's request for information of 19 December 2014, page 37.

[24] Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43.

[25] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty ("Regulation No 773/2004"), OJ L 123, 27.4.2004, p. 18.

(2) The copying and use by Google, without consent, of original content from third party websites in its own specialised search services ("second business practice");[26]

(3) Agreements that *de jure* or *de facto* oblige publishers to source all or most of their search ads requirements from Google ("third business practice"); and

(4) Contractual restrictions on the management and transferability of online search advertising campaigns across online search advertising platforms ("fourth business practice").

(35) Google did not agree with the legal analysis in the Preliminary Assessment and contested that any of the business practices described therein violate Article 102 of the Treaty and Article 54 of the EEA Agreement. It nevertheless offered three sets of commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to address the Commission's competition concerns regarding the four business practices identified in the Preliminary Assessment. Google submitted the first set of commitments on 3 April 2013, the second set of commitments on 21 October 2013 and the third set of commitments on 31 January 2014 (the "Third Set of Commitments").

(36) On 16 May 2014, Deutsche Telekom AG ("Deutsche Telekom") lodged a complaint with the Commission. On 27 May 2014, Deutsche Telekom submitted further information on the allegations covered by its complaint. On 25 June 2014, the Commission sent a non-confidential version of the complaint to Google. On 22 September 2014, Google provided comments on the complaint.

(37) Between 27 May 2014 and 11 August 2014, the Commission sent letters pursuant to Article 7(1) of Regulation No 773/2004 ("Article 7(1) letters") to all complainants that had lodged a complaint under the present proceedings before 27 May 2014.[27] The letters outlined the Commission's preliminary view that the Third Set of Commitments offered by Google could address the Commission's competition concerns identified in the Preliminary Assessment. The Commission also informed the complainants in the Article 7(1) letters that it intended to reject their complaints, to the extent that they related to the competition concerns identified in the Preliminary Assessment.

(38) Five complainants submitted written observations in response to the Article 7(1) Letters.[28]

(39) Having received and analysed those written observations, the Commission considered that it was not in a position to adopt a decision under Article 9 of Regulation (EC) No 1/2003 making binding the Third Set of Commitments in relation to the four business practices identified by the Preliminary Assessment. The Commission brought this to Google's attention on 4 September 2014.[29]

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[26] The Preliminary Assessment did not take a view on the relationship between Google's use of original content from third party websites and intellectual property law.

[27] Commission letters to Ciao of 11 August 2014, to Deutsche Telekom of 19 June 2014, to Expedia of 17 June 2014, to ICOMP of 20 June 2014, to Microsoft of 27 May 2014.

[28] Submission of [redacted] of 7 July 2014; submission of [redacted] of 18 July 2014; submission of [redacted] of 22 July 2014; submissions of [redacted] of 28 July 2014 and 5 August 2014; submission of [redacted] of 10 September 2014.

[29] Email from Cecilio Madero to Kent Walker of 4 September 2014. See also Submission of Google of 7 October 2014.

(40) As Google proved unwilling to offer a revised set of commitments, the Commission reverted to the procedure of Article 7 of Regulation (EC) No 1/2003 in relation to the third business practice.

(41) On 2 July 2015, [redacted] and its parent company [redacted] lodged a complaint with the Commission. On 18 September 2015, the Commission sent a non-confidential version of the complaint to Google. On 20 November 2015, Google provided comments on the complaint.

(42) On 21 April 2016, Microsoft withdrew its and Ciao's complaints against Google.[30]

(43) On 28 May 2016, Google informed the Commission that it would introduce certain changes to the agreements with larger publishers, namely those publishers with whom Google enters into individually negotiated, paper-based agreements (so-called "Direct Partners", see Section 5.1).[31]

(44) On 14 July 2016, Kelkoo submitted an application to be heard as a third party within the meaning of Article 13 of Regulation (EC) No 773/2004 and Article 5 of Decision 2011/695[32]. The Hearing Officer approved Kelkoo's application on 25 July 2016.

(45) On 14 July 2016, the Commission initiated proceedings against Alphabet pursuant to Article 2(1) of Regulation (EC) No 773/2004 in relation to the clauses in Google's agreements with publishers outlined in recitals (4) to (4)(3) under the separate case number AT.40411 – Google Search (AdSense).

(46) On 14 July 2016, the Commission adopted a Statement of Objections (the "SO") addressed to Google and Alphabet.[33] In the SO, the Commission reached the preliminary conclusion that the clauses described in recitals (4)-(4)(3) constitute an abuse of a dominant position and, therefore, infringe Article 102 of the Treaty and Article 54 of the EEA Agreement.

(47) On 26 July 2016, the Commission granted Google access to the Commission file.

(48) On 13 September 2016, [redacted] submitted an application to be heard as a third party within the meaning of Article 13 of Regulation (EC) No 773/2004 and Article 5 of Decision 2011/695. The Hearing Officer approved [redacted]'s application on 19 September 2016.

(49) On 3 November 2016, Google submitted its response to the SO (the "SO Response"). Google did not request the opportunity to express its views at an oral hearing pursuant to Article 12(1) of Regulation (EC) No 773/2004.

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30 Letter of Microsoft of 21 April 2016.

31 Google's letter of 28 May 2016.

32 Decision of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings Text with EEA relevance, OJ L 275, 20.10.2011

33 Hereinafter when the Decision refers to Google's Response to the Statement of Objections and to other submissions made by Google after the opening of proceedings against Alphabet it refers to the joint Response to the Statement of Objections submitted by Google and Alphabet and other joint submissions made by Google and Alphabet. Expressions such as "Google argues", "Google submits" or "Google claims" should also be intended as referring to joint submissions made by Google and Alphabet. Equally, when the Decision uses expressions such as "provided to Google" and "informed Google" this refers jointly to information or access to documents provided by the Commission to Google and Alphabet jointly.

(50) On 4 November 2016, Kelkoo submitted its comments on the SO.

(51) On 6 June 2017, the Commission sent Google a letter (the "First Letter of Facts") informing it about pre-existing evidence to which Google already had access but that the Commission did not expressly rely on in the SO and which, on further analysis of the Commission's file, could be relevant to support the preliminary conclusions reached in the SO. The Commission also informed Google about additional evidence brought to its attention after the adoption of the SO that could also be relevant to support the preliminary conclusions reached in the SO.

(52) On 6 June 2017, the Commission granted Google further access to the Commission file in relation to all documents that the Commission had obtained after the SO until the date of the First Letter of Facts.

(53) On 3 July 2017, Google submitted its response to the First Letter of Facts (the "First LoF Response").

(54) On 5 October 2017, Google submitted a letter requesting full records of the Commission's meetings with third parties relating to the present case.

(55) On 11 October 2017, Google submitted a letter regarding the alleged implications for the present case of the judgment of the European Court of Justice in Case C-413/14P *Intel*.[34]

(56) On 6 December 2017, Kelkoo lodged a complaint with the Commission. On 11 December 2017, the Commission sent a non-confidential version of the complaint to Google. On 31 January 2018, Google provided comments on the complaint.

(57) On 11 December 2017, the Commission sent Google a second letter (the "Second Letter of Facts") informing it about pre-existing evidence to which Google already had access but that the Commission did not expressly rely on in the SO and in the First Letter of Facts and which, on further analysis of the Commission's file, could be relevant to support the preliminary conclusions reached in the SO. The Commission also informed Google about additional evidence brought to its attention after the adoption of the First Letter of Facts that could also be relevant to support the preliminary conclusions reached in the SO.

(58) On 11 December 2017, the Commission granted Google further access to file in relation to all documents that the Commission had obtained after the First Letter of Facts until the date of the Second Letter of Facts.

(59) On 20 December 2017, the Commission provided Google with a list of Google's agreements with Direct Partners that the Commission took into account in the calculations presented in the Second Letter of Facts.

(60) On 15 January 2018, Google submitted its response to the Second Letter of Facts (the "Second LoF Response").

(61) On 1 March 2018, the Commission provided Google with minutes of the meetings and calls that the Commission had with third parties concerning the subject matter of the investigation.

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[34] Case C-413/14 P Intel Corp. v Commission, EU:C:2017:632

4. GOOGLE'S ALLEGATIONS THAT THE COMMISSION HAS BREACHED ITS RIGHTS OF DEFENCE

(62) Google alleges that the Commission breached its rights of defence by (i) not providing it with adequate access to minutes of meetings with third parties;[35] (ii) preventing it from verifying certain calculations contained in the Second Letter of Facts;[36](iii) failing to adopt a Supplementary Statement of Objections ("SSO")[37] and (iv) failing to provide adequate reasons as to why the Commission reverted to the Article 7 procedure.[38]

(63) For the reasons set out in recitals (63) to (72) the Commission concludes that it has respected Google's rights of defence throughout the investigation.

(64) First, the Commission provided Google with adequate access to minutes of meetings with third parties. On 1 March 2018 the Commission provided Google with minutes of the meetings and calls that the Commission had with third parties concerning the subject matter of the investigation. The Commission obtained these minutes by agreement with the third parties concerned. The Commission has no other documents with any further account of the meetings concerned.

(65) In any event, Google has not brought forward specific arguments as to how and why the alleged failure of the Commission to provide fuller meeting notes has breached its rights of defence.

(66) Second, Google has been able to verify all the Commission's calculations contained in the Second Letter of Facts.

(67) The Commission based its calculations in the Second Letter of Facts on data provided by Google. The Commission identifies the specific sources for these calculations in the footnotes of the relevant tables in the Second Letter of Facts. Moreover, on 20 December 2017, the Commission provided Google with a list of Google's agreements with Direct Partners that the Commission took into account in these calculations (see recital (59)). Furthermore, the detailed nature of Google's arguments in its Second LoF Response concerning the content of the tables (see recital (392)) shows that Google fully understood the way in which the Commission had performed the underlying calculations.

(68) Third, the Commission was not required to adopt an SSO.

(69) In the first place, in the SO, the Commission reached the preliminary conclusion that Google's conduct regarding certain clauses in its agreements with publishers was capable of restricting competition. This mirrors the standard recalled at paragraphs 138 to 141 of the judgment of the Court of Justice in Case C-413/14 P *Intel*.

(70) In the second place, neither the First LoF nor the Second LoF concerned conduct other than that of which Google had the possibility to submit observations in its response to the SO.[39] In particular, in the SO, the Commission had already objected

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35 Google's submission of 5 October 2017.

36 Second LoF Response, paragraph 11 bullet 4 of the Executive Summary, paragraph 54 and Annex 2.

37 Second LoF Response, paragraph 17.

38 SO Response, paragraphs 376-377 and Annex 1, page 2.

39 Case T-23/99 *LR af 1998 A/S v Commission*, EU:T:2002:75, paragraphs 186-195; Case T-199/08 *Ziegler v Commission*, paragraph 115; Case T-111/08 *MasterCard v Commission*, EU:T:2012:260,

to Google's agreements with Direct Partners that required them to source all or most of their search ads requirements from Google.

(71) Fourth, the Commission is not required to give reasons as to why it reverted to the Article 7 procedure. The Court of Justice rejected such an argument in *Alrosa*, where it held that "*the General Court based its reasoning on the incorrect proposition that the Commission was required to give [Alrosa] reasons for rejecting the joint commitments*".[40]

(72) Moreover, the Commission has provided adequate reasons as to why it reverted to the Article 7 procedure. The Commission already referred to these reasons in the SO.[41]

(73) In the first place, the Commission had concerns about the effectiveness of the Third Set of Commitments to address the competition concerns in relation to the third business practice. In particular, the Commission had concerns that the minimum Google ads requirement under the Third Set of Commitments could prevent access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation. The Commission communicated these concerns to Google on 4 September 2014.[42] However, Google did not submit any revised set of commitments relating to the third business practice.

(74) In the second place, the Commission also had concerns about the effectiveness of the Third Set of Commitments to address the competition concerns in relation to the first, second and fourth business practices. The Commission communicated these concerns to Google on 4 September 2014. However, Google did not submit any revised set of commitments, relating to the first, second and fourth business practices.

(75) In the third place, the Commission's position outlined in the Article 7(1) letters does not call into question the adequacy of the reasons to revert to the Article 7 procedure. The position outlined in the Article 7(1) letters was preliminary and potentially subject to change.[43] In addition a letter of Commission Vice President Almunia to Google of 22 July 2014 anticipated the possible need for Google to offer revised commitments in the light of the replies to the Article 7(1) letters.[44]

5. GOOGLE'S AFS AGREEMENTS WITH PUBLISHERS

(76) Google has entered into three main categories of AFS agreements with publishers: (i) individually negotiated, paper-based, Google Services Agreements ("GSAs") with Direct Partners; (ii) standard form, non-negotiable, online agreements with a large

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paragraph 273; Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraphs 704 and 741; Case T-758/14 *Infineon Technologies v Commission*, EU:T:2016:737, paragraphs 94-95.

40 Case C-441/07 P, *Commission v Alrosa*, EU:C:2010:377, paragraphs 92 and 95. See also Case T-76/14 *Morningstar v Commission*, EU:T:2016:481, paragraph 40.

41 SO, paragraphs 44-47.

42 Email from Cecilio Madero to Kent Walker of 4 September 2014.

43 Case T-65/98 *Van den Bergh Foods*, EU:T:2003:281, paragraph 194.

44 Letter from Commission Vice-President Joaquin Almunia to Eric Schmidt of 22 July 2014.

number of other generally smaller publishers ("Online Contracts"); and (iii) paper-based simplified agreements ("Simplified Contracts").[45]

5.1. Google Services Agreements with Direct Partners

(77) Since 2003, Google has entered into GSAs with Direct Partners.[46]

(78) Between 2007[47] and 2015,[48] the number of Direct Partners in the EEA increased from 35 to 129. In 2016, the number of Direct Partners in the EEA decreased to [80-90].[49]

(79) While Direct Partners account for only a small fraction of the total number of publishers using AFS, they generate most of Google's AFS revenues. For example, in 2016, Direct Partners generated net revenues in the EEA of EUR [170 million-180 million], representing approximately [70%-80%] of Google's net AFS revenues in the EEA in that year.[50]

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45 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraphs 28.31 and ff.

46 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraphs 28.34 and ff.

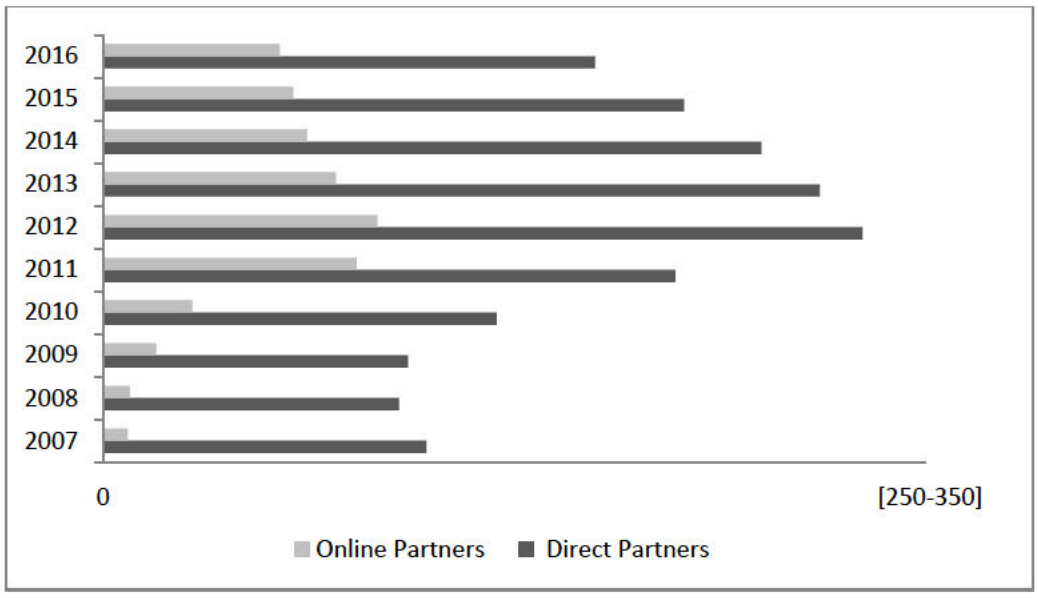
47 Google was unable to provide data for the year 2006. See Google's reply to Question 3 of the Commission's request for information of 16 March 2016.

48 Google's reply to Question 3 of the Commission's request for information of 16 March 2016, Annex 3 and Google's reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7. For the year 2015, Google initially stated that the number of Direct Partners in the EEA was [80-90] (Google's reply to Question 3 of the Commission's request for information of 16 March 2016). Google subsequently explained that the number of Direct Partners in the EEA in 2015 was [120-130] and explained that discrepancy as follows: "[redacted]" (reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7).

49 Google's reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7.

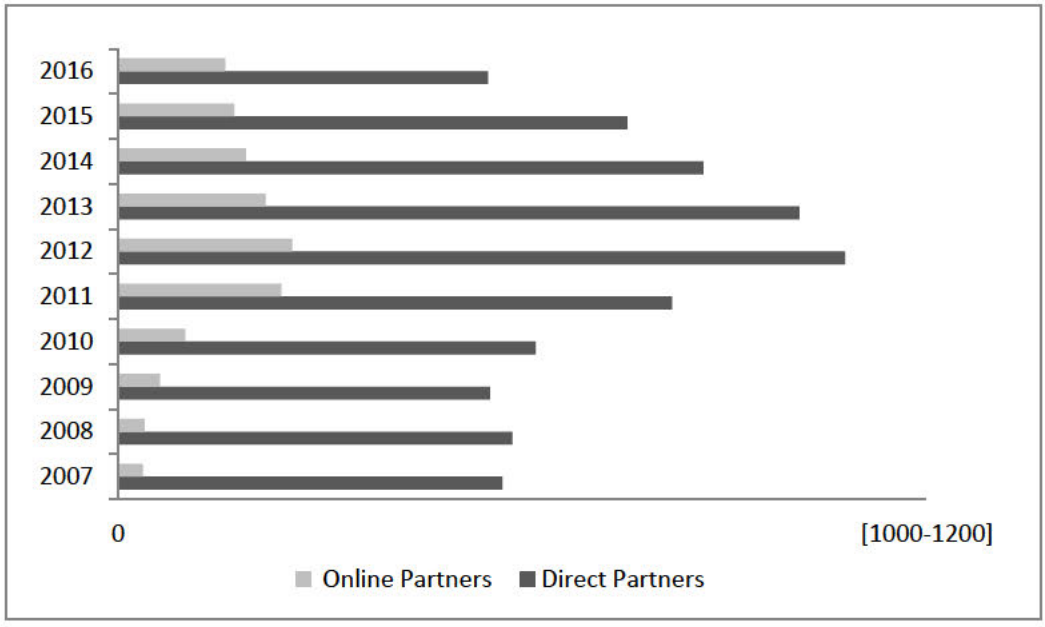
50 Net revenues exclude the share of revenue that Google redistributes to publishers as TAC. Conversely, gross revenues include the TAC.

Table 1: Net revenues generated by Google in the EEA by Partner Type



Source: Google[51]

Table 2: Gross revenues generated by Google in the EEA by Partner Type



Source: Google[52]

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51 Google's reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7. In its previous reply to Question 3 of the Commission's request for information of 16 March 2016, Google explained that it no longer records revenue figures separately for Simplified Contracts, which are now included under Direct Partners. Google submitted separate Simplified Contracts data for the years 2007 to 2010 in its reply to Question 12 of the Commission's request for information of 24 July 2013, Table 12.1.

52 Google's reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7. In its previous reply to Question 3 of the Commission's request for information of 16 March 2016,

(80) GSAs with Direct Partners usually consist of two template documents: (i) the "agreement"; and (ii) the "Order Form", which further specifies the services that the Direct Partner is taking (*e.g.*, AFS, AFC), the list of websites on which those services are implemented and the revenue share between Google and the Direct Partner.[53] The Order Forms, and the list of websites contained therein, are integral parts of the agreement between Google and Direct Partners. The Direct Partner and Google both sign each Order Form.

(81) Over time, Google has amended the wording of its GSA templates, most notably in March 2009. This Decision refers to the pre-March 2009 template GSA as the "old template GSA" and the post-March 2009 template GSA as the "new template GSA".

(82) Section 6 of the old template GSA was entitled "Exclusivity". It contained clause 6.1 (the "Exclusivity Clause"), which read as follows:

"6.1 For each Agreement Customer agrees that during the applicable Services Term Customer shall not implement on the applicable Site or provide access through the applicable Customer Client Application (if any) any services which are the same as or substantially similar to any of the Services being supplied by Google under the Agreement or which are otherwise directly competitive to such Services."[54]

(83) The old template GSA, until mid-January 2008, also included an additional sentence about the concept of "*services which are the same as or substantially similar*":

"This includes but is not limited to any search or advertising services supplied by [redacted] *(or any of their respective subsidiaries or holding companies or any subsidiaries of their respective holding companies) […] which are similar to or are otherwise directly competitive with the Services."*[55]

(84) Similar wording was included in certain GSAs based on the old template GSA. For example, the GSA with [redacted] of 15 October 2004 contained the following clause:

"Subject to Sections 4.2, 4.4 and 4.5, and provided that Google has complied with all material terms of this Agreement (including without limitation the payment terms set out at Section 5), [redacted] *shall not display Sponsored Links, (whether text only, or both text and image, Sponsored Links) provided by any Prohibited Entity on the* [redacted]

Google explained that it no longer records revenue figures separately for Simplified Contracts, which are now included under Direct Partners. Google submitted separate Simplified Contracts data for the years 2007 to 2010 in its reply to Question 12 of the Commission's request for information of 24 July 2013, Table 12.2.

53 When the term of the original Order Form expires, a new Order Form is generally signed to effect the renewal (and record any change in commercial terms), even if extension agreements and amendments are also used for this purpose. In addition, Google and a Direct Partner may also add further Order Forms where that Direct Partner subsequently decides to receive additional services from Google. See Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraph 28.34 and footnote 22.

54 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex I ("*Old Template GSA and Old Template Order Form*").

55 Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

Search Results Pages, or by way of any pop-ups covering, whether partially or fully, the [redacted] *Search Results Pages*."[56]

(85) A separate list annexed to the agreement itself identified each "Prohibited Entity". This list included [names of 10 companies considered Prohibited Entities].[57]

(86) Section 6 of the old template GSA also contained clause 6.2 (the "English Clause") requiring Direct Partners, that were already in a contractual relationship with Google, to inform Google before contacting competing providers of online search advertising intermediation services and to grant Google a right of first refusal to match any more competitive offer:[58]
"6.2 Subject to clause 6.1, Customer agrees that if, at any time during the term of this GSA, it wishes to implement web search services, third party pay for placement compensated sponsored linked advertisements and/or third party pay for placement compensated content targeted advertisements on any site(s) then, before approaching any other provider of such search and/or advertising services, it will immediately notify Google of this and Google and Customer will each use their best endeavours to reach agreement on mutually acceptable terms for an additional Order Form under this GSA for the implementation of the applicable services on such site(s). Customer will not approach any third party provider of search and/or advertising services unless Google and Customer are unable to reach agreement on mutually acceptable terms for the implementation of the applicable services and, in that event, will give Google the option to match any terms proposed by such third party for equivalent services."[59]

(87) Section 3 of the old template GSA contained clause 3.1(a) requiring Direct Partners to obtain Google's approval for any change to the list of websites on which Google would supply its services, as follows:
"*Customer may modify or add additional URLs to those comprising the Site with Google's prior written consent.*"

(88) The Order Forms in the old template GSA included screenshots agreed by Google and the Direct Partner of the latter's search results pages (the "mock ups"). Those mock-ups illustrated the number, format and placement of Google search ads on a Direct Partner's search results page. The mock ups were legally binding on the

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56 Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annexes 102.1 and 102.1.b. See also the wording of clause 10 of the GSA with [redacted], with effective date 1 November 2005; the wording of clause 1.4 of the GSA with [redacted] dated 22 December 2005. In a limited number of cases, the Exclusivity Clause was contained in the Order Form. See for example the wording of clause 14 in the Order Form dated 27 December 2006 of [redacted]; the wording of clause 13.3 in the Order Form dated 25 August 2006 of [redacted].

57 Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annexes 102.1 and 102.1.b. and attached AdSense [redacted] contract.

58 Google's reply to Question 30 of the Commission's request for information of 10 February 2010, footnote 43.

59 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex I ("*Old Template GSA and Old Template Order Form*").

Direct Partner that had to seek and obtain Google's approval before the Direct Partner could make any change to the display of search ads on its search results pages. Google had the right to terminate the GSA if the Direct Partner breached clause 3.5. The relevant clauses read as follows:

"*3.3(b) Customer shall, from the Launch Date: … (vi) ensure that its implementation of the AdSense for Search Services is in all material respects in the form set out in the applicable Exhibit(s) to the applicable Order Form, unless otherwise agreed in writing between the parties;"*

"3.5(d) Unless otherwise agreed between the parties in writing, Customer's implementation of the applicable Services shall be in all material respects in the form set out in the applicable Exhibit(s) to the applicable Order Form(s). Customer will not make any material changes to the implementation of the Services without Google's prior written agreement. Material changes to the implementation will include (but not be limited to) any changes in relation to the display of AdSense for Search Sets or AdSense for Content Sets such as changes to the format (including colour or font) in which these are displayed, their placement on the Site, the extent to which they are clickable and/or any changes in the usage of any Google Brand Features or other attribution or similar wording."[60]

(89) Although Google introduced the new template GSA in March 2009, it did not transition all GSAs with Direct Partners immediately to agreements with wording based on the new template GSA:

(1) As of 23 July 2010, Google had transitioned approximately [30-40] of the [110-120] GSAs with EMEA-managed Direct Partners to the new template GSA wording.[61]

(2) As of 3 May 2011, Google had transitioned [50-60] of the [80-90] GSAs with EMEA-managed Direct Partners to the new template GSA wording.[62]

(3) As of 28 August 2013, Google had transitioned [60-70] of the [70-80] GSAs with EMEA-managed Direct Partners to new template GSA wording.[63]

(4) As of 24 July 2015, Google had transitioned [50-60] of the [60-70] GSAs with EMEA-managed Direct Partners to the new template GSA wording.[64]

(5) As of 15 June 2016, Google had transitioned all GSAs with EMEA-managed Direct Partners to the new template GSA wording. Google had not transitioned, however, [0-5] GSAs with non-EMEA-managed Direct Partners to the new template GSA wording.[65]

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60 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex I ("*Old Template GSA and Old Template Order Form*").

61 Google's reply to Question 102 of the Commission's request for information of 13 July 2010, paragraph 102.3(v) and Annexes 102.1 and 102.1A.

62 Google's reply to Question 75 of the Commission's request for information of 1 April 2011, paragraphs 75.1 to 75.4 and Annex 75.1.

63 Google's reply to Question 11 of the Commission's request for information of 24 July 2013, paragraph 11.2 and Table 11.1.

64 Google's clarifications of 28 July 2015 with regard to Question 14 of the Commission's request for information of 19 December 2014.

65 Google's reply to Question 1 of the Commission's request for information of 31 May 2016. In particular the GSAs with [redacted] (clause 4.1), [redacted] (clause 4.1) and [redacted] (clause 4) prevented those Direct

(90) The new template GSA included the following relevant changes for the purpose of this Decision.

(91) First, Google replaced the Exclusivity Clause with clause 7.2(b) (the "Premium Placement and Minimum Google Ads Clause") of the new template GSA whereby a Direct Partner: (i) must request a minimum of three wide format Google search ads in a single block on desktop devices and at least one Google search ad on mobile devices;[66] and (ii) cannot display any competing search ad above or directly adjacent to Google search ads:

"*7.2(b) The parties agree that: … if Google is providing its AFS service to Company under an Agreement in relation to any Site(s), Company shall at all times during the Term request at least three (3) wide format AFS Ads from Google in relation to each Search Query submitted on such Site(s) and shall display the AFS Ads provided by Google on the applicable Results Pages such that (i) no Equivalent Ads appear above or directly adjacent to such AFS Ads, and (ii) the AFS Ads are displayed in a single continuous block and are not interspersed with other advertisements or content."*[67]

"7.2(b) The parties agree that: if Google is providing its AFS service to Company under an Agreement in relation to any Site(s), Company shall at all times during the Term request […], if the AFS Request has been generated by a Search Query submitted by an End User using a Mobile Device or Tablet Device, at least one (1) Mobile Search Ad or at least one (1) Tablet Search Ad, as applicable […]."[68]

(92) Google clarified in clause 1.1 of the new template GSA that "Equivalent Ad" should be understood as referring to "*any advertisements that are the same as or substantially similar in nature to the AFS Ads provided by Google under any Agreement*". Google thus made clear in clause 1.1 that the placement requirement covers all search ads that a Direct Partner sources from a competitor.

(93) Second, Google removed the English Clause from the new template GSA.

(94) Third, mock ups accompanied the Order Forms in the new template GSA. These mock-ups illustrated the number, format and placement of Google search ads on Direct Partner's search results pages.

(95) Until July 2014, Google expressly provided in clause 2.2(b) in the new template GSA that the mock ups were legally binding on Direct Partners. The relevant clause of the new template GSA read as follows:

"*2.2(b) Company will ensure that the AdSense Services and Search Services are implemented and maintained in accordance with: … (iv) the mock-ups and specifications for such AdSense Services and Search Services set out in the exhibits*

Partners from implementing services which were "*the same or substantially similar in nature*" to the ones provided by Google.

66 Between June 2010 and October 2013, Google adjusted the minimum Google search ad requirement in the new template GSA for mobile devices, see Google's reply to Question 17 of the Commission's request for information of 19 December 2014, Annex 17.1.2 ("*GSA Template: Changes between June 2010 – October 2013*").

67 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex J ("*New Template GSA And New Template Order Form*").

68 See Google's reply to Question 17 of the Commission's request for information of 19 December 2014, Annex 17.1.2 ("*GSA Template: Changes between June 2010 – October 2013*").

to the applicable Order Form, unless otherwise approved by Google or permitted in accordance with clause 6.2(a), (b) or (c)."[69]

(96) As of July 2014, Google no longer included in the new template GSA a requirement providing that the mock-ups were legally binding on Direct Partners. Google and Direct Partners still, however, regularly exchanged mock-ups to ensure that the Direct Partners' implementation of the GSA was correct.[70]

(97) Fourth, clause 6.2(a) (the "Authorising Equivalent Ads Clause") of the new template GSA required Direct Partners to seek Google's approval before changing the display of competing search ads:

"*6.2(a) Unless approved in writing in advance by Google, Company will not make any changes in relation to: … (iii) the display of Equivalent Ads, AFS Ad Sets or AFS Ads on a Results Page, including changes to their number, colour, font, size or placement or the extent to which they are clickable.*

(98) Clause 6.2(b) of the new template GSA further provided that, if Google failed to respond to the Direct Partner within 15 business days, the Direct Partner was entitled to assume that Google had approved the changes. If, however, Google responded to the Direct Partner within 15 business days and refused to give its approval, the Direct Partner could not implement the changes without breaching its GSA with Google:

"(b) Where Company requests approval pursuant to clause 6.2(a)(iii) above, Google may only withhold its approval on grounds that the proposed change would be in breach of the applicable Agreement or the Google Branding Guidelines and Google may not withhold its approval on purely commercial grounds. If Google does not respond to any such request for approval within 15 business days of receipt from Company, such approval shall be deemed given by Google."[71]

(99) On 28 May 2016,[72] Google informed the Commission that it intended to make a number of unilateral changes to its GSAs with Direct Partners for all queries issued in the EEA and that it would reflect those changes in the GSA template. Those unilateral changes included the following.

(100) First, Google intended to remove the Exclusivity Clause or any similar requirement that a Direct Partner source all or most of its search ads from Google.

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69 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex J ("*New Template GSA and New Template Order Form*").

70 Google's reply to Question 3 to the Commission's request for information of 2 February 2016, footnote 6.

71 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex J ("*New Template GSA and New Template Order Form*"). The language of the clause differed over time; see Google's reply to Question 17 of the Commission's request for information of 19 December 2014, Annex 17.2 ("*Current GSA Template and Order Form*"), clause 5.2(b)(ii) ("*If Company wishes to make changes in relation to the display of: Equivalent Ads on a Results Page, including changes to their number, colour, font, size or placement or the extent to which they are clickable, Company will not make any changes unless approved in writing in advance by Google. Google may not withhold its approval unless such proposed change would be in breach of the applicable Agreement. If Google does not respond to any request for approval set out in this clause 5.2(b)(ii) within 15 business days of receipt from Company, such approval shall be deemed given by Google*.")

72 Google's letter of 28 May 2016.

(101) Second, Google intended to amend the Premium Placement and Minimum Google Ads Clause so as to:

(a) remove the requirement that Direct Partners cannot display any competing search ad above or directly adjacent to Google search ads;

(b) amend the requirement that Direct Partners must request a minimum number of Google search ads so that Direct Partners requesting:

– five or more search ads in total would have to request at least three from Google.

– three to four search ads in total would have to request at least two from Google.

– one or two search ads in total would have to request one from Google.

(102) Google called this amended clause the "Minimum Google Search ads requirement".

(103) Third, Google intended to remove the Authorising Equivalent Ads Clause from any agreement based on the new template GSA.

(104) On 9 September 2016,[73] Google informed the Commission that it had sent waiver letters to all Direct Partners notifying them of the unilateral changes, described in recitals (100) to (102), to their agreements. Google sent the last letter on 6 September 2016.[74]

(105) On 15 March 2017,[75] Google informed the Commission that it intended to remove unilaterally the Minimum Google Search ads requirement from its GSAs with Direct Partners for all queries issued in the EEA and that it would reflect such a change in the GSA template.

(106) On 17 May 2017,[76] Google informed the Commission that it had (i) sent waiver letters to all Direct Partners notifying them of the unilateral waiver of the Minimum Google Search ads requirement in their agreements for EEA queries and (ii) reflected the change in the GSA template for Direct Partners. Google sent the last letters on 15 May 2017.[77]

5.2. Online Contracts

(107) Since 2003, Google has entered into Online Contracts with a large number of publishers in the EEA ("Online Partners").[78]

(108) Between 2007[79] and 2015[80], the number of Online Partners in the EEA increased from [10-20] to [8000-9000]. In 2016, Google had [7000-8000] Online Partners.[81]

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73 Google's letter of 9 September 2016. The letter included a DVD containing copies of [200-250] waiver letters.

74 Google waiver letter addressed to [redacted] dated 6 September 2016 (submitted as part of an Annex to Google's letter of 9 September 2016).

75 Google's letter of 15 March 2017.

76 Google's letter of 17 May 2017.

77 Letters to [redacted], [redacted] and [redacted].

78 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraphs 28.32 and 28.33; and Google's reply to Question 99 of the Commission's request for information of 13 July 2010, paragraph 99.1.

79 Google was unable to provide data for the year 2006. See Google's reply to Question 3 of the Commission's request for information of 16 March 2016.

(109) While Online Partners account for a large proportion of the total number of publishers using AFS, they produce a smaller part of Google's AFS revenues. For example, in 2016, Online Partners generated net revenues in the EEA of EUR [60-70] million, representing approximately [20-30%] of Google's net AFS revenues in the EEA in that year.

5.3. Simplified Contracts

(110) Between 2009 and early 2012, Google entered into a limited number of Simplified Contracts, designed to cater for those Online Partners requiring a certain degree of agreement customisation.[82] In 2010, Simplified Contracts generated net revenues in the EEA of EUR [0-5] million, representing [0-5%] of Google's net AFS revenues in the EEA in that year.[83]

6. MARKET DEFINITION

6.1. Principles

(111) For the purposes of investigating the possible dominant position of an undertaking on a given product market, the possibilities of competition must be judged in the context of the market comprising the totality of the products or services which, with respect to their characteristics, are particularly suitable for satisfying constant needs and are only to a limited extent interchangeable with other products or services.[84]

(112) Moreover, since the determination of the relevant market is useful in assessing whether the undertaking concerned is in a position to prevent effective competition from being maintained and to behave to an appreciable extent independently of its competitors and its customers, an examination to that end cannot be limited solely to the objective characteristics of the relevant services, but the competitive conditions

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80 Google's reply to Question 3 of the Commission's request for information of 16 March 2016, Annex 3.

81 Google's reply to Question 3 of the Commission's request for information of 16 March 2016, Annex 3 and Google's reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7. For the year 2015, Google initially stated that the number of Online Partners in the EEA was [8000-9000] (Google's reply to Question 3 of the Commission's request for information of 16 March 2016). Google subsequently explained that the number of Online Partners in the EEA in 2015 was [8000-9000] and explained that discrepancy as follows: [redacted] (reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7).

82 Google's reply to Question 28 of the Commission's request for information of 10 February 2010, paragraphs 28.38 and ff.; Google's reply to Question 99 of the Commission's request for information of 13 July 2010, paragraph 99.1; and Google's reply to Question 19 of the Commission's request for information of 19 December 2014, page 44.

83 Google's reply to Question 70 of the Commission's request for information of 1 April 2011, Table 4.

84 Case T-229/94 *Deutsche Bahn v Commission*, EU:T:1997:155, paragraph 54; Case T-219/99 *British Airways* v *Commission*, EU:T:2003:343, paragraph 91; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 31.

and the structure of supply and demand on the market must also be taken into consideration.[85]

(113) A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.[86]

(114) The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.[87]

(115) Undertakings are subject to three main sources of competitive constraints: demand substitutability, supply substitutability and potential competition. From an economic point of view, for the definition of the relevant market, demand substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product.[88]

(116) Supply side substitutability may be taken into account in situations in which its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy. There is supply side substitution when suppliers are able to switch production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative price.[89]

(117) For the purpose of an analysis under Article 102 of the Treaty, the distinctness of products or services for the purpose of an analysis under Article 102 of the Treaty has to be assessed by reference to customer demand.[90] Factors to be taken into account include the nature and technical features of the products or services concerned, the facts observed on the market, the history of the development of the products or services concerned and also the undertaking's commercial practice.[91]

(118) The fact that a product or service is provided free of charge does not prevent the offering of such a service from constituting an economic activity for the purposes of the competition rules under the Treaty.[92] This is a factor to be taken into account in assessing dominance.

(119) The definition of the relevant market does not require the Commission to follow a rigid hierarchy of different sources of information or types of evidence. Rather, the

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85 Case 322/81 *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 37; Case T-556/08 *Slovenská pošta v Commission*, EU:T:2015:189, paragraph 112. See also Commission Notice on the definition of relevant market for the purposes of Community competition law ("*Commission notice on market definition*"), OJ C 372, 9.12.1997, p. 5.

86 Commission Notice on market definition, paragraph 7.

87 Commission Notice on market definition, paragraph 8.

88 Commission Notice on market definition, paragraph 13.

89 Commission Notice on market definition, paragraph 20.

90 Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 917.

91 Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 925.

92 Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraphs 966-970; Case T-79/12 *Cisco Systems, Inc. and Messagenet SpA v Commission*, EU:T:2013:635, paragraphs 65-74.

Commission must make an overall assessment and can take account of a range of tools for the purposes of that assessment.[93]

6.2. The relevant product markets

(120) For the purpose of this Decision, the Commission concludes that the relevant product markets are the markets for online search advertising (Section 6.2.1) and for online search advertising intermediation (Section 6.2.2).

6.2.1. The market for online search advertising

(121) General search services and online search advertising constitute the two different but interlinked sides of a general search engine platform. Online search advertising involves the matching by search advertising platforms of user queries with relevant search ads. On the demand side of this market are internet users and advertisers. On the supply side are the operators of search advertising platforms.

(122) An online search advertising platform requires at least three elements: (i) a general search service to match user queries with general search results; (ii) the technology to match user queries with relevant search ads; and (iii) an advertiser base that is large enough to compete effectively against other search advertising platforms.

(123) The Commission concludes that the market for online search advertising constitutes a distinct product market. Offline and online advertising belong to different product markets (Section 6.2.1.1). The same is true for online search advertising and online non-search advertising (Section 6.2.1.2) and for online search advertising and paid specialised search results (Section 6.2.1.3).

6.2.1.1. Offline versus online advertising

(124) Offline advertising comprises traditional advertising forms, such as ads on television, radio and in newspapers. Online advertising refers to advertising on the internet.

(125) The Commission concludes that offline and online advertising are not substitutable.

(126) First, offline and online advertising serve different purposes. Advertisers primarily use offline advertising to create brand awareness, while online advertising – especially search advertising – is mainly used to trigger a direct consumer response (for example, a purchase or other types of engagement such as registration for an advertiser's e-newsletter).[94]

(127) Second, offline and online advertising require different degrees of engagement from users. Users can immediately engage with online advertising by clicking on the ads delivered to them.[95] Online advertising can therefore steer users directly to websites on which they can make a purchase. By contrast, users cannot immediately respond to offline advertising. Their response requires additional action (for example, visit to

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93 Case T-342/07 *Ryanair v Commission*, EU:T:2010:280, paragraph 136; Case T-175/12 *Deutsche Börse v Commission*, EU:T:2015:148, paragraph 133; Case T-699/14 *Topps Europe v Commission*, EU:T:2017:2, paragraph 82.

94 Replies of [redacted].

95 Replies of e.g. [redacted].

the shop or the website of the advertiser). Users cannot perform such actions immediately after seeing an offline ad.

(128) Third, online advertising gives advertisers more advanced capabilities to target their campaigns to a specific audience, taking into account (for example, users' areas of interest and geographic location).[96]

(129) Fourth, advertisers can more easily monitor the effectiveness of online advertising since they can immediately trace the origin of a click on an online ad, directly measure its success and adjust their advertising strategy accordingly.[97]

(130) Fifth, in particular for companies with significant online activities, online advertising is generally more cost-effective than offline advertising[98] and delivers a more easily measurable and higher return on investment.[99]

(131) Sixth, offline advertising and online advertising are also different in terms of audience reach. While offline media may reach potentially a broader number of viewers/consumers, online advertising offers the possibility to reach younger audiences and to track online behaviour of viewers which offline advertising does not show.[100]

(132) Seventh, since consumers are increasingly online, advertisers must ensure the visibility of their business online if they want their advertising strategy to be

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96 Replies of [redacted]

97 Replies of [redacted]

98 Replies of [redacted]

99 Replies of [redacted]

100 Reply of [redacted]

effective.[101] This is in particular the case for purely online businesses that reach their target audiences predominantly online. For these businesses, offline ads do not constitute a viable alternative.[102]

(133) Eighth, a majority of advertisers that responded to the Commission's requests for information did not consider offline advertising a substitute for online advertising.[103] Similarly, the members of the World Federation of Advertisers ("WFA") unanimously confirmed that offline advertising and online advertising are not substitutable.[104]

(134) Ninth, Google does not contest that offline and online advertising are not substitutable.

6.2.1.2. Online search advertising versus online non-search advertising

(135) The Commission concludes that online search and online non-search advertising are not substitutable.

(136) First, online search and online non-search advertising can be distinguished by the way in which an ad is triggered to appear on screen.[105] Online search ads can only appear above, below or next to the result of a query entered into the search box on a website and are selected based on the keywords in the query. By contrast, online non-search ads can appear on any website and can be - in broad terms - either contextual (that is to say, selected according to the content of the webpage on which they are shown) or non-contextual (that is to say, display ads).[106] The following evidence confirms this:

(1) the deposition of 2 May 2012 before the Federal Trade Commission of the United States ("FTC")[107] of [redacted], then [redacted]

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101 Replies of [redacted]

102 Reply of e.g. [redacted].

103 For example replies of [redacted]

104 WFA's submission of 18 February 2011. See also [redacted]. The WFA website accessed on 2 June 2016 shows membership of 80 global advertisers and 60 national advertisers associations.

105 Replies of [redacted]

106 For contextual advertising, see Google's online explanation on AdSense for Content https://support.google.com/adsense/answer/17470?hl=en, downloaded and printed on 4 February 2019. For display ads, see for example the website www.theguardian.com/uk, where the top banner is a non-contextual display ad.

107 This and further references in the Decision to the depositions before the FTC concern Google Inc. Investigation (File No. 111-0163).

[redacted] at Google, in which she distinguished between these two main categories of ads: "*So we use the term AdSense for publishers, for them to serve Google ads on their site. And we differentiate -- we differentiate -- in the world of advertising, there are two different types of inventory. There's search. So we would think about a search result page -- I mean, there are many different kinds of inventory. But one type of way we think about ad serving is on a search page, and another would be on a -- a page that has content. And some of the targeting that we would do would be different between those two types of pages*."[108]

(2) the reply of Liberty Global/Virgin Media, which indicated that "*Online search advertisements are generally more text based and directly relevant to the search query input by the user whereas display ads can be more generic and image based. Internally the management of online search ads and online non-search ads is assigned to different teams*".[109]

(137) Second, online search advertising can be distinguished from online non-search advertising based on its appearance or format. Online search advertising is typically exclusively text-based, whereas online non-search advertising (in particular display advertising) includes a variety of textual, graphical and video media formats.[110] Consequently, contrary to Google's claim,[111] advertisers incur little or no costs when designing online search ads compared to the costs of designing online non-search ads, particularly ads containing graphic elements and rich features (*e.g.*, video).[112]

(138) Third, online search ads are distinguishable from non-search ads because of their intrinsically higher capability to answer to an immediate interest of a user in a precisely targeted way.[113]

(139) In the first place, online search advertising providers serve online search ads in real time in response to the expression of interest for a service or product that a user makes through the keywords in a query. Online search ads therefore reach an already interested audience at the point in time when such an audience is closest to

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108 Deposition of [redacted] before the FTC of 2 May 2012, page 22.

109 Reply of Liberty Global to Question 10 of the Commission's request for information of 18 March 2016, revised non-confidential version provided to Google on 28 September 2016.

110 See also replies of [redacted]

111 See SO Response, paragraph 130.

112 Replies of [redacted]

113 Replies of [redacted]

responding to a particular advertising message (for example, by making a purchase).[114] Advertisers identify this moment as being at the end of the so-called "purchase funnel", that is when the user is close to the final, purchase step.[115] [redacted], then Google's [redacted], confirmed this in his deposition before the FTC of 6 June 2012: "[…] *if you go into Google and you type digital camera, there's very high likelihood that you're busy trying to buy the digital camera. Whereas if you're wandering around net reading digital photography […] you're less likely to be buying at that instant.*"[116] Online search advertising providers can further increase the targeting precision of online search ads by programming them to appear only to users searching in a particular location.[117]

(140) In the second place, online non-search advertising offers a lesser degree of targeting precision. Although online non-search ads are adjustable to a user's location and general interests, they lack the key ability of online search ads to target a user's precise request. The following evidence confirms this:

Google's own AdWords Help pages, which explain to advertisers the difference between the targeting of Google search ads and Google display ads:

*"**Where your ads appear** You can choose to target your ads to a number of different ad networks. Keywords work a bit differently on each network.*

***Google search and search partner sites**: When you build your ad groups, you select keywords relevant to the terms people use when they search, so your ads reach customers precisely when they're looking for what you offer*.

***Google Display Network**: If you've chosen to show ads on Display Network sites, AdWords uses your keywords to place your ads next to content that matches your ads. Google's technology scans the content and web address of a webpage and automatically displays ads with keywords that closely match the subject or web address of the page. For example, on a webpage that includes brownie recipes, AdWords might show ads about chocolate brownies or delicious dessert recipes*."[118] (Google's emphasis)

(141) In the third place, the ability of online search ads to respond to a precise interest of the user distinguishes them from other forms of online non-search advertising that offer enhanced targeting capabilities, including contextual ads, behaviourally targeted ads and ads placed on social networks:

(1) While online contextual ads are targeted to the content that a user is viewing and that is expected to correspond to his/her interest, in practice, this occurs

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114 E.g. [redacted].

115 In particular, replies of [redacted].

116 Deposition of [redacted] before the FTC of 6 June 2012, pages 129-130.

117 Google, http://support.google.com/adwords/bin/answer.py?hl=en&answer=1722043, downloaded and printed on 26 April 2012.

118 AdWords Help, "About keywords": https://support.google.com/adwords/answer/1704371, downloaded and printed on 15 May 2017.

less frequently than for online search ads, in particular since the viewed content may either not match the user's genuine interest, or not exactly mirror the advertising message (for example, ads for sports shoes next to a news article about a recent football match). Moreover, given that online contextual ads are not placed in response to a user query, they are less likely to reach the user at a point in time when he/she is liable to respond to the advertising message;[119]

(2) Behavioural advertising allows for the targeting of online non-search ads based on a user's "web history" (that is to say, previous actions such as visits to a certain website). However, given that such ads are not served in response to a user query, they are less likely to correspond to a user's interest at the moment of exposure and less likely to lead to a conversion;[120] and

(3) Online non-search ads placed on social networks allow for enhanced targeting based on a user's network profile. Again, however, given that unlike online search ads, they are not placed in response to a query, they correspond less frequently to the user's interest. As the 2010 French NCA Report on online advertising indicated, "*As things stand, however, offers closely targeting the profiles of social network users do not appear to be regarded as a credible alternative to search-based ads, mainly because they do not satisfy users' active queries (advertisements on Facebook are predominantly used for branding campaigns thanks to the interaction afforded by the 'like' or 'recommend' buttons)*".[121]

(142) Fourth, online search advertising is more suitable for converting existing demand into a purchase, whereas online non-search advertising is more efficient at creating brand-awareness and new demand.[122]

(143) In the first place, the creation of brand awareness is at most a secondary objective of online search advertising. The following evidence confirms this:

(1) Axel Springer, which stated that the creation of brand awareness is "*another, probably secondary, reason to use search ads*";[123]

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119 Microsoft's reply to Questions 2 and 2.2 of the Commission's AdWords related request for information of 22 December 2010 (Annex 1B).

120 For retailers, this will typically be the sale of a product, whereas for content creators, this may cover other user actions such as a membership registration or a newsletter subscription. Replies of [redacted].

121 See the 2010 French NCA report "Opinion No 10-A-29 of 14 December 2010 on the competitive operation of online advertising", paragraph 170, available at http://www.autoritedelaconcurrence fr/doc/10a29_en.pdf.

122 See replies to [redacted].

123 Reply of Axel Springer Group to Question 2 of the Commission's AdWords related request for information of 22 December 2010 (Annex 1B).

(2) Labelium, which indicated that, although the main objectives of its search advertising campaigns are the driving of direct responses and the creation of brand awareness, it would not consider replacing all or part of its requirements of search advertisements by non-search advertisements should the price of the former increase permanently by 5%-10%. This is because, according to Labelium, the profitability of search advertisements is significantly better than that of other types of online advertising;[124]

(3) An Econsultancy/SEMPO market study of 2010 confirms this, as it indicates that 76% of surveyed advertisers and 83% of surveyed media agencies identified the selling of products, services or other online content and the generating of leads as their primary objective when using search advertising. Only 5% of advertisers and 4% of media agencies mentioned the creation of brand awareness as their primary objective, while 25% and 17% respectively mentioned it as their secondary objective.[125]

(144) In the second place, online search advertising is relatively ineffective at raising brand awareness. This is confirmed by an internal Google email dated 19 September 2008 in which [redacted], then [redacted] at Google, stated that: "display ads help create the interest, but it's search ads that help make the purchase".[126]

(145) Fifth, online search ads perform better than online non-search ads in terms of CTR and conversion[127] rates.[128] The following evidence confirms this:

(1) An undated[129] internal Google document entitled "*The core pitch*", in which Google search ads are described as having "*Outstanding performance: CTR and conversions more than 5-20 times higher than banner ads*".[130]

(2) Google Partner help pages that make the following distinction between its online search and non-search services: "*CTR is generally lower on the Display Network than on the Search Network because people have different goals when they're on Display Network pages. People on Display Network pages are browsing through information, not searching with keywords*." and "*Your ad performance on the Display Network does not affect the performance, Quality*

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124 Replies of Labelium to Questions 2 and 2.2 of the Commission's AdWords API related request for information of 22 December 2010.

125 Microsoft's complaint of 31 March 2011, Econsultancy study "*State of Search Engine Marketing Report 2010*" in association with SEMPO of April 2010 (see also page 70 on the metrics for measuring paid search marketing), Annex 38, p. 64-65.

126 Deposition of [redacted] before the FTC of 11 July 2012 under the reference CX0190, page 93.

127 For an explanation of "conversion" see footnote 115.

128 Replies of [redacted] to Question 10.c of the Commission's request for information to advertisers of 11 January 2016 (e-questionnaire) and of [redacted] to Question 7.c of the Commission's request for information to media agencies of 11 January 2016 (e-questionnaire). See also replies of e.g. [redacted] Question 2.2 of the Commission's AdWords related request for information of 22 December 2010 (Annex 1B).

129 The file properties indicate that Google created the document on 22 February 2002.

130 Internal Google document GOOGBRIN-00030190, slide 32.

Score, cost-per-clicks (CPCs), or position on Google search pages or on other pages in the Search Network."[131]

(146) Sixth, the return on investment of online search advertising is easier to estimate than that of online non-search advertising.[132] As advertisers can measure the number of clicks on an online search ad and the conversion of these clicks into actual purchases on a keyword basis, they can directly relate their spending to the sales generated with each keyword on which they have bid. By contrast, the return on investment of online non-search ads, in particular display ads, is more difficult to assess because, typically, there is no direct connection between the viewing of such an ad and the making of a purchase. This is confirmed by an Econsultancy/ExactTarget study dated February 2010, in which 54% of surveyed advertisers and 35% of surveyed media agencies identified online search advertising as the best digital marketing channel for being able to measure return on investment.[133]

(147) Seventh, the WFA indicated that the aspects outlined in recitals (136), (137), (138) and (139) constitute key differences between online search and online non-search advertising (excluding video ads).[134]

(148) Eighth, a majority of advertisers,[135] all publishers[136] and half of the media agencies[137] indicate that they would be unlikely to replace all or part of their online search ads by non-search ads in the event of a non-transitory 5-10% increase in the price of online search ads. Certain publishers also indicate that this is because revenues from online search ads are far higher than from non-search ads.[138]

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131 Google Partners Help, "Optimize Display Network ads and campaigns": https://support.google.com/partners/answer/2549129?hl=en, downloaded and printed on 27 January 2017.

132 Replies of [redacted].

133 Microsoft's complaint of 31 March 2011, Econsultancy study "*Marketing Budgets 2010: Effectiveness, Measurement and Allocation Report*" in association with ExactTarget of February 2010, Annex 41, p. 42-43.

134 WFA's submission of 18 February 2011, p. 2-3. See also [redacted].

135 Replies of [redacted].

136 Replies of [redacted].

137 Replies of [redacted].

138 See [redacted].

(149) Ninth, an industry report, dated 7 April 2017,[139] by Statista, a leading online database providing statistical data and research, highlights the following differences between search and display advertising:

– "*search ads are three times as likely to be clicked as display ads*" (slide 5);

– "*Search ads are three times as expensive as display ads*" (slide 6);

– "*Display ads annoy more Internet users than search ads*" (slide 7); and

– "*One in three experts considers search ads most effective, one in ten thinks this about display ads*" (slide 8).

(150) Tenth, from a supply-side perspective, the provision of online search advertising services involves: (i) a general search service matching user queries with general search results; (ii) technology to match user keywords/queries with relevant search (iii) a real-time search auction mechanism to manage efficiently the sale of large volumes of search ads; and (iv) the acquisition of a sufficient number of advertisers.[140] The more advertisers to which an online search advertising platform has access, the more online search ads it can choose from to match to user queries. This in turn increases the relevance of the online search ads it can serve in reply to a query and the likelihood that users will click on an online search ad served to them.[141] Each of these four elements requires substantial investments.

(151) As to (i), the development of general search technology requires substantial investments (see Section 7.2.2). Google stated that it is "*[t]he most significant task that a non-search advertising provider wishing to provide a search advertising solution might consider undertaking*".[142]

(152) As to (ii), while providers of online advertising, and in particular of contextual advertising, can rely to a certain extent on their existing ad-matching technology, they still need to invest significant time and resources in its refinement for the provision of online search advertising.[143] Moreover, additional investment is required for the ongoing maintenance and refinement of an online search advertising service (see also recital (242) and following). Google explained that "*an advertising service will continue to be improved and refined for an indefinite period after being launched*", which may even "*be longer than that during which the service was under development prior to launch*".[144]

(153) As to (iii), due to the complexity of its design, the development of a real-time search auction system requires significant investments in terms of time and resources.[145]

(154) As to (iv), while providers of online non-search advertising can rely, to a certain extent, on their existing advertiser base, they still need to attract as many advertisers

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139 "Search Advertising: Updates – Comparisons - Views" by Statista at https://www.statista.com

140 Microsoft's reply to Question 9 and 9.1 of the Commission's request for information of 13 January 2011. While Microsoft made this point with regard to the provision of intermediation services for online search advertising it equally applies to the provision of online search advertising services because it makes no difference whether a general search engine or a publisher site displays search ads to users.

141 Yahoo's submission of 17 February 2011, p. 2-3.

142 Google's reply to Question 6 of the Commission's request for information of 13 July 2010.

143 Google's reply to Question 6 of the Commission's request for information of 13 July 2010.

144 Google's reply to Question 6 of the Commission's request for information of 13 July 2010.

145 Microsoft's complaint of 31 March 2011, LECG report of 21 June 2010 on "*Paid search and paid search intermediation*", Annex 37, p. 28-29.

as possible to ensure that their online search advertising pool covers the broadest range of keywords possible (see recital (248)).

(155) The Commission's conclusion that online search and online non-search advertising are not substitutable is not affected by Google's claims that:

(1) search-targeted ads compete with non-search targeted ads;[146]

(2) publishers can choose from a number of monetisation options that compete for the same ad inventory;[147]

(3) the Commission found in its *Google/DoubleClick* merger decision that the differences between online search and non-search ads are diminishing;[148]

(4) the Commission's past merger decisions have recognised the broad convergence of online search and non-search advertising;[149]

(5) online search advertising has been facing even more competition with the growth of mobile device usage, because native ads (that is to say, content-based ads that are integrated within editorial feeds) are particularly effective in attracting user attention on mobile devices.[150] In support of its claim, Google submitted a study regarding the alleged competitive pressure that native ads exert on online search ads.[151] Google also referred to the fact that [redacted] and [redacted] have switched the majority of their mobile device traffic away from AFS;[152]

(6) online search advertising does not have unique targeting capabilities because, since 2016, Facebook (via the Audience Network) has developed advanced ad targeting capabilities linked to user behaviour;[153]

(7) certain publishers and advertisers have switched from search advertising to other forms of online advertising, which shows that search and non-search advertising are substitutable.[154] In support of its claim, Google submitted a screenshot of a search result page of the website [redacted] (operated by the Direct Partner, [redacted]), which Google claims "*now uses graphical ads*" instead AFS ads.[155] Google also referred to the example of [redacted] that decided in 2015 to no longer use search advertising at all;[156]

(8) Amazon, eBay, Facebook and Nextag have not only developed and use their own advertising services but can offer online advertising intermediation services;[157] and

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146 SO Response, paragraph 110.
147 SO Response, paragraphs 91-94 and following.
148 SO Response, paragraph 111.
149 SO Response, paragraph 111.
150 SO Response, paragraph 118.
151 IPG Media Lab and Sharethrough, quoted in footnote 83 of the SO Response, available at http://sharethrough.com/resources/native-ads-vs-display-ads/.
152 SO Response, paragraph 80, figures 9 and 10.
153 SO Response, paragraph 119 and following.
154 SO Response, paragraphs 122 and 123.
155 SO Response, paragraph 122.
156 SO Response, paragraph 123.
157 SO Response, paragraph 124.

(9) the extracts relied on by the Commission from depositions of Google employees before the FTC (and from contemporaneous internal Google presentations[158]) constitute "*anecdotal evidence*".[159]

(156) As to (1), Google itself recognises the differences between online search and non-search ads, in particular as regards their targeting capabilities. As [redacted], then [redacted], stated in her deposition before the FTC, regarding AFC ads: "[…] *we're picking out what they [i.e. the publishers] think are the strongest elements of the content in trying to decide what's the best ad to show*" whereas as regards Google search ads, "[…] *we're totally reliant on the end user putting a query into the query box or clicking on a link, like, in a directory service for autos, for instance*.[…]". [160]

(157) As to (2), the Commission has taken into account the views of publishers in its assessment of the relevant product market, as indicated in the text and footnotes of recitals (136), (138), (139), (142), (143), (145) and (148).

(158) As to (3), in the *Google/DoubleClick* decision the Commission merely stated that online search and non-search ads may be substitutable to a certain extent[161] for advertisers. By contrast, the Commission stated in that same decision that online search and non-search ads are complementary and not substitutable for publishers.[162]

(159) As to (4), the Commission has not recognised in past merger decisions the broad convergence of online search and non-search advertising. Rather, in the past decisions quoted by Google,[163] the Commission left open the market definition for the purpose of the competitive assessment of the relevant concentrations.

(160) As to (5), Google's claim that native ads shown on mobile devices exert competitive pressure on online search ads is inconsistent with its own statements of April 2016 that:

(1) its "[redacted]";[164] and

(2) [redacted]

158 First LoF Response, paragraph 38.

159 First LoF Response, paragraph 46.

160 Deposition of [redacted] before the FTC of 3 May 2012, page 77.

161 See Commission decision of 11 March 2008 in case M.4731 – *Google/DoubleClick*, recital 53.

162 See Commission decision of 11 March 2008 in case M.4731 – *Google/DoubleClick*, recitals 54-55.

163 See Commission decision of 11 March 2008, in case M.4731 – *Google/DoubleClick*, recital 56; Commission Decision of 18 February 2010, in case COMP/M.5727 – *Microsoft/Yahoo! Search Business*, recital 75; Commission decision of 27 July 2010, in case M.5676 – *SevenOne Media/G+J Electronic Media Service/Tomorrow Focus Portal/IP Deutschland/JV*, recital 29; Commission decision of 3 October 2014, in case M.7217 – *Facebook/WhatsApp*, recital 79.

164 Google's reply to Question 8 of the Commission's request for information of 2 February 2016.

(161) Moreover, the study submitted by Google assesses only the substitutability of native ads and display banner ads from the perspective of users and not the substitutability of native ads and online search ads from the perspective of advertisers.

(162) Furthermore, [Direct Partner] and [Direct Partner] have not switched the majority of their mobile device traffic away from AFS. Rather [Direct Partner] and [Direct Partner] (i) decreased their use of AFS in January 2014 and January 2015 respectively, following Google's unilateral decision in January 2014 to reduce the revenue share for AFS traffic to [20-30]% and
(ii) subsequently increased again their use of AFS for mobile devices "*as a result of Google agreeing improved mobile revenue share terms in order to win back their business*".[165]

(163) As to (6), Facebook's Audience Network enables only the placement of targeted display and video ads (native[166], banner[167] and interstitial ads,[168] videos)[169] on Facebook's social network.[170] Given that, unlike online search ads, they are not placed in response to a query, such targeted display and video ads correspond less frequently to the user's interest, which is the use of Facebook's social network (see recital (141)(3)). Furthermore, Facebook itself considers that the Facebook Audience Network allows it only to offer non-search ads.[171]

(164) As to (7), the example of [redacted] does not support Google's claim that that search and non-search advertising are substitutable because certain publishers have switched from search advertising to other forms of online advertising. The screenshot of a search result page of the website [redacted] submitted by Google merely shows a search results page from [redacted] with a top and a right hand side display advertisement for furniture products. However, Google has not explained: (i) why [redacted] allegedly stopped using AFS; and (ii) whether the website used "graphical ads" before it allegedly stopped using AFS ads.

(165) Moreover, the fact that [a company may decide to no longer use search advertising at all does not support Google's claim that search and non-search advertising are substitutable. A company interested in branded campaigns might not be interested in search which generally has a purpose of direct response. [footnote 172]]

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165 Google's reply to Question 5 of the Commission's request for information of 20 December 2016.

166 Native ads are those that mimic the look and feel of the page content. As Facebook itself describes it, a native ad "looks like it is an integral part of the user experience". See https://en-gb facebook.com/help/publisher/909759812477057 , downloaded and printed on 13 February 2019.

167 Banner ads are defined by Facebook as smaller ads that appear at the top or bottom of the screen. See https://en-gb.facebook.com/help/publisher/909759812477057 , downloaded and printed on 13 February 2019.

168 Interstitial ads are defined by Facebook as full-screen ads that appear during transitions between users' navigation activities. See https://en-gb facebook.com/help/publisher/909759812477057 , downloaded and printed on 13 February 2019.

169 Reply of Facebook to Question 1 of the Commission's request for information of 13 January 2015. Furthermore, see https://www facebook.com/business/help/1409448922609084?helpref=faq_content , downloaded and printed on 13 February 2019.

170 "Audience Network extends Facebook's people-based advertising beyond the Facebook platform. With Audience Network, publishers can make money by showing ads from Facebook advertisers in their apps or websites", see https://en-gb.facebook.com/help/publisher/987564874649426, downloaded and printed on 13 February 2019.

171 Reply of Facebook to Question 1 of the Commission's request for information of 13 January 2015.

(166) As to (8), Amazon, eBay, Facebook and Nextag neither developed online search advertising services nor offer online search advertising intermediation services:

(1) Regarding Amazon[173] and eBay[174], they offer paid specialised search results services and not online search ads (see section 6.2.1.3);

(2) regarding Facebook, see recital (163);

(3) regarding Nextag, a comparison shopping website, it does not offer online search advertising intermediation services, but an affiliation system to publishers, which is not based upon serving ads in connection with search queries. [175]

(167) Moreover, advertisers and media agencies that responded to the Commission's request for information of January 2016 did not identify any of the undertakings mentioned by Google as suppliers of online search advertising intermediation services.[176]

(168) As to (9), the Commission concludes that online search and online non-search advertising are not substitutable based on evidence of high probative value, including not only the depositions of Google employees before the FTC and contemporaneous internal Google presentations but also third party submissions, industry studies and replies to Commission's requests for information pursuant to Articles 18(2) and 18(3) of Regulation (EC) No 1/2003.

(169) Moreover, Google has failed to explain why the depositions of its-then Executive Chairman, Vice President of Search Services, the Senior Vice President of Advertising and senior economist lack credibility.

6.2.1.3. Online search advertising versus paid specialised search results

(170) The Commission concludes that online search advertising and paid specialised search results[177] are not substitutable.

(171) First, on the demand side, from the perspective of advertisers, paid specialised search services only list specific subsets of advertisers in their results. For example,

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172 Reply of [redacted] to Question 14 of the Commission's request for information to advertisers of 11 January 2016.

173 In order to qualify for Amazon advertising, a seller must be registered as an Amazon seller, see https://services.amazon.co.uk/services/advertising/how-it-works html?ref=asuk_aa_snav.

174 For eBay, "Only Anchor and Featured Shop subscribers have access to Highline Search Ads" https://pages.ebay.co.uk/highline-search-ads/faq html, downloaded and printed on 4 February 2019.

175 See https://www.nextag.co.uk/about-us/.

176 See the replies of [redacted] to Question 17 of the Commission's request for information to advertisers of 11 January 2016.

177 Paid specialized search results are, for instance, on Google's general search results pages, mostly Google Shopping results. Google also displays travel related paid specialized search results from Google Hotel Finder.

comparison shopping services, such as Google Shopping, only list online retailers and merchant platforms in their results.[178]

(172) Second, participation in paid specialised search results involves different conditions than online search advertising results.

(173) In the first place, in order to appear in paid specialised search results, third party websites bid on products and not keywords.

(174) In the second place, specialised search services that display paid specialised search results, such as Google Shopping, require merchants to give dynamic access to structured information on their products, including dynamically adjusted information on prices, product descriptions and the number of items in stock. This is explained on Google's own AdWords help pages:

"Shopping ads use your existing Merchant Center **product data** *-- not keywords -- to decide how and where to show your ads. The product data you submit through Merchant Center contains details about the products you sell. We'll use these details when we match a user's search to your ads, making sure to show the most relevant products."* [179] (Google's emphasis)

(175) Similarly, the "*content for Shopping campaigns and Shopping ads needs to comply with the Google Shopping Policies, which are different from the AdWords Advertising Policies*".[180]

(176) Third, specialised search services display paid specialised search results in richer formats than online search services display online search advertising results. AdWords help pages in which Google describes the differences between "Shopping Ads" and text-based search ads[181] confirm this:

"*We call these placements* **Shopping ads**, *because they're more than a text ad--they show users a photo of your product, plus a title, price, store name, and more. These ads give users a strong sense of the product you're selling before they click the ad, which gives you more qualified leads.*" (Google's emphasis).

(177) Fourth, the fact that paid specialised search results and text-based search ads address different advertiser needs is further confirmed by the following internal Google documents:

(1) An internal Google presentation of September 2014 entitled "*Maintaining Growth in a Shifting Auction*" which states: "*PLAs[182] continue to drive the only desktop traffic growth in the PLA-mature markets of US, UK, and DE. We*

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178 See the requirements listed on Google's websites "Requirements for Shopping campaigns" https://support.google.com/adwords/answer/6275312?hl=en&ref_topic=6275320 downloaded and printed on 19 September 2018.

179 AdWords Help, "About Shopping campaigns and Shopping ads": https://support.google.com/adwords/answer/2454022?hl=en, downloaded and printed on 9 January 2017.

180 AdWords Help, "Requirements for Shopping campaigns": https://support.google.com/adwords/answer/6275312?hl=en&ref_topic=6275320, downloaded and printed on 24 May 2017.

181 AdWords Help, "About Shopping campaigns and Shopping ads": https://support.google.com/adwords/answer/2454022?hl=en , downloaded and printed on 9 January 2017.

182 Product Listing Ads ("PLAs") is the term Google uses for paid specialised search results.

recommend that [redacted] *expand its PLA test to these countries in order to complement* [redacted]*'s strong desktop text presence for commercial queries and improve overall portfolio performance. A consumer who is exposed to both text ads and PLAs is 83% more likely to make a purchase than a consumer who is exposed only to text ads*."[183]

(2) An internal Google email exchange of 4 December 2015, which states: [redacted]"[184];

(3) An internal Google email of 4 December 2015, which states: [redacted]";[185]

(4) AdWords help pages that highlight the greater clickthrough rates of paid specialised search results for shopping-related searches:

"**More traffic:** *Many businesses experience significantly higher clickthrough rates (CTR) with Shopping ads compared to text ads shown in the same location for shopping-related searches. In some cases, advertisers have experienced double or triple standard clickthrough rates*";[186] and

(5) AdWords help pages that indicate that paid specialised search results address a more immediate interest of viewers than text-based search ads:

– *"**Where your ads appear** - Here's where you might see your Shopping ads across the web:*

– *Google Search, next to search results and separate from text ads*

– *Your Shopping ads can appear at the same time as text ads, because we want to give shoppers access to the full variety of products that match their search. This means that shoppers can find the best match before clicking through to make a purchase, which might help you close the sale.*

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183 Google's reply to Question 10 of the Commission's request for information of 29 October 2015, Annex 10, GOOGEC-0184454, page 7.

184 Google's reply to Question 10 of the Commission's request for information of 29 October 2015, Annex 10, GOOGEC-0183799.

185 Google's reply to Question 10 of the Commission's request for information of 29 October 2015, Annex 10, GOOGEC-0183799.

186 AdWords Help, "About Shopping campaigns and Shopping ads": https://support.google.com/adwords/answer/2454022?hl=en, downloaded and printed on 9 January 2017.

– ***Example*** *- If you sell ballet slippers and have a text ad for ballet equipment and a Shopping ad for ballet shoes, a customer could see both of your ads on the same Google Search results page*."[187]

(178) Fifth, specialised search services rank paid specialised search results based on different algorithms that take into account different parameters, tailored to the relevant specialised search category. For example, Google's comparison shopping service uses algorithms to match products, on which the participants have placed a bid, with user queries.

(179) Sixth, Google's own conduct and submissions confirm that specialised search services and online search advertising services satisfy different user needs.

(180) In the first place, in September 2014, Google launched AFSh, a service different from its text-based search ads service, AFS (see recital (21)). AFSh allows publishers to place paid comparison shopping results from Google Shopping on their websites.[188]

(181) In the second place, in response to submissions by [redacted],[189] Google stated that [redacted] provides paid specialised search results, which are different from online search ads : "[redacted] *'s specialized search ads could not, on any view, have been excluded as a result of the alleged infringements in the SO. The SO relates only to text-based search ads*".[190]

(182) Seventh, Google's interpretation of the notion of "Similar services" under Clause 7 of the new template GSA confirms that paid specialised search results and online search advertising are not "equivalent": "*As Google also explained, the reference to "equivalent ads" in the premium placement clause in AFS Direct Partner contracts only applies to text-based search ads. It does not apply to display ads, product listing ads, or other ad formats*."[191]

(183) Eighth, contrary to what Google claims,[192] the fact that certain Direct Partners display both online search ads and paid specialised search results on their search results pages confirms, rather than refutes, the fact that online search advertising and paid specialised search results are not substitutable.

6.2.2. The market for online search advertising intermediation

(184) In principle, there are two ways for publishers to sell online search advertising space on their websites: either directly to advertisers or indirectly through one or more intermediaries.

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187 AdWords Help, "About Shopping campaigns and Shopping ads": https://support.google.com/adwords/answer/2454022?hl=en, downloaded and printed on 9 January 2017.

188 Google's reply to Question 14 of the Commission's request for information of 19 December 2014, page 37.

189 [redacted].

190 Google's comments on [redacted].

191 Google's reply to Question 6 of the Commission's request for information of 2 February 2016, paragraph 6.2; and Google's reply to Question 28 of the Commission's request for information of 10 February 2010, Annex J.

192 SO Response, paragraphs 102-106; Google's submission of 31 January 2018, page 4.

(185) The Commission concludes that the market for online search advertising intermediation constitutes a distinct product market. There is limited substitutability between intermediated and direct sales of online ads (Section 6.2.2.1). Furthermore, there is limited substitutability between intermediation services for online search ads and intermediation services for online non-search ads (Section 6.2.2.2).

6.2.2.1. Intermediated sales of online ads versus direct sales of online ads

(186) The Commission concludes that there is limited substitutability between intermediated sales of online ads and direct sales of online ads.

(187) First, from the perspective of publishers, direct sales of online ads involve high transaction costs as they require publishers to undertake considerable investments in terms of time, funds and personnel. Intermediated sales generate no or negligible transaction costs because providers of intermediation services for online search ads manage sales of such ads through an automated process.[193]

(188) Second, online advertising requires a large advertising base (see recital (154)). Individual publishers are less likely to attain a sufficiently large advertising base if they use only direct sales for their own websites. Intermediaries, by contrast, are able to provide the necessary scale by bringing together numerous publishers and advertisers. The European Publishers Council[194] confirmed that not all publishers directly sell online advertising inventory on their websites and even when they do, they supplement these direct sales with intermediated sales of online advertising.[195]

(189) The Commission's conclusion that there is limited substitutability between intermediated and direct sales of online ads is not affected by Google's claims that:

(1) "*many*" Direct Partners directly sell online ads and substitute such ads for intermediated Google and other third party ads.[196] Google seeks to support its claim by reference to two screenshots from [redacted]'s search results pages[197] and to the replies of [redacted] and the [redacted] to Commission's requests for information;[198]

(2) [redacted] has developed advanced targeting capabilities linked to user behaviour;[199]

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193 See reply of [redacted].

194 Reply of the European Publishers Council to Question 3 of the Commission's request for information of 16 September 2011 [redacted]. The European Publishers Council includes Europe's leading media corporations such as Axel Springer, Sanoma Corporation, Telegraph, Hubert Burda Media and Impresa.

195 See replies of [redacted].

196 SO Response, paragraph 141.

197 SO Response, Figure 20.

198 SO Response, footnote 115 and First LoF Response, paragraph 51 and footnote 100.

199 SO Response, paragraph 143.

(3) [redacted] and [redacted] have developed in-house capabilities to better target ads for their own products;[200] and

(4) in its *Telefónica UK/Vodafone UK/Everything Everywhere/JV* merger decision, the Commission concluded that "*direct sales of mobile advertising constrain the sale of mobile advertising through intermediaries to a significant extent*".[201]

(190) As to (1), while certain Direct Partners do directly sell and display ads on their search results pages, this is always in conjunction with intermediated Google search ads. This indicates that there is limited substitutability between intermediated sales of online ads and direct sales of online ads.

(191) In addition, Google's claim is supported neither by the screenshots from [redacted]'s search results page, nor by the replies of [redacted] and [redacted] to Commission's requests for information:

Figure 20
Screenshots of [Direct Partner]Search Results Page
Showing Shift Between Search Ads and Direct-Sold (House) Ads

(1) the two screenshots from [redacted]s search results pages do not show that [redacted] "*shifts results page inventory between Google ads and direct-sold ads*". Rather, they confirm the limited substitutability between intermediated and direct sales of online ads.

(1) The two screenshots appear to relate to different queries: the first shows a model of an Apple iPhone whereas the other shows an album of a British independent rock band. As a result, the reason why, according to the second screenshot, [redacted] showed only a directly sold ad or a house ad[202] could be that there is no matching search ad for that specific query. If a search ad had been available, it could have appeared above or next to the display ad on the second screenshot.

(2) The second screenshot shows the directly sold or house ad just below the "Search Feedback" box, whereas the first screenshot is cut just below the

200 SO Response, paragraphs 143-144.

201 Commission decision of 4 September 2012 in Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, recital 181.

202 A house ad advertises products of the publisher.

"Search Feedback" box. As a result, [redacted] may also have showed a directly sold or house ad on the search results page relating to the first screenshot.

(2) the replies of [redacted] and the [redacted] to Commission's requests for information do not show that Direct Partners "*frequently substitute directly-sold and house ads for google and other third party ads in their inventory*":

(1) [redacted] indicated that the percentage of ads it sells directly and through media agencies is 70%, while intermediaries sell the rest of the advertising space[203] and

(2) the reply of [redacted] states that no intermediary could meet the entire demand for advertising intermediation because advertising space sold directly has a better value than that sold through intermediaries.[204]

(192) As to (2) and (3), it is irrelevant that [redacted], [redacted] or [redacted] have developed advanced ad targeting capabilities linked to user behaviour. This is because:

(1) the fact that [redacted] - [redacted][205] - has developed advanced targeting capabilities linked to user behaviour does not say anything about the substitutability of directly sold ads and intermediated ads; and

(2) [redacted] and [redacted] continued to use Google's online search advertising intermediation service[206] after they developed in-house capabilities to target better ads for their own products.[207]

(193) As to (4), the *Telefónica UK/Vodafone UK/Everything Everywhere/JV* merger decision does not support Google's claim. In that decision, the Commission left open whether there were separate markets for direct and intermediated sales of mobile advertising.[208]

6.2.2.2. Intermediation services for online search ads versus intermediation services for online non-search ads

(194) The Commission concludes that there is limited substitutability between intermediation services for online search ads and for online non-search ads.

(195) First, in order to provide intermediation services for online search ads, an intermediary must establish a fully-fledged online search advertising platform, which

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203 See reply of [redacted] to Question 6(d) of the Commission's request for information of 31 July 2015 (Google wrongly refers to the Commission's request for information of 30 October 2015, which only has 5 questions).

204 See reply of [redacted] to Question 4(a) of the Commission's request for Information of 31 July 2015.

205 See [redacted], downloaded and printed on 12 December 2018.

206 According to the information in the Commission file [redacted] has been a Direct Partner until 31 January 2018 and [redacted] has been a Direct Partner until December 2015.

207 In Figure 21 of the SO Response, [redacted]'s retargeted ad is for [redacted]'s own product

208 See Commission decision of 4 September 2012, in case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, recital 181.

requires significant technological investments in order to develop a viable search engine (see recital (150).

(196) Second, an intermediary needs to invest in the development of an ad-matching technology and a real-time auction mechanism (see recitals (152) and (153)). Even for existing providers of online non-search advertising intermediation services, which can, to a certain extent, rely on their pre-existing technology, these investments remain significant (see recital (152)).

(197) Third, intermediation services for online search ads rest much more on scale advantages than intermediation services for online non-search ads. Intermediaries offering online search advertising services must develop a sufficiently large search advertising portfolio in order to deliver relevant online search ads in response to a broad range of keywords (see recital (150)). By contrast a large online advertising portfolio is less important for intermediaries offering non-search ads. This is because online non-search advertising is more efficient at creating brand-awareness and new demand (see recital (142)) rather than satisfying the immediate needs of users.

(198) Fourth, statements by Google employees and internal Google documents confirm that there is limited substitutability between intermediation services for online search ads and intermediation services for online non-search ads:

(1) In her deposition before the FTC of 2 May 2012, [redacted], then [redacted], noted a number of differences between Google's online search advertising intermediation service and online non-search advertising intermediation service: "*We look at these as two different products because they are two different products* […] *So there are some cases where they do blend together. But in general, the technologies behind them have been different. And that's the reason that we look at them as two different products. We also give our advertisers the option to select which one they want to participate in or both. And so that's why we look at them separately*;"[209] and

(2) in an internal Google document entitled "2008 AdSense Business Review", the executive summary opens by stating: "*The nature of our AFS and AFC businesses are fundamentally different. AFS is primarily a "partnership" business with [90-100]% of its revenue driven by the Direct channel and consisting of large partners with high search traffic volume. Conversely, AFC appears to be a "network" business with [80-90]% of its revenue driven by the Online channel and consisting of over a million smaller publishers*."[210]

(199) Fifth, the following formulations of the Exclusivity Clause in certain GSAs with Direct Partners specifically distinguished between intermediation services for online search advertising and non-search advertising:

(1) Clause 6.2 of the agreement of 1 April 2009 with [redacted]:

"*The Parties acknowledge that for the purposes of clause 6.1, a service is the same or substantially similar to (a) AdSense for Search Services, if the service*

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209 Deposition of [redacted] before the FTC of 2 May 2012, pages 69-70.

210 Internal Google document [redacted]-000056769, discussed in the deposition of [redacted] before the FTC of 2 May 2012, under the reference CX0083.2, page 3. See also page 24 of the same internal Google document.

consists of the provision of advertisements which are targeted at keywords; (b) AdSense for Content Services, if the service consists of the provision of content targeted advertising which is automatically generated; […]"[211]

(2) Clause 6.2 of the agreement of 1 January 2007 with [redacted]:

"[redacted]"[212]

(200) Sixth, Google does not contest that there is limited substitutability between intermediation services for online search ads and intermediation services for online non-search ads.

6.3. Relevant geographic markets

6.3.1. Principles

(201) The relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different.[213]

(202) The definition of the geographic market does not require the conditions of competition between traders or providers of services to be perfectly homogeneous. It is sufficient that they are similar or sufficiently homogeneous and, accordingly, only those areas in which the conditions of competition are "heterogeneous" may not be considered to constitute a uniform market.[214]

6.3.2. The market for online search advertising

(203) The Commission concludes that the markets for online search advertising are national in scope.

(204) First, online search advertisers typically address their target audiences in their native language since this is the most efficient way to communicate an advertising message and to maximise performance in terms of traffic, CTR and return on investment.[215]

(205) Second, due to the paramount importance of language, advertisers typically design their online search advertising campaigns on a country-by-country basis,[216] with

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211 Reply of [redacted] to the Commission's request for information of 22 December 2010.

212 Reply of [redacted] to the Commission's request for information of 22 December 2010.

213 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 44; Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 26.

214 Case 27/76 *United Brands*, EU:C:1978:22, paragraphs 11 and 53.

215 Replies of e.g. [redacted].

many of them focusing on their home market.[217] Even search ads used in global campaigns are adapted in particular to the language of the different national markets.[218] As H&M indicated "*We always optimize our campaigns on a national level. Every country organization within H&M has its separate profit and loss (P&L), which makes it natural to optimize online campaigns on a national level. We also see better results when optimizing nationally*."[219]

(206) In the first place, online search ads appear when the associated keywords correspond to the queries that users typically enter in their own language. Advertisers and media agencies have confirmed this:

(1) Indeed Ireland Operations, Ltd stated that "*Language and cultural differences make advertising campaigns across the EEA more difficult*";[220]

(2) Netflix stated that "*[…] language is certainly very important and then cultural preferences and norms are considered for adjustments to the creative*";[221]

(3) WFA stated that "[…] *whilst search purchasing strategies may be centralised (globally or at a regional level) translators are almost always needed, whether they are based in market or not. Cultures and regulatory issues often differ greatly by market. So whilst search offers global potential, it is very often still bought locally, as with most other channels, including offline*";[222]

(4) Sky stated that it "*typically designs its online advertising on a national scale due to the nature of its products. Audiences in other EEA countries will search for different products to those in the UK and language differences are also relevant*";[223] and

(5) Company Z stated that "*Country and/or language specificities are important and will impact the set-up and campaign management/optimisation of an online advertising campaign.*"[224]

(207) In the second place, online search ads are typically exclusively text-based and therefore, by nature, language-based.

(208) In the third place, the main purpose of online search advertising is to trigger a consumer response (see recitals (126), (138) and (142)), which implies subsequent

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216 Replies of e.g. [redacted].

217 Reply of e.g. [redacted] to Question 7 of the Commission's AdWords related request for information of 22 December 2010 (Annex 1B).

218 Replies of e.g. [redacted].

219 Reply of [redacted] to Question 20 of the Commission's request for information to advertisers of 11 January 2016 (Annex I).

220 Reply of Indeed Ireland Operations, Ltd, to Question 20 of the Commission's request for information to advertisers of 11 January 2016.

221 Reply of Netflix to Question 21 of the Commission's request for information to advertisers of 11 January 2016.

222 Reply of WFA to Question 21 of the Commission's request for information to advertisers of 11 January 2016.

223 Reply of Sky to Question 20 of the Commission's request for information to advertisers of 11 January 2016.

224 Reply (anonymised) of Company Z to Question 17 of the Commission's request for information to media agencies of 11 January 2016.

communication – and possibly direct interaction – with the user that clicks on the online search ad, typically in his or her own language.

(209) Third, the provision of online search advertising requires a certain local presence and language-specific sales and support networks.

(210) In the first place, the structure of the sales and support network of the main online search advertising platforms in the EEA confirms this. Google's AdWords, Microsoft's adCenter and Yahoo's Panama each has (or has previously had) local sales and support teams in several countries.[225]

(211) In the second place, advertisers that do not have access to local sales and support teams are either served by a pan-European sales teams, able to respond to clients in one of the major European languages via telephone or email, or directed to a largely automated self-service support network, the services of which are available in all major European languages.[226]

(212) Fourth, the ability of online search advertising platforms to expand their activities in additional countries where people speak a different language is constrained by the need to attract a sufficient amount of advertisers in each language in which they operate.

(213) Fifth, the target audience of online search ads in different countries may have different needs, interests and preferences. A product that sells well in one country does not necessarily have the same success in other countries.[227] Zalando, a publisher, and Tradedoubler, an online advertising intermediary, confirmed this:

(1) Zalando stated that "*Campaigns are localized due to different languages, different culture backgrounds and localized only on shops we advertise. We don't necessarily advertise the same products in all of our country shops.*"[228]

(2) TradeDoubler stated that it "[…] *work*[s] *with international clients but the vast majority of […][its] campaigns are designed for national markets due to the difference in the national clients objectives and audiences*."[229]

(214) Sixth, when designing an online search advertising campaign, advertisers need to take into account the fact that sense of humour and other sensibilities may vary from country to country.[230]

(215) Seventh, advertisers may have to use different advertising channels or service providers to reach their target audience in each country, depending on the specific competitive situation in the different national markets for online advertising.[231]

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225 Google's reply to Question 7 of the Commission's request for information of 13 July 2010, p. 13. See also Yahoo's reply to Question 7 of the Commission's request for information of 22 December 2010.

226 Google's reply to Question 7 of the Commission's request for information of 13 July 2010, p. 13. See [redacted].

227 Replies of e.g. [redacted].

228 Reply of Zalando to Question 20 of the Commission's request for information to publishers of 11 January 2016 (Annex I).

229 Reply of TradeDoubler to Question 16 of the Commission's request for information to media agencies of 11 January 2016 (Annex I). See also reply of [redacted] answer to Question 17 of the Commission's request for information to media agencies of 11 January 2016 (Annex I).

230 Replies of e.g. [redacted].

(216) Eighth, national advertising laws may vary. An advertiser can advertise a product without limitation in one country whereas another country may prohibit it from doing so.[232]

(217) Ninth, Google does not contest that the markets for online search advertising are national in scope.

6.3.3. The market for online search advertising intermediation

(218) The Commission concludes that the market for online search advertising intermediation is EEA-wide in scope.

(219) First, the main providers of online search advertising intermediation services can offer search ads in a variety of different languages. For example, Google offers search ads in various languages including in English ([redacted]), in German ([redacted]), in Italian ([redacted]), in French ([redacted]), in Polish ([redacted]) and in Dutch ([redacted]). Similarly, [redacted] also offers search ads in various languages including in English ([redacted]), in German ([redacted] and in French ([redacted]).

(220) Second, larger publishers can conclude agreements with online search advertising intermediation service providers that allow the latter to adapt online search ad campaigns to national preferences by sending the query with an IP address that identifies the origin of the website. This allows providers to know in which language they should serve the matching search ad.[233] For example, Google has entered into an agreement with [redacted] which covers the provision of online search intermediation services to websites with domains including .co.uk, .de, .fr, .it, .nl etc.[234]

(221) Third, Google does not contest that the market for online search advertising intermediation is EEA-wide in scope.

7. DOMINANCE

7.1. Principles

(222) 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

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231 Reply of [redacted].

232 See [redacted].

233 Replies of [redacted] to Question 4 of the Commission's request for information to publishers of July 2013. See also reply of [redacted] to Question 13 of the Commission's request for information of 18 March 2016.

234 Reply of [redacted] to the Commission's request for information of 31 July 2015, annex "[redacted]".

behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers.[235]

(223) The existence of a dominant position derives from a combination of several factors which, taken separately, are not necessarily determinative.[236] 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.[237] That is the case where a company has a market share of 50% or above.[238] Likewise, a share of between 70% and 80% is, in itself, a clear indication of the existence of a dominant position in a relevant market.[239] The ratio between the market share held by the dominant undertakings and that of its nearest rivals is also a highly significant indicator.[240] 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, because of this alone, secures for it, at the very least during relatively long periods, that freedom of action which is the special feature of a dominant position.[241]

(224) In recently established and 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.[242] The same can, however, not be said of a fast-growing market that does not show signs of marked instability during the period at issue and where a rather stable hierarchy is established.[243]

(225) The fact that a service is offered free of charge is also a relevant factor to take into account in assessing dominance. Another relevant factor is whether there are technical or economic constraints that might prevent users from switching providers.[244]

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235 Case 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.

236 Case 27/76 *United Brands and United Brands Continentaal v Commission*, EU:C:1978:22, paragraph 66; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 39.

237 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.

238 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.

239 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.

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

241 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.

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

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

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

(226) A finding of dominance does not require that an undertaking has eliminated all opportunity for competition in a market.[245] A finding of dominance is also not precluded by the existence of competition on a particular market, provided that an undertaking can act without having to take account of such competition in its market strategy and without for that reason suffering detrimental effects from such behaviour.[246]

(227) Other important factors when assessing dominance are the existence of countervailing buyer power and barriers to entry or expansion, preventing potential competitors from having access to the market or actual ones from expanding their activities on the market.[247] 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.[248]

7.2. Google's dominant position in the national markets for online search advertising

(228) The Commission concludes that Google held a dominant position in at least the following national markets for online search advertising in the EEA and during at least the following periods:[249]

(1) between 2006 and 2016 in Austria, Belgium, Cyprus, Denmark, Estonia, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Spain and the United Kingdom;

(2) between 2007 and 2016 in Norway and Poland;

(3) between 2008 and 2016 in Hungary, Romania and Sweden;

(4) between 2009 and 2016 in Finland and Slovenia;

(5) between 2010 and 2016 in Bulgaria and Slovakia;

(6) between 2011 and 2016 in the Czechia and

(7) between 1 July 2013 and 2016 in Croatia.

(229) The Commission bases its conclusion on the market shares of Google and competing online search advertising providers (Section 7.2.1), the existence of barriers to entry

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245 Case 27/76 *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 113.

246 Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 70; and Case T-340/03 *France Télécom SA v Commission*, EU:T:2007:22, paragraph 101.

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

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

249 The Commission's conclusion is conservative and favourable to Google because the Commission has left open whether Google may have been dominant in certain national markets for online search advertising in the EEA during years when Google has been unable to provide information on market shares.

and expansion (Section 7.2.2) and the lack of countervailing buyer power (Section 7.2.3).

(230) Between 2006 and 2016, Google's share of most of the national markets for online search advertising increased steadily, with the result that in 2016, there remained almost no competing suppliers of online search advertising in any national market in the EEA. Moreover scale and network effects, among other barriers to entry and expansion, made it difficult for alternative suppliers to emerge.

7.2.1. Market shares

(231) The Commission concludes that market shares in the national markets for online search advertising in the EEA provide a good indication of Google's competitive strength in these markets. This is for the following reasons.

(232) First, between 2006 and 2016 in all EEA countries, the Commission has calculated market shares based on both gross (Table 3) and net revenues (Table 4) using the data provided by Google.[250] In addition, the Commission has analysed shares based on query share volumes between 2010 and 2013 and in the countries where data was available (Table 5).

(233) Second, market shares based on gross rather than net revenue best reflect Google's competitive strength in the national markets for online search advertising in the EEA. This is because payments made by Google to publishers[251] for the placement of search ads on their websites constitute a cost incurred by Google (see Section 2.2.3). Like any other essential cost to supply a product or a service, it is unnecessary to deduct these payments from the revenues generated by Google in online search advertising.[252]

(234) Third, based on gross revenues, Google's position in the national markets for online search advertising in the EEA was consistently strong. Throughout the period between 2006 and 2016, Google's shares were above [50%-60%] in all the EEA countries for which information is available, except Czechia, Finland, Norway, Portugal, Slovenia and Sweden. Moreover, in 2016, Google's shares were above [50%-60%] in all EEA countries for which information was available, including Czechia, Finland, Slovenia and Sweden.[253] Table 3 illustrates this.[254]

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250 Google response to Question 1 of the Commission's request for information of 16 March 2016, Annex 1; to Question 1 of the Commission's request for information of 20 December 2016, Annex I and to Question 1 of the Commission's request for information of 30 August 2017, Annex 1.

251 [redacted].

252 Case C-272/09 P *KME Germany and Others v Commission*, EU:C:2011:810, paragraph 53; Case C-389/10 P *KME Germany and Others v Commission*, EU:C:2011:816, paragraph 62.

253 On the basis of those countries for which Google was able to provide, in addition to their revenues, an estimate of the market size. See Google's reply to Question 1 of the Commission's request for information of 16 March 2016, Annex 1; to Question 1 of the Commission's request for information of 20 December 2016, Annex I and to Question 1 of the Commission's request for information of 30 August 2017, Annex 1.

254 Estimates of online search advertising market size including TAC by EEA country as provided by Google in response to Question 1 of the Commission's request for information of 16 March 2016, Annex 1, in response to Question 1 of the Commission's request for information of 20 December 2016, Annex I and in response to Question 1 of the Commission's request for information of 30 August 2017, Annex 1. The Commission bases the estimates of market sizes on the methodology set out in Google's reply to Questions 4 and 9 of the Commission's information request of 24 July 2013 and Google's reply

Table 3: Google's estimated shares of the national markets for online search advertising in the EEA for 2006-2016 based on gross revenues

Country	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Austria	70-80%	80-90%	70-80%	70-80%	80-90%	60-70%	70-80%	90-100%	80-90%	90-100%	90-100%
Belgium	50-60%	50-60%	50-60%	60-70%	60-70%	60-70%	70-80%	50-60%	30-40%	90-100%	90-100%
Bulgaria	*	*	*	*	80-90%	70-80%	90-100%	90-100%	60-70%	90-100%	90-100%
Croatia	*	*	*	*	*	*	*	90-100%	90-100%	90-100%	90-100%
Cyprus♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Czechia	*	*	*	*	30-40%	50-60%	90-100%	90-100%	90-100%	90-100%	80-90%
Denmark	60-70%	70-80%	70-80%	70-80%	70-80%	70-80%	70-80%	70-80%	70-80%	70-80%	70-80%
Estonia♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Finland	10-20%	30-40%	30-40%	50-60%	80-90%	90-100%	90-100%	50-60%	40-50%	90-100%	90-100%
France	70-80%	90-100%	90-100%	80-90%	90-100%	70-80%	70-80%	70-80%	70-80%	80-90%	90-100%
Germany	70-80%	80-90%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Greece	70-80%	70-80%	90-100%	50-60%	50-60%	60-70%	80-90%	80-90%	40-50%	80-90%	80-90%
Hungary	*	*	90-100%	90-100%	90-100%	90-100%	90-100%	80-90%	70-80%	70-80%	70-80%
Iceland♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Ireland	90-100%	90-100%	90-100%	90-100%	90-100%	80-90%	70-80%	90-100%	90-100%	90-100%	90-100%
Italy	70-80%	80-90%	80-90%	80-90%	90-100%	90-100%	60-70%	40-50%	70-80%	70-80%	80-90%
Latvia♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Liechtenstein	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Lithuania♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Luxembourg♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Malta♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Netherlands	50-60%	80-90%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Norway	5-10%	50-60%	60-70%	50-60%	70-80%	80-90%	80-90%	80-90%	80-90%	70-80%	90-100%
Poland	*	70-80%	90-100%	80-90%	80-90%	80-90%	80-90%	90-100%	90-100%	80-90%	90-100%
Portugal	30-40%	40-50%	50-60%	50-60%	50-60%	30-40%	20-30%	20-30%	20-30%	*	*
Romania	*	*	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Slovakia	*	*	*	*	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Slovenia	10-20%	20-30%	30-40%	60-70%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Spain	80-90%	90-100%	90-100%	90-100%	90-100%	60-70%	60-70%	80-90%	80-90%	90-100%	90-100%
Sweden	20-30%	20-30%	80-90%	80-90%	70-80%	80-90%	80-90%	80-90%	80-90%	60-70%	50-60%

to Question 5 of the Commission's information request of 13 July 2010. Google bases its estimates of the size of the various advertising markets on estimates from IAB Europe (IAB), Forrester/Jupiter Research (Jupiter), and ZenithOptimedia (Zenith).

Country	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
United Kingdom	80-90%	80-90%	90-100%	80-90%	80-90%	80-90%	90-100%	90-100%	90-100%	80-90%	80-90%
EEA[255]	70-80%	80-90%	90-100%	80-90%	90-100%	80-90%	80-90%	80-90%	80-90%	90-100%	80-90%

(* = no information provided)
Source: Google[256]

(235) Fourth, based on net revenues, Google's position in the national markets for online search advertising in the EEA was also consistently strong. Throughout the period between 2006 and 2016, Google's shares were above [50-60%] in all the EEA countries for which information is available, except Czechia, Finland, Norway, Portugal, Slovenia and Sweden. Moreover, in 2016, Google's shares were above [50-60%] in all EEA countries for which information was available, including Czechia, Finland, Slovenia and Sweden.[257] Table 4 illustrates this.[258]

Table 4: Google's estimated shares of the national markets for online search advertising in the EEA for 2006-2016 based on net revenues

Country	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Austria	70-80%	80-90%	70-80%	70-80%	80-90%	60-70%	70-80%	80-90%	80-90%	90-100%	90-100%
Belgium	40-50%	50-60%	50-60%	50-60%	60-70%	60-70%	70-80%	50-60%	30-40%	90-100%	90-100%
Bulgaria	*	*	*	*	70-80%	70-80%	90-100%	90-100%	90-100%	90-100%	90-100%
Croatia	*	*	*	*	*	*	*	90-100%	90-100%	90-100%	90-100%
Cyprus♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Czechia	*	*	*	*	30-40%	50-60%	90-100%	90-100%	90-100%	90-100%	80-90%

255 The Commission has calculated Google's revenues and market size estimates by summing across those countries for which estimates of total expenditure on search advertising are available. Google was unable to provide market size estimates for all EEA countries. Google response to Question 1 of the Commission's request for information of 16 March 2016.

256 [redacted]: '[redacted] "♦".

257 The Commission based itself on those countries for which Google was able to provide, in addition to their revenues, an estimate of the market size. See Google's reply to Question 1 of the Commission's request for information of 16 March 2016, Annex 1; to Question 1 of the Commission's request for information of 20 December 2016, Annex I and to Question 1 of the Commission's request for information of 30 August 2017, Annex 1.

258 Estimates of online search advertising market size excluding TAC by EEA country as provided by Google in response to Question 1 of the Commission's request for information of 16 March 2016, Annex 1 in response to Question 1 of the Commission's request for information of 20 December 2016, Annex I and in response to Question 1 of the Commission's request for information of 30 August 2017, Annex 1.

Country	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Denmark	60-70%	70-80%	70-80%	60-70%	70-80%	60-70%	70-80%	60-70%	70-80%	60-70%	70-80%
Estonia♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Finland	10-20%	30-40%	30-40%	40-50%	80-90%	90-100%	90-100%	40-50%	40-50%	90-100%	90-100%
France	60-70%	90-100%	90-100%	80-90%	90-100%	70-80%	70-80%	70-80%	70-80%	80-90%	90-100%
Germany	70-80%	80-90%	80-90%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Greece	60-70%	60-70%	90-100%	40-50%	50-60%	60-70%	80-90%	80-90%	40-50%	80-90%	80-90%
Hungary	*	*	90-100%	90-100%	90-100%	90-100%	90-100%	70-80%	70-80%	60-70%	70-80%
Iceland♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Ireland	90-100%	90-100%	90-100%	90-100%	90-100%	70-80%	70-80%	90-100%	90-100%	90-100%	90-100%
Italy	70-80%	80-90%	80-90%	80-90%	90-100%	90-100%	50-60%	30-40%	70-80%	70-80%	80-90%
Latvia♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Liechtenstein♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Lithuania♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Luxembourg♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Malta♦	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	*	*
Netherlands	50-60%	80-90%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Norway	5-10%	40-50%	60-70%	50-60%	60-70%	70-80%	80-90%	70-80%	80-90%	70-80%	90-100%
Poland	*	70-80%	90-100.0%	80-90%	80-90%	80-90%	80-90%	80-90%	80-90%	80-90%	90-100%
Portugal	30-40%	40-50%	50-60%	50-60%	50-60%	20-30%	20-30%	20-30%	20-30%	*	*
Romania	*	*	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Slovakia	*	*	*	*	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Slovenia	10-20%	10-20%	20-30%	60-70%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%	90-100%
Spain	70-80%	90-100%	90-100%	90-100%	90-100%	60-70%	50-60%	70-80%	80-90%	90-100%	90-100%
Sweden	20-30%	20-30%	80-90%	70-80%	70-80%	80-90%	80-90%	70-80%	80-90%	60-70%	50-60%
United Kingdom	70-80%	80-90%	90-100%	70-80%	80-90%	80-90%	80-90%	80-90%	90-100%	80-90%	70-80%
EEA[259]	60-70%	80-90%	90-100%	80-90%	80-90%	80-90%	80-90%	70-80%	80-90%	80-90%	80-90%

[259] The Commission has calculated Google's revenues and market size estimates by summing across those countries for which estimates of total expenditure on search advertising are available. Google was unable to provide market size estimates for all EEA countries. Google response to Question 1 of the Commission's request for information of 16 March 2016.

(* = no information provided)
Source: Google[260]

(236) Fifth, based on query share volumes, Google's position in the national markets for online search advertising in the EEA was also consistently strong. Throughout the period between 2010 and 2013, Google's shares of the national markets for online search advertising in the EEA were above [90-100%] in all the countries for which information is available. Table 5 illustrates this.

Table 5: Google's estimated shares of the national markets for online search advertising in the EEA for 2010-2013, based on query share volumes

Country	2010	2011	2012	2013
Austria	90-100%	90-100%	-	-
Belgium	90-100%	90-100%	-	-
Germany	90-100%	90-100%	90-100%	90-100%
Denmark	90-100%	90-100%	-	-
Spain	90-100%	90-100%	90-100%	90-100%
Finland	90-100%	90-100%	-	-
France	90-100%	90-100%	90-100%	90-100%
Ireland	90-100%	90-100%	-	-
Italy	90-100%	90-100%	90-100%	90-100%
Netherlands	90-100%	90-100%	-	-
Norway	90-100%	90-100%	-	-
Sweden	90-100%	90-100%	-	-
United Kingdom	90-100%	90-100%	90-100%	90-100%
EEA	90-100%	90-100%	-	-

Source: Microsoft[261]

260 [redacted].

261 Microsoft's reply to Question 2 of the Commission's request for information of 8 December 2014, Table 2d and footnote 7; and reply of Microsoft to Question 8 of the Commission's request for information of 26 July 2013, Table 6 and footnote 23.

(237) Sixth, throughout the period between 2006 and 2016, Google has faced limited competition from competing online search advertising providers, including Microsoft's Bing Ads (until September 2012 called adCenter[262]) and Yahoo's Panama.[263] Yahoo has exerted limited competitive pressure on Google, even though in 2003 it acquired the then incumbent – Overture.[264] As Table 3 and Table 4 illustrate, Microsoft and Yahoo were active only in some of the EEA countries[265] and their shares in those markets were low.

(238) Seventh, Google seems to consider the competition that it faces from competing online search advertising providers in the EEA to be such that it is not worth its while to estimate internally the market shares of its competitors. This is confirmed by Google's inability to provide market share estimates for competing online search advertising providers in the EEA, despite an express request to that effect by the Commission. Google explained that "*[r]evenue data for individual competitors are not available […]*",[266] and that it "*[…] knows of no third party sources that attempt to estimate these figure*",[267] and that "*[t]here is a high degree of uncertainty inherent in the estimates of online advertising expenditure in third party reports […]*".[268]

(239) The Commission's conclusion that market shares in the national markets for online search advertising in the EEA provide a good indication of Google's competitive strength in these markets is not affected by Google's claim that the data provided by Google and on the basis of which the Commission has calculated market shares is unreliable.[269]

(240) Google has neither provided any justification for this claim, nor proposed any alternative method of calculating market shares.

7.2.2. Barriers to entry and expansion

(241) The Commission concludes that the national markets for online search advertising in the EEA are characterised by the existence of a number of barriers to entry and expansion.

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262 See a blog post on Bing Ads Community blog site, "*Microsoft adCenter is Now Bing Ads and Introducing the Yahoo! Bing Network*", 9 September 2012, available at https://advertise.bingads.microsoft.com/en-us/blog/post/september-2012/microsoft-adcenter-is-now-bing-ads-and-introducing-the-yahoo!-bing-network downloaded and printed on 19 July 2017.

263 Yahoo's reply to the Commission's request for information of 3 May 2016.

264 See http://www.wsj.com/articles/SB10581896562315360O, downloaded and printed on 19 July 2017.

265 Yahoo operates Panama in 11 EEA countries (Austria, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden and the United Kingdom) whereas Microsoft operates Bing Ads in seven other EEA countries (Belgium, Czech Republic, Greece, Hungary, Ireland, Luxembourg and Portugal). See Yahoo's reply to Questions 2 and 4 of the Commission's request for information of 8 December 2014 and Microsoft's reply to Question 2 of the Commission's request for information of 8 December 2014, Tables 2a and 2c, p. 4-5.

266 Google's reply to Questions 13 and 20 of the Commission's request for information of 19 December 2014.

267 Google's reply to Question 1c of the Commission's request for information of 8 November 2011, p. 3; see also Google's reply to Questions 13 and 20 of the Commission's request for information of 19 December 2014, Annexes 13 and 20.

268 Google's reply to Question 1 of the Commission's request for information of 16 March 2016.

269 SO Response, paragraph 400; Second LoF Response, Annex 2, p.1-2.

(242) First, in order to establish itself as a fully-fledged online search advertising provider, a potential entrant would have to undertake significant investments in a number of areas.

(243) In the first place, a potential entrant would have to invest significantly – in terms of capital and time - in the development of a general search engine. This has been confirmed by Google, Microsoft, other general search service providers, specialised search service providers and merchant platforms:

(1) Google stated that the development of a general search technology is "*[t]he most significant task that a non-search advertising provider wishing to provide a search advertising solution might consider undertaking.*"[270]

(2) Between 2009 and 2013/2014, Microsoft has annually invested USD 350 million to USD 750 million in the development and maintenance of the latest version of its general search engine launched in June 2009 under the brand name "Bing".[271]

(3) Orange stated that it only operates its own general search technology for French language websites because "*investments are too large to develop such technology for non French language websites*."[272]

(4) Expedia stated that "*the incremental costs of converting Expedia's online travel search service into a viable, competitive broad search service would […] require years of development*."[273]

(5) [redacted] stated that "[redacted]."[274]

(244) In the second place, a potential entrant would have to invest significantly in search ad technology that matches keywords entered by users in their queries with relevant online search ads. While providers of online non-search advertising, and in particular of contextual online non-search advertising, can rely to a certain extent on their existing ad-matching technology, they would still need to invest significant time and resources to refine it for the provision of online search advertising.[275]

(245) In the third place, a potential entrant would have to invest significantly in the development of a real-time search auction mechanism that manages sales of online search ads. In view of the limited advertising space available on a given webpage, online search advertising providers have to be able to select and show the most relevant online search ads for a given query. A real-time search auction mechanism

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270 Google's reply to Question 6 of the Commission's request for information of 13 July 2010.

271 Reply of Microsoft's to Question 1 of the Commission's request for information of 8 December 2014.

272 Reply of Orange to Question 1 of the Commission's request for information of 3 October 2011.

273 Reply of Expedia to Question 17 of the Commission's search related request for information of 22 December 2010 (Annex 1A).

274 Reply of [redacted] to Question 17 of the Commission's search related request for information of 22 December 2010 (Annex 1A).

275 Google's reply to Question 6 of the Commission's request for information of 13 July 2010, p. 5.

appears to be the best way to do so in a profitable and efficient way.[276] Since designing a search auction mechanism is complex and costly, its development requires significant investments in terms of time and resources.

(246) In the fourth place, a potential entrant would have to invest significantly in order to gather user click data. In his deposition before the FTC of 18 May 2012 [redacted], then [redacted], before the FTC, confirmed the importance of user click data for search quality: "*[…] the more data you have, the better you are. It might have diminishing return after a while, but in general, we always wanted to have more data*".[277]

(247) In the fifth place, a potential entrant would have to continue investing significant amounts in ongoing maintenance and refinement of its search advertising platform. Google confirmed that "*[…] an advertising service will continue to be improved and refined for an indefinite period after being launched*", which may even "*[…] be longer than that during which the service was under development prior to launch*".[278]

(248) Even for operators of online non-search advertising platforms, the investments described in recitals (243) to (246) remain significant:

(1) Yahoo was already active in the provision of online non-search ads and it spent EUR 1.16 billion in 2003 to enter the online search advertising business when it acquired Overture. Between 2004 and 2009, Yahoo's annual costs of running its sponsored search platform, excluding TAC, were between USD 232 million and USD 329 million. In addition, Yahoo spent more than USD 150 million on the Panama project, meant to upgrade and overhaul the platform used by advertisers to define the parameters of their Yahoo search campaigns.[279] However, despite these investments, Yahoo was unable to establish a significant market presence in any of the online search advertising markets in the EEA in which it was active. An advertiser confirmed this: "*First Yahoo – vanished Now bing – no future in our view*."[280]

(2) Microsoft already operated a display ad platform, AdExpert, with annual display ad sales of more than USD 1.5 billion[281] and it had to undertake over three years of research and development and make considerable investments before it was able to enter the online search advertising business in 2006 with its online search advertising platform, adCenter. Moreover, in 2011, Microsoft stated that it continued to invest more than USD 400 million annually in adCenter.[282]

(3) Deutsche Telekom already operated an online non-search advertising platform and it explained that: "*The development of a search engine advertising*

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276 Microsoft's complaint of 31 March 2011, LECG report of 21 June 2010 on "*Paid search and paid search intermediation*", Annex 37, p. 28.

277 Deposition of [redacted] before the FTC of 18 May 2012 , page 152, points 16-19.

278 Google's reply to Question 6 of the Commission's request for information of 13 July 2010, p. 12-13.

279 Yahoo's reply to Question 9 of the Commission's request for information of 22 December 2010, section B, p. 13, as confirmed by email on 3 May 2016.

280 See Check 24 reply to Question 18 of the Commission's request for information to advertisers of 11 January 2016 (e-questionnaire).

281 Microsoft's e-mail to the Commission's case team of 13 April 2012.

282 Microsoft's complaint of 31 March 2011, LECG report of 21 June 2010 on "*Paid search and paid search intermediation*", Annex 37, p. 28.

marketplace is a great challenge with many requirements (e.g. real-time bid management, scalability, ease to use and legal requirements) and it comes at very high costs. […] intermediaries, such as Google, have superior know-how, technology, data and demand from advertisers to serve relevant search advertisements."[283]

(249) Second, the national markets for online search advertising in the EEA are characterised by network effects.

(250) In the first place, the success of an online search advertising services depends on the number of advertisers that a potential entrant can attract.[284] The more advertisers to which an online search advertising provider has access, the more search ads it can choose from to match with a given query. This increases the relevance of the online search ads that it can serve in response to a given query and the likelihood that users will click on online search ads served to them.[285] Sky, for example, stated that "*the effectiveness of the platform is improved over time where there are a large number of advertisers using it as more services are developed to meet their specific demands.*"[286] While providers of online non-search advertising can rely on their existing advertiser base to a certain extent, they also need to attract a considerable number of advertisers, interested in placing search ads, to ensure that their search advertising pool covers a broad range of keywords.

(251) In the second place the success of online search advertising services depends also on the reach and performance of the underlying general search service.[287] The higher the number of users of a general search service, the greater the likelihood that a given online search ad is matched to an interested user and eventually converted into a click (see recitals (153) and (154)). Internal Google documents and a statement of Google's [redacted] confirm this:

(1) In an internal presentation of October 2007, entitled "Google 2008 Strategy: Fewer products, and all products to be great" Google stated: *"Our goal is to maximize end user experience and revenue through ads and drive the virtuous cycle between publishers and advertisers."*[288]

(2) In his deposition before the FTC of 11 July 2012 before the FTC, [redacted], a [redacted] at Google, stated: "*Well, there's one strategic consideration which is relevant to this discussion. And that is that a publisher with whom we're contemplating becoming a search partner, there may be advertisers that are very interested in reaching the audience of that particular publisher.* […] *So advertisers who sold games would want to be able to reach that audience effectively. If we brought that customer into the Google ad network, then those advertisers would also be advertising on Google.com and other properties*

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283 Reply of Deutsche Telekom AG to Question 1 of the Commission's request for information of 26 July 2013.

284 Microsoft's reply to Question 9.1 of the Commission's request for information of 13 January 2011.

285 Yahoo's submission of 17 February 2011, p. 2-3. See also [redacted].

286 See Sky's reply to Question 19 b) of the Commission's request for information to advertisers of 11 January 2016.

287 See Microsoft's complaint of 31 March 2011.

288 Internal Google document 111-0163 [redacted]-000067748.

within the network. So that would be a strategic consideration where we seek a publisher in part because of the advertisers that the publisher could bring with it."[289]

(252) Third, the strength of Google's general search service and its interaction with online search advertising confers competitive advantages on Google that competing providers of online search advertising services cannot easily match.

(253) In the first place, as Table 6 illustrates in 2016 the market share of Google's general search service was above [90-100%] in each EEA country with the exception of Czechia, where it was above [80-90%].

Table 6: Market shares in 2016 of general search services in the EEA

EEA Country	Google	Bing	Yahoo	Others
Austria	90-100%	0-5%	0-5%	>0-5%
Belgium	90-100%	0-5%	0-5%	>0-5%
Bulgaria	90-100%	>0-5%%	>0-5%%	>0-5%
Croatia	90-100%	0-5%	0-5%	>0-5%
Cyprus	90-100%	0-5%	0-5%	0-5%
Czechia	80-90%	0-5%	0-5%	10-20%
Denmark	90-100%	0-5%	0-5%	>0-5%
Estonia	90-100%	0-5%	>0-5%	0-5%
Finland	90-100%	0-5%	>0-5%	>0-5%
France	90-100%	0-5%	0-5%	>0-5%
Germany	90-100%	0-5%	0-5%	0-5%
Greece	90-100%	0-5%	>0-5%	>0-5%
Hungary	90-100%	0-5%	>0-5%	>0-5%
Iceland	90-100%	0-5%	0-5%	>0-5%
Ireland	90-100%	0-5%	0-5%	>0-5%
Italy	90-100%	0-5%	0-5%	>0-5%

[289] Deposition of [redacted] before the FTC of 11 July 2012, page 158.

EEA Country	Google	Bing	Yahoo	Others
Latvia	90-100%	0-5%	0-5%	0-5%
Liechtenstein	90-100%	5-10%	0-5%	>0-5%
Lithuania	90-100%	0-5%	>0-5%%	0-5%
Luxembourg	90-100%	0-5%	0-5%	>0-5%
Malta	90-100%	0-5%	0-5%	>0-5%
Netherlands	90-100%	0-5%	0-5%	0-5%
Norway	90-100%	0-5%	0-5%	>0-5%
Poland	90-100%	0-5%	>0-5%%	>0-5%
Portugal	90-100%	0-5%	>0-5%%	>0-5%
Romania	90-100%	0-5%	0-5%	>0-5%
Slovakia	90-100%	0-5%	>0-5%%	>0-5%
Slovenia	90-100%	0-5%	>0-5%%	>0-5%
Spain	90-100%	0-5%	0-5%	>0-5%
Sweden	90-100%	0-5%	0-5%	>0-5%
United Kingdom	90-100%	5-10%	0-5%	>0-5%

Source: StatCounter[290]

(254) In the second place, studies and internal Google documents confirm the competitive advantage of Google in online search advertising due to the strength of its general search service:

(1) A Keystone study submitted by Microsoft[291] indicated that the percentage of advertisers that advertise exclusively via AdWords is the highest in EEA countries where Google has the highest query share.

(2) An [redacted] study submitted by Google indicated that advertisers simultaneously use two or more search advertising platforms more in those EEA countries where Microsoft offers a "localised" version[292] of Bing.[293]

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290 StatCounter data for 2016, downloaded on 23 May 2017, http://gs.statcounter.com/.

291 Microsoft's submission of 27 June 2011, Keystone, "*Advertiser Multi-Homing in Online Search Advertising in Europe*"; see also Microsoft's reply to Question 4 of the Commission's request for information of 8 December 2014.

292 See Google's submission of 23 September 2011, [redacted], "[redacted]", footnote 3.

(3) In an internal email exchange dated 21 August 2007, Google's employees state that the success of online search advertising services depends *inter alia* on the reach and performance of the underlying general search service (see recital (251)) and that the development of online search advertising increases Google's profits in its "*traditional areas*" i.e. general search services:

"*Ads: Also fairly clear overall — to maximize end user experience and revenue through ads. To drive the virtuous cycle between publishers and advertisers. We have been gradually expanding from just google.com web search to AFS, AFC, site-targeted ads, and offline. I think it is important to remind ourselves why we pursue these broader areas. First, because we have such a large network of advertisers already, we believe we can more efficiently find the best advertisers for particular inventory. Second, if our platform attracts new advertisers because of these other media, we will increase monetization in our more traditional areas. […].*"[294]

(4) In a presentation of 20 December 2002, entitled "*Syndication Discussion for Engineering*", Google's employees discuss "*Network Effects*" and emphasise the so-called "*Advertiser effect*", that is *"The more users we have, the more advertisers come, resulting in more syndication partners further driving our user base*".[295]

(5) In their notes from the so-called "*Town Hall Strategy Meetings*" attached to an email of September 2004, Google's employees explain that:

"*Google has a number of self-reinforcing (i.e., "feedback") strategic advantages; The growth of our ad network and search products reinforce one another; We enjoy a variety of network effects, whereby the value of all players increases as we add an individual player to the mix* […]".[296]

(6) In the same document, Google's employees state that the success of an online search advertising service depends on the reach and performance of the underlying general search service (see recital (251)) and discuss the positive impact on Google of operating a large scale general search service:

"*Our "Unfair… ahem, Blessed" Advantages: A competitor perusing this list would become extremely upset; Traffic to Google represents a kind of scale that other companies would die for […]"* and *"Ads. We must provide the right advertising answer to every end-user every time; More advertisers (and the ads they bring with them) increase overall ads quality by increasing the number of total "choices"; This is yet another example of a positive feedback and/or scale effect"*.[297]

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293 Google's submission of 23 September 2011, [redacted], "[redacted]".

294 Internal Google document 111-0163 - [redacted]-000036203.

295 Internal Google document [redacted]-000006008, discussed in the deposition of [redacted] before the FTC of 22 June 2012 under the reference CX0179, page 4.

296 Internal Google document [redacted]-000013304, discussed in the deposition of [redacted] before the FTC of 2 May 2012, under the reference CX0081, page 1.

297 Internal Google document [redacted]-000013304, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0081, pages 2-3.

(7) In an internal Google presentation of 2006, entitled "*Yahoo! MSFT merger*",[298] Google discusses the potential synergies that it considered would result from a merger between Yahoo and Microsoft. Among those synergies, the document lists:

"*Exploit search revenue synergies – higher cost per keyword, and increased scale lead to a multiplicative increase in revenue", "Scale enables MD to "catch up" to Google" and build out a leading advertising platform and consumer ecosystem", "Scale enables MS to compete on cost of operations (e.g., storage and in technology investments (e.g., search, ad platform)", "A greater share of search volume leads to a multiplicative increase in search advertising revenue"* and *"The greater search scale achieved by combining MSN/Yahoo! is critical to achieving favourable economics in search*".

(8) An internal Google presentation of 8 May 2007, entitled "*Google Strategy 2007*", also refers to the synergies among users, publishers and advertisers as the "*Virtuous User Cycle*".[299]

(255) Fourth, a potential entrant would not only need to develop a general search service that attracts advertisers,[300] but also be in a position to keep pace with the reach and performance of Google's general search service. Netflix and Company X have confirmed this:

(1) Netflix stated that "*New entrants into the search market face exceeding difficulties at this point because there may not be enough scale to drive volume back to the advertisers' sites* […]."[301]

(2) Company X stated that "*Bing's experience in the EEA appears to illustrate the extreme difficulty of duplicating the scale and as a result, the performance of AdSense. Despite […] significant investments in search-advertising intermediation services by Microsoft, Bing has obtained only a small fraction of the revenue that AdSense obtains*."[302]

(256) Fifth, nearly all advertisers use AdWords for their online search advertising campaigns in the EEA.[303] As Check24 stated, "*there is only Google*."[304]

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298 Internal Google document [redacted]-000012712, discussed in the deposition of [redacted] before the FTC of 17 May 2012 under the reference CX00121, pages 5-7.

299 Internal Google document [redacted]-000002870, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0078, page 6.

300 See replies of [redacted].

301 See reply of Netflix to Question 18 of Commission's request for information to advertisers of 11 January 2016.

302 See reply of Company X (anonymised reply) to Question 1 of the Commission's request for information of 26 July 2013.

303 Replies of e.g. [redacted]

(257) Sixth, advertisers typically prioritise their online search advertising campaigns on AdWords, because of the wide reach of Google's general search service[305] and the network effects that characterise the national markets for online search advertising in the EEA (see recital (249)). This is confirmed by Company Z (a media agency group wishing to remain anonymous), which explains that "*[i]n many cases search campaigns are only executed on Google and if Bing, Yahoo! or local search engines are used, these are usually for niche importance and managed on different criteria.*"[306] Company Z also notes that "*Search Billings [of Company Z] with Google consistently average 70 to 90%*[307] *across the EEA*".[308]

(258) Seventh, since Microsoft's launch of adCenter in 2006, there has been no further significant entry in any national market for online search advertising in the EEA.[309] For example, [redacted] stated that "*Although there may be other companies that offer advertising experiences which are similar and keyword based,* [redacted]"[310]

(259) Eight, in October 2015, Google further strengthened its position in the national markets for online search advertising in the EEA when it entered into an agreement with Yahoo pursuant to which Google will provide Yahoo with search ads, general search services and specialised image search services.[311] Yahoo was able to enter into such an agreement only after Yahoo and Microsoft modified their 2009 "Yahoo-Microsoft Search Alliance" to allow Yahoo to respond to 49% of search queries on desktop devices using a general search service other than Microsoft.

(260) The Commission's conclusion that the national markets for online search advertising in the EEA are characterised by the existence of a number of barriers to entry and

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[redacted].

304 Reply of Check24 to Question 19 of the Commission's request for information to media agencies of 11 January 2016.

305 Reply of [redacted] to Question 22.1 of the Commission's AdWords related request for information (Annex IB) of 22 December 2010: "*Due to its reach, we always build new advertising campaigns first for AdWords. We will then adapt and port these campaigns to other platforms such as Yahoo and Bing*".

306 Reply of Company Z (anonymised reply) to Question 10 of the Commission's API related request for information of 22 December 2010.

307 Ranges as provided by Company Z (anonymised reply).

308 Reply of Company Z (anonymised reply) to Question 10 of the Commission's API related request for information of 22 December 2010, Annex 2.

309 Replies of [redacted]

310 Reply of [redacted] to Question 17 of the Commission's request for information to advertisers of 11 January 2016.

311 See Form 8-K filing, available at https://investor.yahoo.net/secfiling.cfm?filingID=1193125-15-348230&CIK=1011006, downloaded and printed on 6 July 2016.

expansion is not affected by Google's claim[312] that since October 2016, Apple displays search ads in response to user searches in the App Store.[313]

(261) Apple cannot be considered to have entered the national markets for online search advertising in the EEA because it displays specialised search results only in response to search queries within its own closed eco-system.

7.2.3. Lack of countervailing buyer power

(262) The Commission concludes that the national markets for online search advertising in the EEA are characterised by a lack of countervailing buyer power on the part of advertisers.

(263) First, each advertiser represents only a small part of the total demand in the national markets for online search advertising in the EEA.

(264) Second, advertisers cannot rely solely on competing online advertising platforms.

(265) In the first place, advertisers require scale and volume from a provider of online search advertisements.[314] The strength of Google's general search service[315] and its scale and volume are unrivalled. As early as in 2002 Google already publicly stated that it was the "*World's largest ad network.*[316]

(266) In the second place, since Microsoft's launch of adCenter in 2006, there has been no further significant entry in any of the national markets for online search advertising in the EEA ((see recitals (247) and (249)).

(267) Third, advertisers cannot negotiate with Google when they enter into agreements for the provision of Google's online search advertising services:

(1) [redacted] stated that "*There is no negotiation with [G]oogle possible, due to their power.*"[317]

(2) [redacted] stated that "*There is no negotiation* […]."[318]

(3) [redacted] stated that "*There are no negotiations, only auctions.*"[319]

(4) [redacted] stated that "*There is an inverse correlation between the market share and the bargaining power of advertisers*".[320]

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312 SO Response, paragraph 157.

313 An app store is a digital distribution platform enabling users to download, install and manage apps on their smartphone. App Store is an app store specific for the operating system of Apple.

314 See reply of [redacted] to Question 17 of the Commission's request for information to advertisers of 11 January 2016.

315 See replies of [redacted]

316 Internal Google document [redacted]-000002870, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0078, page 3.

317 Reply of [redacted] to Question 17 b. of the Commission's request for information to advertisers of 11 January 2016.

318 Reply of [redacted] to Question 17 b. of the Commission's request for information to advertisers of 11 January 2016.

319 Reply of [redacted] to Question 17 b. of the Commission's request for information to advertisers of 11 January 2016.

320 Reply of [redacted] to Question 17 b. of the Commission's request for information to advertisers of 11 January 2016.

(268) Fourth, Google imposes high prices on advertisers that use its online search advertising services.

(269) In the first place, Google charges significant cost-per-click rates for clicks on its search ads.[321] While this also reflects to a certain extent AdWords' superior click-through and conversion rates,[322] it also results from "high bidder density", namely there being a larger number of bidders for a limited number of search advertising placements[323] in particular for generic keywords.[324]

(270) In the second place, Google does not grant rebates when advertisers purchase large volumes of Google search ads.[325]

(271) Fifth, Google imposes opaque bidding and pricing processes on advertisers, in particular in relation to how Google determines the Quality Score[326] and to the lack of itemised billing.[327] Expedia has confirmed this:

> *"*[there is] *a lack of visibility into what constitutes a "good" vs. "bad" Quality Score. The rules are not exposed, making it difficult to determine why a particular keyword or ad has a given Quality Score. Additionally, Google states that your Quality Score also has different impact depending on what your competitor's Quality Score is for a given keyword, which makes understanding the value of the Quality Score even more difficult and confusing.*"[328]

(272) The Commission's conclusion that the national markets for online search advertising in the EEA are characterised by a lack of countervailing buyer power is not affected by Google's claim that advertisers have multiple options to reach customers and routinely shift their spend between various types of advertising. [329]

(273) The fact that advertisers in the EEA can choose between different forms of online advertising does not strengthen their bargaining position vis-à-vis Google when it comes to online search advertising because substitutability between these different forms of online advertising is limited (See Sections 6.2.1.2 and 6.2.1.3). Search advertising is perceived as an: *"«always-on» medium to reflect the fact that consumers are continuously conducting online searches".*[330] As one advertiser

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321 Replies of e.g. [redacted].

322 SO Response, paragraph 152.

323 Reply of Netflix to Question 18 of the Commission-s request for information of 8 January 2016.

324 Replies of e.g. [redacted].

325 Replies of e.g. [redacted]

326 See recital (18).

327 Replies to Question 19 of the Commission's AdWords related request for information of 22 December 2010 (Annex 1B).

328 Reply of Expedia to Question 19 of the Commission's AdWords related request for information of 22 December 2010 (Annex 1B).

329 SO Response, paragraphs 87, 158, 169.

330 Reply of WFA to Question 11g of the Commission's request for information to advertisers of 11 January 2016.

stated, *"Search advertising is an important part of an on-line business strategy which is difficult to currently substitute."*[331]

7.3. Google's dominant position in the EEA-wide market for online search advertising intermediation

(274) The Commission concludes that Google held a dominant position in the EEA-wide market for online search advertising intermediation between at least 2006 and 2016.

(275) The Commission bases its conclusion on the market shares of Google and competing online search advertising intermediaries (Section 7.3.1), the existence of barriers to entry and expansion (Section 7.3.2) and the lack of countervailing buyer power (Section 7.3.3).

(276) Between 2006 and 2016 Google's share of the EEA-wide market for online search advertising intermediation increased steadily, with the result that, in 2016 there remained almost no competing suppliers of online search advertising intermediation in the EEA. Moreover, scale and network effects, among other barriers to entry and expansion, made it difficult for alternative suppliers to emerge.

7.3.1. Market shares

(277) The Commission concludes that market shares in the EEA-wide market for online search advertising intermediation provide a good indication of Google's competitive strength in this market. This is for the following reasons.

(278) First, as no market share data is available from independent third parties, the Commission has calculated market shares based on both gross (Table 7) and net revenues (Table 9) using data provided by Google.[332] In addition the Commission has used revenue data provided by Microsoft[333] and Yahoo[334] to cross-check these calculations (See Table 8 and Table 10).

(279) Second, market shares based on gross rather than net revenues best reflect Google's competitive strength in the EEA-wide market for online search advertising intermediation. This is because payments made by Google to publishers for the placement of search ads on their websites constitute a cost incurred by Google (see Section 2.2.3). Like any other essential cost to supply a product or a service, it is unnecessary to deduct these payments from the revenue generated by Google in online search advertising intermediation.[335]

(280) Third, based on gross revenue data provided by Google, its position in the EEA-wide market for online search advertising intermediation was consistently strong. Throughout the period between 2006 and 2016, Google's share was above [70-80%]. Moreover, in 2016, Google's share was [90-100%]. Table 7 illustrates this.

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331 Reply of Indeed to Question 12a of the Commission's request for information to advertisers of 11 January 2016.

332 Google response to Question 2 of the Commission's request for information of 16 March 2016, Annex 2 and to Question 2 of the Commission's request for information of 20 December 2016, Annex 2.

333 Microsoft provided data about its gross revenues at EEA level between 2010 and 2014.

334 Yahoo's reply to Question 1 of the Commission's request for information of 15 April 2016.

335 Case C-272/09 P *KME Germany and Others v Commission*, EU:C:2011:810, paragraph 53; and Case C-389/10 P *KME Germany and Others v Commission*, EU:C:2011:816, paragraph 62.

Table 7: Google's share of the EEA-wide market for online search advertising intermediation between 2006 and 2016 based on gross revenues

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
EEA	70-80%	80-90%	90-100%	80-90%	90-100%	80-90%	80-90%	80-90%	80-90%	90-100%	90-100%

Source: Google[336]

(281) Fourth, based on gross revenue data provided by Google, Microsoft and Yahoo, Google's share in the EEA-wide market for online search advertising intermediation was above [60-70%] in 2006 and has been consistently above [70-80%] since 2007 until 2014 Table 8 illustrates this.

Table 8: Google's share of the EEA-wide market for online search advertising intermediation between 2006 and 2014 based on gross revenues

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Google gross revenues (EUR million)	450-500	650-700	800-850	850-900	1100-1150	1150-1200	1450-1500	1400-1450	1100-1150
Yahoo gross revenues (EUR million)	250-300	200-250	100-150	100-150	100-150	100-150	0-10	0-10	0-10
Microsoft (Bing) gross revenues (EUR million)[337]	0-10	0-10	0-10	0-10	<0-10	<0-10	100-150	200-250	250-350
Total market size estimate (EUR million	700-750	850-900	900-950	1000-1050	1200-1250	1250-1300	1550-1650	1600-1650	1400–1450
Google's share	60-70%	70-80%	80-90%	80-90%	80-90%	90-100%	90-100%	80-90%	70-80%

Sources: Google, Yahoo and Microsoft[338]

(282) Fifth, based on net revenue data provided by Google, its share of the EEA-wide market for online search advertising intermediation was also consistently strong. It

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336 Google response to Question 2 of the Commission's request for information of 16 March 2016, Annex 2, to Question 2 of the Commission's request for information of 20 December 2016, Annex 2 and to Question 2 of the Commission's request for information of 30 August 2017, Annex 2.

337 Gross revenue figures for Microsoft (Bing) are obtained by summing total revenues for Microsoft Bing Search Intermediation excluding Yahoo and total revenues for Yahoo (both in Own & Operated properties and in Syndication), as provided in Microsoft's Reply to Question 2 of the Commission's request for information of 8 December 2014, tables 2b and 2c. Own and Operated properties are websites owned and operated by a given entity. Search syndication is the process by which a search engine repurposes general search results and online search ads on websites that offer a search box.

338 Google's reply to Question 2 of the Commission's request for information of 16 March 2016, Annex 2; reply of Yahoo to Question 1 of the Commission's request for information of 15 April 2016; and reply of Microsoft to Question 2 of the Commission's request for information of 8 December 2014.

was above [40-50%] since 2006 and above [50-60%] since 2007. Moreover, in 2016, Google's share was [70-80%]. Table 9 illustrates this.

Table 9: Google's shares of the EEA-wide market for online search advertising intermediation between 2006 and 2016 based on net revenues

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
EEA	40-50%	50-60%	80-90%	60-70%	70-80%	60-70%	60-70%	60-70%	70-80%	70-80%	70-80%

Source: Google[339]

(283) Sixth, based on net revenue data provided by Google and Yahoo, Google's share of the EEA-wide market for online search advertising intermediation was also consistently strong. It was above [60-70%] since 2006 and above [90-100%] in 2011, which is the last year for which information is available. Table 10 illustrates this.

Table 10: Google's shares of the EEA-wide market for online search advertising intermediation between 2006 and 2011 based on net revenues

	2006	2007	2008	2009	2010	2011
Google net revenues (EUR million)	100-150	150-200	200-250	250-300	350-400	350-400
Yahoo net revenues (EUR million)	80-90	60-70	30-40	30-40	30-40	30-40
Total market size estimate (EUR million)	200-250	200-250	250-300	300-350	400-450	400-450
Google's share	60-70%	70-80%	80-90%	80-90%	90-100%	90-100%

Sources: Google and Yahoo[340]

(284) Seventh, while both Bing and Google partner with a number of sub-syndication partners which distribute their respective search advertising feeds to publishers, these sub-syndication partners do not compete against Bing and Google since they do not operate their own search advertising platforms.

(285) Eighth, Google has faced very limited competition from alternative providers of online search advertising intermediation services (see Table 7 to Table 10).

(286) The Commission's conclusion that Google's market shares in the EEA-wide market for online search advertising intermediation provide a good indication of Google's competitive strength in this market is not affected by Google's claims that:

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339 Google response to Question 2 of the Commission's request for information of 16 March 2016, Annex 2, to Question 2 of the Commission's request for information of 20 December 2016, Annex 2 and to Question 2 of the Commission's request for information of 30 August 2017, Annex 2.

340 Google's reply to Question 2 of the Commission's request for information of 16 March 2016, Annex 2; and reply of Yahoo to Question 1 of the Commission's request for information of 15 April 2016.

(1) the data provided by Google and on the basis of which the Commission has calculated market shares is unreliable;[341]

(2) competition in the EEA-wide market for online search advertising intermediation is dynamic; and[342]

(3) Google's revenues in the EEA-wide market for online search advertising intermediation fell between 2012 and 2015.[343]

(287) As to (1), Google has neither provided any justification for this claim nor proposed any alternative method of calculating market shares.

(288) As to (2), the stability of Google's share of the EEA-wide market for online search advertising intermediation (see Section 7.3.1) contradicts Google's claim that competition in that market is dynamic.

(289) As to (3), the fact that Google's revenues in the EEA-wide market for online search advertising intermediation may have fallen between 2012 and 2015 gives no indication about either the intensity of competition in that market or the relative position of providers of online search advertising intermediation services.

7.3.2. Barriers to entry and expansion

(290) The Commission concludes that the EEA-wide market for online search advertising intermediation is characterised by the existence of a number of barriers to entry and expansion.

(291) First, in order to establish itself as a fully-fledged provider of online search advertising intermediation, a potential entrant would have to undertake significant investments (see recitals (242) to (246)) in establishing, maintaining and refining a search advertising platform. Microsoft and Axel Springer confirmed this:

(1) Microsoft stated that "*Cross-border operation of advertising intermediation services requires strong systems and support. These include localization of the advertiser interface for accessing the ad platform and editorial capability to deal with language, cultural differences, and local legal requirements governing privacy, media, and advertising. Accounting, currency, and foreign exchange systems are required for each country. Platform localization is also required. This includes modification to search and ad-selection algorithms to deal with local language, cultural and legal differences, and fraud detection. Sales execution and marketing awareness also remains critical, even if there were no physical local presence.*"[344]

(2) Axel Springer stated that "*direct search advertising sales organization is not an economically viable option without having an own search (machine) activity.*"[345]

(292) Even for operators of online non-search advertising platforms, that can to a certain extent rely on their pre-existing technology and advertiser base, the investments

341 SO Response, paragraph 400; Second LoF Response, Annex 2, p.1-2.
342 Second LoF Response, footnote 24.
343 Second LoF Response, paragraph 21.
344 Reply of Microsoft to the Commission's request for information of 26 July 2013.
345 Reply of Axel Springer to the Commission's request for information of 18 March 2016.

described in recitals (226)-(230), (248) and (291) remain significant.[346] As Deutsche Telekom explained "*The development of a search engine advertising marketplace is a great challenge with many requirements (e.g. real-time bid management, scalability, ease to use and legal requirements) and it comes at very high costs. […] intermediaries, such as Google, have superior know-how, technology, data and demand from advertisers to serve relevant search advertisements*."[347]

(293) Second, the EEA-wide market for online search advertising intermediation is characterised by network effects.

(294) In the first place, the success of a provider of online search advertising intermediation services depends on the number of advertisers (see recital (249)) and publishers that it can attract, as well as the size of its portfolio of online search ads. All three elements are interlinked; for example, if an online search advertising intermediation service does not manage to include a sufficient number of publishers, it will also fail to attract the adequate amount of advertisers.[348]

(295) In addition, as recital (249) explains, the more advertisers that an online search advertising intermediation service has access to, the more search ads it can choose from to match with a given query. This increases the relevance of the online search ads it can serve in response to a given query and the likelihood that users will click on online search ads served to them.[349]

(296) In the second place, an internal Google presentation of 13 September 2004 and entitled "*We are public. Now What*"[350] confirms that scale and the existence of network effects constitute barriers to entry and expansion:

"Use Google's scale and high margins to make WebSearch a low margin business (used against Intkomi);

Use Google.com high margin ad business to make search ad syndication a low margin business (used against Overture). (…)

advertisers want access to the most users, having most users and advertisers provides data that we use to increase targeting/relevance (network effect) (…)

our unique strengths in scale".

(297) Third, since Microsoft's entry in December 2009,[351] there has been no further significant entry in the EEA-wide market for online search advertising intermediation. [352] Microsoft confirmed that it is "*not aware of any other competitors*

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346 Replies of Microsoft and Deutsche Telekom AG to the Commission's request for information of 26 July 2013.

347 Reply of Deutsche Telekom AG to Question 1 of the Commission's request for information of 26 July 2013.

348 Replies of e.g. [redacted].

349 Yahoo's submission of 17 February 2011.

350 Internal Google document GOOGMAYE-000022892, slides 5, 15.

351 Through Search and Advertising Services and Sales Agreement with Yahoo in December 2009.

352 Replies of [redacted]

in the online search advertising intermediation space in the EEA for the period 2006-15."[353] Moreover, Yahoo has not expanded its search advertising intermediation services into additional countries within the EEA since 2009.

(298) Fourth, since 2007, a number of competing providers of online search advertising intermediation services have been marginalised or exited the EEA-wide market for online search advertising intermediation. Orange and Italiaonline have confirmed this:

(1) Orange stated that "*Since Google is in a dominant position on this market, it is de facto impossible to develop competing market places.*"[354]

(2) Italiaonline stated that "*[…] there are not Google's competitors (it means our possible real partner) […]*."[355]

(299) The Commission's conclusion that the EEA-wide market for online search advertising intermediation is characterised by the existence of a number of barriers to entry and expansion is not affected by Google's claims that:

(1) Facebook entered the EEA-wide market for online search advertising intermediation in 2016 via its Audience Network;[356]

(2) much of the evidence on which the Commission relies regarding the existence of barriers to entry and expansion pre-dates 2006 i.e. before Google allegedly became dominant on the EEA-wide market for online search advertising intermediation;[357] and

(3) barriers to entry and expansion can be overcome and the EEA-wide market for online search advertising intermediation is characterised by dynamic competition.[358]

(300) As to (1), as recital (163) explains, Facebook did not enter the EEA-wide market for online search advertising intermediation in 2016 because the Audience Network enables only the placement of targeted display ads and video ads.[359]

(301) As to (2), much of the evidence regarding barriers to entry and expansion on which the Commission relies (in particular the statements of competing providers of online search advertising intermediation services and customers – see recitals (291), (297) and (298)) post-dates 2006 when Google became dominant on the EEA-wide market for online search advertising intermediation.

(302) Moreover, the evidence that pre-dates 2006 sheds light on the structural characteristics of the EEA-wide market for online search advertising intermediation, including barriers to entry and expansion. For example, in an internal Google document of April 2002, Google's employees assess a number of issues related to the

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[redacted] to Question 14 of the Commission's request for information to media agencies of 11 January 2016.

353 Reply of Microsoft to Commission's request for information of 14 April 2016.

354 Reply of Orange to Question 1 of the Commission's request for information of 26 July 2013.

355 Reply of Italiaonline to Question 9.7 of the Commission's request for information of 31 July 2015.

356 SO Response, paragraph 157, Google's submission of 11 October 2017, para 60.

357 First LoF Response, paragraph 54.

358 SO Response, paragraph 83, First LoF Response, paragraph 54, Google's submission of 11 October 2017, paragraphs 36, 59 and 60.

359 https://www.facebook.com/business/news/audience-network .

creation of a joint syndication network with Yahoo and indicate the following regarding scale and network effects: "*The key benefits to both parties are scale, improved monetization and control. Scale:* […] *Can get "network effect" in terms of number of advertisers, bidding, improved coverage, greater sell-through* […] *We want to get these companies in JSN to get scale*."[360]

(303) As to (3), the stability of Google's share of the EEA-wide market for online search advertising intermediation (see Section 7.3.1) contradicts Google's claim that competition in that market is dynamic.

7.3.3. Lack of countervailing buyer power

(304) The Commission concludes that the EEA-wide market for online search advertising intermediation is characterised by a lack of countervailing buyer power on the part of publishers.

(305) First, each publisher represents only a small part of the total demand of the EEA-wide market for online search advertising intermediation.[361]

(306) Second, publishers cannot rely solely on competing online search advertising intermediaries. Publishers require scale and volume from a provider of online search advertising intermediation services. Google's extensive network and reach in terms of audience and advertisers are unrivalled and make it the only player capable of guaranteeing the highest levels of coverage[362] and overall profitability:[363] Expedia stated that: "*Google traditionally has had higher CPC rates than competitors like Microsoft and Yahoo!* [redacted]."[364]

(307) Third, in 2013, Google ceased to provide publishers with any material minimum revenue guarantees.[365] [redacted] stated that it *"has not secured any minimum revenue guarantees in the contracts relevant for the period 2011-2014, but has in previous Google contracts."*[366]

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360 Internal Google document [redacted]-000046517, discussed in the deposition of [redacted] before the FTC of 22 June 2012 under the reference CX0177, pages 1-3.

361 The largest of Google's publishing partners, [redacted], accounts for approximately only [0-5%] of Google's total AdSense EEA net revenues, while the vast majority of publishers account for negligible percentages. See Google's submission of 17 September 2011, "*Google's AdSense and distribution agreements do not have anti-competitive foreclosure effects – an analytical framework*".

362 Reply of [redacted] to Question 16 of the Commission's request for information of 18 March 2016 "*Yes, there are material differences in the offerings of providers of search ads, in revenue share,* [redacted]*, but* [redacted] *has the biggest volume of offers from advertisers,* [redacted]".

363 See reply of [redacted] to Question 9.7 of the Commission's request for information to publishers of 31 July 2015; reply of [redacted] to Question 20.e of the Commission's request for information to publishers of 18 March 2016; reply of [redacted] to Question 14.d of Commission's request for information to publishers of 18 March 2016.

364 Reply of Expedia answer to Question 20.e to the Commission's request for information to publishers of 18 March 2016.

365 Google's reply to Question 13 of the Commission's request of information of 20 December 2016, paragraph 13.1 and Table 1; and Google's reply to Questions 2 and 3 of the Commission's request for information of 28 March 2017, paragraphs 2.1-2.3 and Table 1 and paragraphs 3.1 and Annex 3.

366 See Reply of [redacted] to Question 11 of the Commission's request for information of 31 July 2015.

(308) Fourth, between 2007 and 2016, Google reduced the average revenue that it shared with publishers. Table 11 illustrates this with respect to Direct Partners, where Google reduced the average revenue share from [70-80%] in 2007 to [60-70%] in 2016.

Table 11: Reduction of Google's average revenue share with Direct Partners

Year	Average % revenue shared by Google with Direct Partners	Average % revenue share retained by Google
2007	70-80%	20-30%
2008	70-80%	20-30%
2009	70-80%	20-30%
2010	70-80%	20-30%
2011	60-70%	30-40%
2012	60-70%	30-40%
2013	60-70%	30-40%
2014	60-70%	30-40%
2015	60-70%	30-40%
2016	60-70%	30-40%

Source: Google[367]

(309) Google's reduction in the average revenue that it shared with publishers is also confirmed by the following Direct Partners:

(1) [redacted] stated that '[redacted]"[368]

(2) [redacted] stated that "*We have not been able to negotiate on top of Google's initial offer. To the contrary, with the renewal of the contract in 2015, the revenue share for mobile and tablet has been significantly reduced by Google.*"[369]

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367 Google's reply to Question 7 of the Commission's request for information of 20 December 2016, Annex 7.

368 Reply of [redacted] to Question 7 of the Commission's request for information of 22 December 2010.

369 Reply of [redacted] to Question 11 of the Commission's request for information of 31 July 2015.

(3) [redacted] stated that "*in the agreement still in force with Google* […] *Google specify that <<Company (i.e. [redacted]) is not ordering AFS for Mobile Devices or Tablet Devices)>>. Such modifications, not provided in previous agreements, has a bad effect for our company, due to the fact that mobile search traffic is not calculated for the purpose of the Agreement and, in particular, for the computation of the AdSense Revenues.* "[370]

(310) Fifth, internal Google documents confirm the lack of countervailing buyer power of publishers:

(1) In an internal Google document, entitled "*2008 AdSense Business Review*", attached to an email exchange of 18 December 2007, Google's employees state that:

"The Future of AFS. […] *To some degree we have become a victim of our own success. Our improvements in search monetization have enabled us to increase partner payments, which in turn has led many of our AFS partners to have increased dependency on Google. In contrast, we have become less dependent on them*."[371]

(2) In the same document, Google employees also provide specific actionable items:

"*To defend our margins, we propose the same strategy for economic terms as last year: no guarantee payment or high revenue share in regions where our monetization is strong (NA and EMEA); this applies to large sites and large partners as well* […] *We should not be providing guarantees or overly aggressive revenue-share for AFS in markets where we are strong (NA and EMEA)* […]".[372]

(3) In an email exchange of 31 July 2008, Google's employees report on the negotiation of a new GSA with [redacted], reiterating the focus on reducing TAC and, at the same time, dismissing the impact of a possible loss of [redacted] as a search intermediation customer:

"*Our general philosophy with renewals has been to reduce TAC across the board* […] *I believe that you [[redacted]] had discussed this briefly with [redacted] and agreed that we need to lower TAC".*

"P.S. If we "lose" [redacted], it would be the second time since both parties walked away during the last renewal. We ended up negotiating a new deal a few months after the previous one expired. :-)". [373]

(4) In an internal Google presentation of July 2009, entitled "[redacted] *Renewal Analysis*", Google's employees dismiss the impact of a possible loss of [redacted] as a search intermediation customer: "*Material loss and depresses 2011 revenue growth* […] *Little impact to net revenue, Potential to win back traffic further*

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370 Reply of [redacted] to Question 11 Commission's request for information of 31 July 2015.

371 Internal Google document [redacted]-000056769, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0083.2, page 27.

372 Internal Google document [redacted]-000056769, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0083.2, pages 4 and 13.

373 Internal Google document [redacted]-000025680, discussed in the deposition of [redacted] before the FTC of 9 May 2012 under the reference CX0102, page 1.

minimizing net revenue impact."[374] Indeed, the presentation states that losing [redacted] may even have had a positive impact on Google: "*Displays financial discipline and that Google is willing to let large partners go*".[375]

(5) In an internal Google document of January 2010, entitled "*Global Partnerships: 2010 Strategy*", Google reviews its performance in a number of sectors. In the "*Search*" section of the document, Google emphasises the reduction in TAC resulting from the application of its revenue share guidelines:

"*Margin Improvement: The 2009 Traffic Acquisition Cost (TAC) was down 3 percentage points from 2008, attributable to the application of standardized revenue share guidelines for renewals and new partnerships and a reduction in guarantee payments to partners*". [376]

(6) In an internal Google document entitled "*Global Syndication: 2010 Review & 2011 Strategy*" of January 2011, Google's employees emphasise their success in reducing TAC and increasing net revenues:

"the team delivered on the goal of reducing average TAC. 2010 Global Direct Syndication gross revenues grew by [10-20%] Y/Y, while net revenues improved by [40-50%] Y/Y. AFS drove [90-100%] of the additional revenue in 2010".

"Despite increased competitive intensity from Bing and our efforts to manage TAC, the team was able to retain virtually all partners up for renewal, including the critical renewal of [redacted], one of the top AdSense partners".[377]

(311) The Commission's conclusion that the EEA-wide market for online search advertising intermediation is characterised by a lack of countervailing buyer power on the part of publishers is not affected by Google's claims that:

(1) the Commission understates the countervailing buyer power of publishers because it incorrectly treats them as customers, even though Google does not sell them search ads;[378]

(2) Direct Partners can, and do, negotiate the wording of their GSAs with Google;[379]

(3) it is the growth of mobile devices– not any change in Google's bargaining power – that led Google to reduce the average revenue that it shares with publishers;[380]

(4) Direct Partners use Google due to the superior quality of its online search advertising intermediation service[381] and

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374 Internal Google document [redacted]-000006354-001, discussed in the deposition of [redacted] before the FTC of 17 July 2012 under the reference CX0092, page 8.

375 Internal Google document [redacted]-000006354, discussed in the deposition of [redacted] before the FTC of 17 July 2012 under the reference CX0092, page 8.

376 Internal Google document [redacted]-000006283, discussed in the deposition of [redacted] before the FTC of 9 May 2012 under the reference CX0106, page 3.

377 Internal Google document [redacted]-000050720, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0077, pages 2 and 5

378 SO Response, paragraph 160.

379 SO Response, paragraph 161, LoF Response, paragraph 57.

380 SO Response, paragraph 165.

(5) publishers can use many other options to monetise their inventory.[382]

(312) As to (1), publishers are Google's customers because, even though Google does not sell them search ads, it allows them to monetise their inventory through Google's search advertising intermediation service.[383]

(313) As to (2), Direct Partners have confirmed that they cannot negotiate the wording of their GSAs:

(1) [redacted] stated that *"[w]e accepted the clause because we had no choice since we wanted Google as our search services provider"*.[384]

(2) [redacted] stated that [redacted][385]

(3) [redacted] stated that *"Google's typical explanation was that it wanted consistency with all of their contracts, and that* [redacted] *must accept such changes if it wanted to continue to offer the AFS and AFC products",*[386] *and "[t]here were basically no financial advantages gained in any of the negotiations with Google. They essentially dictated their terms"*.[387]

(4) [redacted] stated that *"[t]here was hardly any room for negotiation upon renewal(s) of the Google Search Advertising Services Agreement. No negotiations were possible on exclusivity for mobile or the default position of Google Websearch. There was limited room for negotiation on the commercial deal: revenue share percentages were non-negotiable, but the threshold for these tiered revenue shares was to some extent negotiable",*[388] *and "[t]here have however been changes to the financial clauses (making the services less profitable to the publisher)"*.[389]

(5) Company X stated that it *"perceives itself as a <clause-taker> in its negotiations with AdSense. Although [Company X] attempted to improve the terms that it was able to negotiate (…) AdSense at all times maintained significantly superior bargaining power"*.[390]

(314) Moreover, an internal Google email exchange of July 2008 confirms that it is Google, and not the Direct Partners that exerts leverage during the negotiations of

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381 SO Response, paragraph 152, LoF Response, paragraph 54.

382 SO Response, paragraph 76, LoF Response, paragraph 54.

383 SO Response, paragraph 160.

384 Reply of [redacted] to Question 9.7 of the Commission's request for information of 31 July 2015.

385 Reply of [redacted] to Question 8.6 of the Commission's request for information of 22 December 2010.

386 Reply of [redacted] to Question 8.6 of the Commission's request for information of 22 December 2010.

387 Reply of [redacted] to Question 10 of the Commission's request for information of 22 December 2010.

388 Reply of [redacted] to Question 9.2 of the Commission's request for information of 31 July 2015, less redacted version provided to Google on 21 September 2016.

389 Reply of [redacted] to Question 9.9 of the Commission's request for information of 31 July 2015, less redacted version provided to Google on 21 September 2016.

390 Reply of Company X (anonymised reply) to Question 10 the Commission's request for information of 22 December 2010.

GSAs. In that email exchange, Google's employees discussed the launch of revenue share guidelines for North American Direct Partners and indicated the following in the "FAQ" section of the guidelines: "*How do I explain to my partner our rationale for lowering TAC?* […] *Y!* [Yahoo!] *has publicly released a statement saying that we monetize 60% better than Y!*" and "*Are we willing to walk away from deals? Yes, talk to your Director to assess the strategic importance of the Partner in the Direct network*".[391]

(315) As to (3), Google has not provided any data to support its claim that it is the growth of mobile devices that has led to a reduction in average revenue that Google shares with publishers. On the contrary, when asked by the Commission to provide its revenue share split between desktop and mobile devices Google explained that its "*database does not contain any information at this level. It is also not possible to use alternative accounting systems within Google to produce this split, as these only track revenue by form factor to the extent that partners have different revenue shares by platform. There is therefore insufficient information to meaningfully split the data by form factor for the purpose of this response*".[392]

(316) As to (4), even if Direct Partners were to use Google due to the superior quality of its online search advertising intermediation service, this would not preclude a finding of dominance. The reasons why Google has a dominant position on the EEA-wide market for online search advertising intermediation are not relevant.[393]

(317) Moreover, if anything, Google's alleged superior quality and the fact that publishers cannot rely solely on competing online search advertising intermediaries (see recital (306)) is a further indication of Google's dominant position in online search advertising.[394] This is confirmed by a publisher, [redacted], Microsoft and internal Google documents:

(1) [redacted] stated that it *"works with Google exclusively, because it has the broadest portfolio of advertisers"*.[395]

(2) Microsoft stated that: *"Given the choice between two networks/exchanges that are identical in all respects except that one has a larger number of advertisers than the other, any publishers will choose to participate in the network/exchange with the larger number of advertisers. This is because a larger number of advertisers increases the chance that ad inventory will be bought on the publisher's site and increase competition between advertisers for ad space on the publisher's site, thus increasing payments from advertisers to the publishers. As the volume of transactions and the payments from advertisers to publishers on the network/exchanges increase, the*

391 Internal Google document [redacted]-000004721, discussed in the deposition of [redacted] before the FTC of 9 May 2012 under the reference CX0098, page 2.

392 Google's response to the Commission's request for information of 20 December 2016, paragraph 7.3.

393 Case T-228/97 *Irish Sugar plc v Commission*, EU:T:1999:246, paragraph 112; Joined Cases C-395/96 P and C-396/96 P *Compagnie Maritime Belge Transports and Others v Commission*, EU:C:2000:132, paragraph 37; Case T-201/04 *Microsoft* v *Commission*, EU:T:2007:289, paragraph 229.

394 See Sections 7.2.2 and 7.3.2.

395 Reply of [redacted] to Question 5.2(c) of Commission's request for information of 22 December 2010.

network/exchange gets to share in a larger number of transactions with higher payments".[396]

(3) in an email exchange of 26 August 2009 between [redacted], a [redacted] and then [redacted], and [redacted], a [redacted] at Google, [redacted] stated that: *"The bottom line is this. If Microsoft had the same traffic we have their quality will improve *significantly*, and if we had the same traffic they have, ours will drop significantly. That's a fact. (…) As much as I would have liked, quality isn't everything."*[397]

(318) As to (5), the fact that publishers can choose between different forms of online advertising does not strengthen their bargaining position vis-à-vis Google when it comes to online search advertising intermediation because substitutability between these different forms of online advertising is limited (See Sections 6.2.1.2 and 6.2.1.3).

(319) Furthermore publishers confirm that there are no realistic alternatives to Google:

(1) Orange stated that "*Today there are alternatives to Google for certain domains only*";[398] and

(2) [redacted] stated that "*Search ads: the reason is that there is no effective alternative to Google*".[399]

8. ABUSE OF A DOMINANT POSITION

8.1. General principles

(320) The concept of abuse of a dominant position 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, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.[400]

(321) A dominant undertaking has a special responsibility not to impair, by conduct falling outside the scope of competition on the merits, genuine undistorted competition in the internal market.[401] It follows from the nature of the obligations imposed by Article 102 of the Treaty and Article 54 of the EEA Agreement that, in specific circumstances, an undertaking in a dominant position may be deprived of the right to adopt a course of conduct or take measures which are not in themselves abuses and

396 Reply of Microsoft to question 9.1 of the Commission's request for information on AdSense of 20 December 2010, dated 20 February 2011.

397 Internal document [redacted]-000029871.

398 Reply of Orange to Question 5 of the Commission's request for information of 31 July 2015.

399 Reply of [redacted] to Question 6.1 of the Commission's request for information of 31 July 2015.

400 Case C-549/10 P *Tomra v Commission*, EU:C:2012:221, paragraph 17; Case C-457/10 P *AstraZeneca v Commission*, EU:C:2012:770, paragraph 74.

401 Case 322/81 *Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 57; Case C-209/10 *Post Danmark A/S v Konkurrencerådet*, EU:C:2012:172, paragraph 23; Case C-457/10 P *AstraZeneca v Commission*, EU:C:2012:770, paragraph 134.

which would even be unobjectionable if adopted or taken by non-dominant undertakings.[402]

(322) An abuse of a dominant position does not necessarily have to consist in the use of the economic power conferred by a dominant position.[403] Accordingly, the actual scope of the special responsibility imposed on a dominant undertaking must be considered in the light of the specific circumstances of each case which show that competition has been weakened. It follows that certain conduct on markets other than the dominated markets and having effects either on the dominated markets or on the non-dominated markets themselves can be categorised as abusive.[404]

(323) Article 102 of the Treaty and Article 54 of the EEA Agreement list a number of abusive practices. These are merely examples, not an exhaustive enumeration of the sort of abuses of dominant position prohibited by the Treaty and the EEA Agreement.[405]

(324) Article 102 of the Treaty and Article 54 of the EEA Agreement prohibit behaviour that tends to restrict competition or is capable of having that effect, regardless of its success.[406] This occurs not only where access to the market is made impossible for competitors, but also where the conduct of the dominant undertaking is capable of making that access more difficult, thus causing interference with the structure of competition on the market.[407] Customers and users should have the opportunity to benefit from whatever degree of competition is possible on the market and competitors should be able to compete on the merits for the entire market and not just for a part of it.[408] Since the structure of competition on the market has already been weakened by the presence of the dominant undertaking, any further weakening of the structure of competition may constitute an abuse of a dominant position.[409] In particular, where, among other circumstances, the dominant undertaking holds a very large market share, the structure of the market may be such that the emergence of an as efficient competitor is practically impossible.[410] Furthermore, in a market access to which is protected by high barriers, the presence of a less efficient competitor might contribute to intensifying the competitive pressure on that market and,

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402 Case 322/81 *Nederlandsche Banden-Industrie Michelin v Commission*, EU:C:1983:313, paragraph 57; Case T-111/96 *ITT Promedia v Commission*, EU:T:1998:183, paragraph 139; Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 135.

403 Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 27; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 91; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 354.

404 Case C-333/94 P *Tetra Pak v Commission*, EU:C:1996:436, paragraphs 24-25; Case C-52/09 *Konkurrensverket v TeliaSonera Sverige AB*, EU:C:2011:83, paragraphs 84-85.

405 Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26; Case C-280/08 P *Deutsche Telekom* v *Commission*, EU:C:2010:603, paragraph 173; Case C-52/09 *Konkurrensverket v TeliaSonera Sverige AB*, EU:C:2011:83, paragraph 26.

406 Case T-321/05 *AstraZeneca v Commission*, 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.

407 Case C-52/09 *Konkurrensverket v TeliaSonera Sverige AB*, EU:C:2011:83, paragraph 63.

408 Case C-549/10 P *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 42.

409 Case 85/76 *Hoffmann-La Roche* v *Commission*, EU:C:1979:36, paragraph 123; Case T-65/89 *BPB Industries and British Gypsum* v *Commission*, EU:T:1993:31, paragraph 95; Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246, paragraph 114; Joined Cases T-24/93 and others *Compagnie Maritime Belge v Commission*, EU:T:1996:139, paragraph 106; Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 72.

410 Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 59.

therefore, to exerting a constraint on the conduct of the dominant undertaking.[411] It follows that fixing an appreciability threshold for the purposes of determining whether there is an abuse of a dominant position is not justified.[412]

(325) Concerning the effects of the dominant undertaking's conduct, while they must not be of a purely hypothetical nature, they do not necessarily have to be concrete.[413] It is sufficient that, in light of all the relevant circumstances surrounding that conduct, it tends to restrict competition or is capable of having that effect,[414] regardless of its success.[415] These circumstances include, but are not limited to, the undertaking's dominant position, the share of the market covered by the challenged conduct, the duration and the possible existence of a strategy aiming to exclude competitors that are at least as efficient as the dominant undertaking from the market. The Commission is not required, however, to demonstrate that a particular conduct has actual anti-competitive effects.[416]

(326) It is for a dominant undertaking to provide justification for its conduct to be caught by the prohibition set out in Article 102 of the Treaty.[417]

(327) Such an undertaking may demonstrate, for that purpose, either that its conduct is objectively necessary or that the exclusionary effect produced may be counterbalanced, outweighed even, by advantages in terms of efficiency that also benefit consumers.[418]

(328) In that last regard, a dominant undertaking must therefore demonstrate that four cumulative conditions are met:[419]

(1) There have been or are likely to be efficiency gains brought about as a result of the dominant company's conduct;

(2) The efficiency gains also benefit consumers and counteract any likely negative effects on competition and on consumers;

(3) The conduct is necessary for the achievement of those gains in efficiency; and

(4) The conduct does not eliminate effective competition, by removing all or most existing sources of actual or potential competition.

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411 Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 60.

412 Case C-23/14 *Post Danmark A/S v Konkurrenceradet*, EU:C:2015:651, paragraph 73; Case C-525/16 *Meo- Serviços de Comunicações e Multimédia*, EU:C:2018:270, paragraph 29.

413 Case C-52/09 *TeliaSonera Sverige*, EU:C:2011:83, paragraph 64; Case T-336/07 *Telefónica and Telefónica de España v Commission*, EU:T:2012:172, paragraph 268, confirmed on appeal in Case C-295/12 P, EU:C:2014:2062, paragraph 124; Case T-398/07 *Spain v Commission*, EU:T:2012:173, paragraph 90; Case C-457/10 P *AstraZeneca* v *Commission*, EU:T:2012:770, paragraph 112; Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 65.

414 Case C-549/10 P *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraphs 18 and 68.

415 Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 347, confirmed on appeal in Case C-457/10 P, EU:C:2012:770, paragraphs 109 and 111.

416 Case T-336/07 *Telefónica and Telefónica de España v Commission*, EU:T:2012:172, paragraph 272.

417 Case C-209/10 *Post Danmark A/S v Konkurrencerådet*, EU:C:2012:172, paragraphs 40-42; Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraphs 47-49; Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 688; Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 140.

418 Case C-209/10 *Post Danmark A/S v Konkurrencerådet*, EU:C:2012:172, paragraph 41.

419 Case T-201/04 *Microsoft Corporation v Commission*, EU:T:2007:289, paragraph 688; Case C-209/10 *Post Danmark A/S v Konkurrencerådet*, EU:C:2012:172, paragraph 42; Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 49.

8.2. The abusive conduct

(329) In Sections 8.3 to 8.5, the Commission applies the principles summarised in Sections 8.1 and 8.3.1 to Google's conduct. Section 8.3 applies the principles summarised in Sections 8.1 and 8.3.1 to the Exclusivity Clause in GSAs with Direct Partners that typically included all of their websites displaying search ads in their GSAs containing the Exclusivity Clause ("All Sites Direct Partners"). Section 8.4 applies the principles summarised in Section 8.1 to the Premium Placement and Minimum Google Ads Clause. Section 8.4.6 applies the principles summarised in Section 8.1 to the Authorising Equivalent Ads Clause.

(330) For the reasons set out in Section 8.3, the Commission concludes that, between 1 January 2006 and 31 March 2016, the Exclusivity Clause in GSAs with All Sites Direct Partners constituted an abuse of Google's dominant position in the EEA-wide market for online search advertising intermediation. That clause required All Sites Direct Partners to source all or most of their search ads requirements from Google.

(331) For the reasons set out in Section 8.4, the Commission concludes that, between 31 March 2009 and 6 September 2016, the Premium Placement and Minimum Google Ads Clause constituted an abuse of Google's dominant position in the EEA-wide market for online search advertising intermediation. That clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for a minimum number of Google search ads.

(332) For the reasons set out in Section 8.5, the Commission concludes that, between 31 March 2009 and 6 September 2016, the Authorising Equivalent Ads Clause constituted an abuse of Google's dominant position in the EEA-wide market for online search advertising intermediation. That clause required Direct Partners to seek Google's approval before making changes to the display of competing search ads on websites covered by the relevant GSA.

(333) In summary, between 2006 and 2016, competition was already weak in the EEA-wide market for online search advertising intermediation because of Google's dominant position. Notwithstanding such weak competition, Google entered into agreements with Direct Partners that maintained and strengthened Google's dominant position on that market by stifling any realistic chance of entry and expansion by competing providers of online search advertising intermediation services.

(334) First, as of 2006, Google entered into GSAs with All Sites Direct Partners containing the Exclusivity Clause.

(335) Second, as of March 2009, Google gradually replaced the Exclusivity Clause with the Premium Placement and Minimum Google Ads clause and the Authorising Equivalent Ads clause (see recitals (91) and (97)). Google internally called the Premium Placement and Minimum Google Ads clause a "relaxed exclusivity"[420] clause.

(336) Third, during the period between 2006 and 2015, the combined gross revenues generated by Google in the EEA from GSAs: (i) with All Sites Direct Partners containing the Exclusivity Clause; and (ii) with Direct Partners containing the

[420] See recital (470).

Premium Placement and Minimum Google Ads Clause and Authorising Equivalent Ads Clause represented a significant percentage of the total value of the EEA-wide market for online search advertising intermediation. For example, as Table 12 illustrates, those combined gross revenues represented at least[421] [30-40%] of the total value of the EEA-wide market for online search advertising intermediation in each year, reaching a maximum of [60-70%] in 2014 and 2015.

Table 12: Gross revenues generated by Google in the EEA from GSAs: (i) with All Sites Direct Partners containing the Exclusivity Clause; and (ii) with Direct Partners containing the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation[422]

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Combined gross revenues as a percentage of the total value of the EEA-wide market for online search advertising intermediation	40-50%	30-40%	60-70%	50-60%	50-60%	60-70%	60-70%	60-70%	60-70%	60-70%

Source: Google

8.3. Abuse of Google's dominant position: Exclusivity Clause in GSAs with All Sites Direct Partners

8.3.1. Principles

(337) The relevant legal principles are set out in Section 8.1.

(338) Moreover, an undertaking that is in a dominant position on a market and ties purchasers – even if it does so at their request – by an obligation or promise on their part to obtain all or most of their requirements exclusively from that undertaking ("exclusive supply obligation") abuses its dominant position within the meaning of Article 102 of the Treaty and Article 54 of the EEA Agreement.[423]

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421 The Commission has based these revenues on conservative assumptions that are favourable to Google, see recital (349).

422 Table 12 is a compilation of the data contained in Table 13 and Table 26. For the years 2006-2008 the data is derived from Table 13, while for the years 2009-2015 the data is derived from Table 26. Since the GSAs of all Direct Partners that contained the Authorising Equivalent Ads Clause also contained the Premium Placement and Minimum Google Ads Clause, Table 26 includes the revenues generated by Google from GSAs containing the Authorising Equivalent Ads Clause.

423 Case 86/76 *Hoffmann-La Roche* v *Commission*, EU:C:1979:36, paragraph 89; Case C-62/86 AKZO v Commission, EU:C:1991:286, paragraph 149; Case T-65/89 *BPB Industries Plc and British Gypsum Ltd v Commission*, EU:T:1993:31, paragraph 68; Case T-128/98 *Aéroports de Paris v Commission*,

(339) That approach is justified by the special responsibility that an undertaking in a dominant position cannot allow its conduct to impair genuine undistorted competition in the internal market and by the fact that an exclusive supply obligation in favour of a dominant undertaking constitutes an unacceptable obstacle to access to the market on which the structure of competition has already been weakened.[424]

8.3.2. The abusive conduct

(340) For the reasons set out below, the Commission concludes that the Exclusivity Clause in GSAs with All Sites Direct Partners constituted an abuse of Google's dominant position in the EEA-wide market for online search advertising intermediation.

(341) First, the Exclusivity Clause in GSAs with All Sites Direct Partners constituted an exclusive supply obligation because it obliged All Sites Direct Partners to source all or most of their search ads requirements from Google (section 8.3.3).

(342) Second, Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners was either objectively justified, or that the exclusionary effect it produced was counterbalanced or outweighed by advantages in terms of efficiency gains that also benefit consumers (section 8.3.5).

(343) The above findings are sufficient in themselves to find that the Exclusivity Clause in GSAs with All Sites Direct Partners was an infringement of Article 102 of the Treaty.

(344) This conclusion is not affected by Google's claim that,[425] following the Court of Justice's judgment in *Intel*, the Commission must demonstrate further that the Exclusivity Clause was capable of restricting competition:

(1) The Court of Justice's judgment in *Intel* has clarified the *Hoffmann-La Roche* case law only where the exclusivity obligation of a customer of the dominant undertaking is undertaken in consideration of the grant of a rebate. This is confirmed by the fact that, when listing the elements that the Commission is required to analyse, the Court of Justice mentions certain elements that are relevant only for exclusivity rebates.

(2) Where, however, as in this case, the exclusivity obligation of a customer of the dominant undertaking is stipulated without further qualification, that undertaking abuses its dominant position within the meaning of Article 102 of the Treaty, unless it demonstrates that: (i) such an exclusive supply obligation is objectively justified; or (i) the exclusionary effect arising from such an exclusive supply obligation, which is disadvantageous for competition, is counterbalanced, or outweighed, by advantages in terms of efficiency which also benefit the consumer.

EU:T:2000:290, paragraph 170; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraph 315; Case T-155/06 *Tomra v Commission*, EU:T:2010:370, paragraphs 208-209.

424 Case 86/76 *Hoffmann-La Roche* v *Commission*, EU:C:1979:36, paragraphs 90, 120, 121 and 123; Case T-65/89 *BPB Industries Plc and British Gypsum Ltd v Commission*, EU:T:1993:31, paragraphs 65-68, confirmed on appeal in Case C-310/93 P, EU:C:1995:101, paragraph 11.

425 Google's submission of 11 October 2017, paragraph 25.

(3) This is consistent with the fact that, all other things being equal, an exclusive supply obligation constitutes a greater obstacle to access to the market than exclusivity rebates. An exclusive supply obligation deprives a customer of the possibility to switch any of its requirements to a competitor of the dominant undertaking whereas exclusivity rebates deprive a customer of the rebate associated with the exclusivity condition if it switches part of its requirements to a competitor of the dominant undertaking.

(345) Nonetheless, whilst it is not legally required to do so, the Commission concludes, based on an analysis of all the relevant circumstances,[426] that the Exclusivity Clause in GSAs with All Sites Direct Partners was capable of restricting competition (section 8.3.4).

8.3.3. The Exclusivity Clause in GSAs with All Sites Direct Partners was an exclusive supply obligation for All Sites Direct Partners

(346) The Commission concludes that the Exclusivity Clause in GSAs with All Sites Direct Partners constituted an exclusive supply obligation because it obliged All Sites Direct Partners to source all or most of their search ads requirements from Google. This is for the following reasons.

(347) First, the Exclusivity Clause required Direct Partners to source all of their search ads requirements from Google for the websites included in the GSAs. Google has confirmed this:

"The terms of Google's Old Template GSA … did previously contain provisions which restricted partners from using paid advertising services from another provider on the same website";[427] and

"ads that are "the same or substantially similar in nature" in the context of this clause [are] ads that are "(i) placed on the page in a similar position to which the Google text ads are generally placed and (ii) text-only and so look substantially similar to Google text ads (such that they might be confused with Google's text ads). Therefore, a 'substantially similar' service would be the supply of such ads on a keyword basis for AFS contracts…."[428]

(348) Second, at least the following Direct Partners typically included all of their websites displaying search ads in their GSAs containing the Exclusivity Clause:

(1) [redacted] regarding the agreement of 1 June 2007;[429]

(2) [redacted] regarding the agreement of 15 October 2004;[430]

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426 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 139; Case C-525/16 *Meo-Serviços de Comunicações e Multimédia*, EU:C:2018:270, paragraphs 28 and 31.

427 Google's reply to Question 29 of the Commission's request for information of 10 February 2010, paragraph 29.7.

428 Google's reply to Question 101 of the Commission's request for information of 13 July 2010, paragraph 101.1.

429 Reply of [redacted] to Questions 1 and 1.1 of the Commission's request for information of 24 February 2017 ("RFI of 24 February 2017").

430 Reply of [redacted] to Question 1 of the RFI of 24 February 2017. [redacted] no longer uses Google's AFS service as of 1 January 2016.

(3) [redacted] regarding the agreements of 20 May 2004 and 1 April 2007;[431]

(4) [redacted] regarding the agreements of 21 August 2006 and 1 January 2007;[432]

(5) [redacted] regarding the agreements of 1 June 2005 and 1 December 2008;[433]

(6) [redacted] regarding the agreement of 1 July 2008;[434]

(7) [redacted]), regarding the agreement of 1 January 2006;[435]

(8) [redacted] regarding the agreements of 1 June 2006 and 1 July 2008;[436]

(9) [redacted] regarding the agreement of 1 July 2007;[437]

(10) [redacted] regarding the agreement of 1 August 2008;[438]

(11) [redacted] regarding the agreement of [redacted] 2006;[439]

(12) [redacted] regarding the agreement of 15 September 2008;[440]

(13) [redacted] regarding the agreement of 16 May 2003;[441]

(14) [redacted] regarding the agreements of 1 January 2008 and 1 January 2010;[442]

(15) [redacted] regarding the agreement of 1 May 2006;[443]

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431 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017; and further replies of 3 and 4 May 2017.

432 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

433 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017. See also Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1; and Google's reply to Question 2 of the Commission's request for information of 27 April 2017.

434 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017. See also Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1; and Google's reply to Question 2 of the Commission's request for information of 27 April 2017.

435 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

436 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

437 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

438 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

439 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

440 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

441 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

442 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

443 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

(16) [redacted] regarding the agreement of 15 April 2008;[444]

(17) [redacted] regarding the agreement of 30 September 2003;[445]

(18) [redacted] regarding the agreement of 1 March 2005;[446]

(19) [redacted] regarding the agreement of 1 July 2007;[447]

(20) [redacted] regarding the agreements of 18 December 2003, 17 February 2006 and 1 April 2008;[448]

(21) [redacted] regarding the agreement of 2 October 2007;[449]

(22) [redacted] regarding the agreement of 2 October 2007;[450]

(23) [redacted] regarding the agreement of 15 December 2004;[451]

(24) [redacted] regarding the agreement of 1 December 2007;[452]

(25) [redacted] regarding the agreement of 1 April 2006;[453]

(26) [redacted] regarding the agreement of 1 April 2009;[454]

(27) [redacted] regarding the agreement of 1 July 2008;[455]

(28) [redacted] regarding the agreement of 1 July 2007;[456]

(29) [redacted] regarding the agreement of 4 July 2009;[457]

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444 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

445 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

446 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

447 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

448 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

449 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

450 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

451 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

452 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017; and further replies of 3 and 4 May 2017.

453 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017; and further reply of 18 April 2017.

454 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017; and further reply of 18 April 2017.

455 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017; and further replies of 4 and 11 May 2017.

456 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

(30) [redacted] regarding the agreements of 1 February 2005 and 1 February 2006;[458]

(31) [redacted] regarding the agreement of 28 June 2004;[459]

(32) [redacted] regarding the agreement of 1 August 2007;[460]

(33) [redacted] regarding the agreement of 1 April 2007;[461] and

(34) [redacted] regarding the agreements of 1 October 2005 and 1 August 2008.[462]

(349) This list of All Sites Direct Partners is conservative and favourable to Google because, for various reasons,[463] 69 other Direct Partners were unable to ascertain whether they typically included all of their websites displaying search ads in their GSAs containing the Exclusivity Clause.[464]

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457 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017; and further reply of 21 April 2017.

458 Reply of [redacted] to Question 1 of the RFI of 24 February 2017; and further replies of 28 April and 15 May 2017. [redacted] divested [redacted] in [redacted]. See also Google's reply to Question 2 of the Commission's request for information of 27 April 2017.

459 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

460 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017.

461 Reply of [redacted] Questions 1 and 1.1 of the RFI of 24 February 2017.

462 Reply of [redacted] to Questions 1 and 1.1 of the RFI of 24 February 2017. See also Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

463 These reasons include organisational changes in the company, lapse of time etc. See, for example, the further reply of [redacted] of 20 March 2017 to the RFI of 24 February 2017: "*Please note that some of* [redacted] *'s subsidiaries have been acquired during the period 2006 to present. From this follows that our knowledge of whether or not these subsidiaries previously have had AFS might be limited. However, we have provided our answers based on the information that is available to us*".

464 Those Direct Partners are: (1) [redacted] for the agreement of 1 November 2006; (2) [redacted] for the agreement of 1 May 2008 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (3) [redacted] for the agreement of 25 July 2007; (4) [redacted] for the agreements of 1 October 2005 and 1 October 2007; (5) [redacted] for the agreement of 1 December 2008; (6) [redacted] for the agreement of 1 May 2006; (7) [redacted] for the agreement of 1 December 2007; (8) [redacted] for the agreement of 1 October 2007; (9) [redacted] for the agreements of 1 May 2005 and 1 November 2008; (10) [redacted] for the agreement of 1 December 2006; (11) [redacted] for the agreement of 1 October 2007; (12) [redacted] for the agreement of 1 October 2008; (13) [redacted] for the agreement of 29 October 2004; (14) [redacted] for the agreement of 1 April 2007; (15) [redacted] for the agreement of 11 December 2006; (16) [redacted] for the agreements of 1 November 2005 and 1 November 2008; (17) [redacted] for the agreement of 1 October 2007; (18) [redacted] for the agreement of 1 September 2008; (19) [redacted] for the agreement of 1 June 2006 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (20) [redacted] for the agreement of 1 September 2005; (21) [redacted] for the agreement of 23 December 2005; (22) [redacted] for the agreement of 20 September 2006; (23) [redacted] for the agreement of 10 October 2008; (24) [redacted] for the agreement of 1 January 2009; (25) [redacted] for the agreement of 1 October 2008; (26) [redacted] for the agreement of 1 July 2008; (27) [redacted] for the agreement of 24 November 2004; (28) [redacted] for the agreements of 1 May 2005 and 1 April 2008; (29) [redacted] for the agreement of 1 June 2007; (30) [redacted] for the agreements of 6 June 2006 and 1 June 2008; (31) [redacted] for the agreement of 1 July 2008; (32) [redacted] for the agreement of 1 September 2008; (33) [redacted] for the agreement of 1

(350) Third, an All Sites Direct Partner could not remove a website from its GSA without Google's consent (see recital (87)). Moreover, only three All Sites Direct Partners ([redacted], [redacted] and [redacted]) removed websites from the scope of their GSAs and each of them did so only with Google's consent.[465]

(351) Fourth, the GSAs of [redacted] and [redacted] required those All Sites Direct Partners to include all of their websites displaying search ads in their GSAs, including successor websites to websites originally included in the Order Form and any website that those All Sites Direct Partners may have accidentally omitted to include:

(1) Section 2 of Amendment 10 of 29 October 2008 to the agreement entered into by [redacted][466]

"*Customer agrees that it has made good faith efforts to ensure that the list of Sites on Exhibit A represents a complete list of all websites owned and controlled by Customer as of* [redacted] *which are still in operation as of the Amendment Effective Date [...] If Customer has failed to include a website that was owned and controlled by Customer on* [redacted]

February 2006; (34) [redacted] for the agreement of 1 December 2009; (35) [redacted] for the agreement of 1 April 2007; (36) [redacted] for the agreement of 27 December 2006; (37) [redacted] for the agreement of 1 October 2007; (38) [redacted] for the agreement of 6 August 2006 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (39) [redacted] for the agreement of 1 August 2007; (40) [redacted] for the agreement of 1 January 2007; (41) [redacted] for the agreement of 1 December 2008; (42) [redacted] for the agreements of 2 October 2007 and 1 November 2008; (43) [redacted] for the agreement of 26 September 2007; (44) [redacted] for the agreements of 1 September 2005 and 1 April 2008; (45) [redacted] for the agreement of 1 February 2009; (46) [redacted] for the agreement of 1 April 2006; (47) [redacted] for the agreement of 1 June 2008 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (48) [redacted] for the agreements of 12 December 2004, 1 January 2007 and 1 December 2009; (49) [redacted] for the agreement of 1 February 2008; (50) [redacted] for the agreement of 1 October 2008; (51) [redacted] for the agreement of 1 January 2009; (52) [redacted] for the agreements of 1 July 2005 and 1 July 2008; (53) [redacted] for the agreement of 1 December 2006; (54) [redacted] for the agreement of 1 July 2007 and 1 July 2008 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (55) [redacted] for the agreement of 1 September 2008 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (56) [redacted] for the agreement of 1 September 2008 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (57) [redacted] for the agreements of 1 August 2005 and 1 February 2008; (58) [redacted] for the agreement of 1 May 2006; (59) [redacted] for the agreements of 24 November 2004, 1 December 2007 and 1 January 2008; (60) [redacted] for the agreement of 1 October 2005 (Reply of [redacted] to the Commission's request for information of 22 December 2010); (61) [redacted] for the agreements of 18 August 2004 and 1 November 2006; (62) [redacted] for the agreements of 10 August 2004 and 1 October 2006; (63) [redacted] for the agreement of 19 August 2007; (64) [redacted] for the agreement of 1 March 2009; (65) [redacted] for the agreement of 1 February 2007; (66) [redacted] for the agreement of 19 September 2005; (67) [redacted] for the agreement of 1 July 2007; (68) [redacted] for the agreement of 1 May 2008; and (69) [redacted] for the agreement of 2 January 2009. The Commission has based this list on the replies of Google to Question 102 of the Commission's request for information of 13 July 2010, to Question 75 of the Commission's request for information of 1 April 2011 and to Question 2 of the Commission's request for information of 27 April 2017.

465 Replies of [redacted] to Questions 2 and 2.1 of the RFI of 24 February 2017.

466 Reply of [redacted] to the RFI of 24 February 2017.

[redacted], *then each Missing* [redacted] *Website will be considered to be a Site for purposes of Section 1.4 (Exclusivity) of the GSA and no other purposes*."

(2) Clause 13.3 of Order Form Terms and Conditions appended to the agreement of [redacted] 2006 entered into by [redacted]:[467]

"*Customer agrees that for any other present or future Customer or Customer Affiliate site which is the* [redacted] *international equivalent of* [redacted] *for a particular country (e.g.,* [redacted]*, etc.) (including any successor site thereto) ("Other Sites"), Customer: (a) shall not implement any text-based advertising service from a non-Affiliate third party which is the same or substantially similar in nature to the Services being* provided to Customer hereunder."

(352) The Commission's conclusion that the Exclusivity Clause in GSAs with All Sites Direct Partners constituted an exclusive supply obligation is not affected by Google's claims that:

(1) the Exclusivity Clause applied only to the individual websites of a Direct Partner and a Direct Partner was free to choose which of its websites displaying search ads to include in the GSAs. In support of its claim, Google refers to [redacted], [redacted] and [redacted], which are allegedly All Sites Direct Partners that did not include all their websites in GSAs;[468]

(2) a number of Direct Partners identified by the Commission as All Sites Direct Partners ([redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]) do *"not in fact fit within this definition"*;[469]

(3) the Commission has identified only less than half of Direct Partners as All Sites Direct Partners;[470]

(4) while All Sites Direct Partners confirmed that they "typically" included all of their websites displaying search ads in their GSAs "typically" does not equal "all" websites;[471]

(5) [redacted] and [redacted] were not contractually required to include all of their websites displaying search ads in their GSAs;[472]

(6) [redacted] was able to stop displaying Google search ads on its websites without Google's consent;[473]

(7) [redacted], [redacted] and [redacted] sourced search ads from competing providers of online search advertising intermediation services for certain of their websites displaying search ads;[474] and

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467 Reply of [redacted] to the Commission's request for information of 27 June 2016.

468 SO Response, paragraphs 180 to 184, First LoF Response, paragraph 4 and ff; Annex 3 to the First LoF Response, Google's submission of 11 October 2017, paragraphs 9 and 38-40, Second LoF Response, paragraph 3 of the Executive Summary, paragraph 7 first bullet, paragraph 42, Annex 3 p. 5.

469 Second LoF Response, Annex 1 and Annex 3, p. 6.

470 Second LoF Response, paragraph 41.

471 Second LoF Response, paragraph 39.

472 First LoF Response, footnote 8.

473 First LoF Response, paragraph 7.

474 First LoF Response, paragraph 6 and footnotes 11, 12.

(8) All Sites Direct Partners could have used Online Contracts to display competing search ads on their websites.[475]

(353) As to (1), the fact that a Direct Partner was free to choose which of its websites displaying search ads to include in the GSAs containing the Exclusivity Clause cannot affect the characterisation of the Exclusivity Clause in GSAs with All Sites Direct Partners as an exclusive supply obligation. While a Direct Partner could initially choose not to include all of its websites displaying search ads in a GSA, once it chose to include a website, the Exclusivity Clause required it to source all or most of its search ads requirements from Google for the duration of the GSA. An All Sites Direct Partner also could not remove one or more website from its GSA without Google's consent (see recitals (87) and (350)).

(354) Moreover, the examples of [redacted], [redacted] and [redacted][476] referred to by Google do not support its claim that the Exclusivity Clause in GSAs with All Sites Direct Partners does not constitute an exclusive supply obligation:

(1) [redacted] is not an All Sites Direct Partner because it never entered into a GSA containing the Exclusivity Clause;[477] and

(2) [redacted] and [redacted] are All Sites Direct Partners because they typically included all of their websites displaying search ads in their GSAs containing the Exclusivity Clause. Moreover, while Google refers to certain websites that [redacted] and [redacted] did not include in their GSAs, Google does not specify whether those websites displayed search ads.

(355) As to (2), this Decision does not generally identify [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] as All Sites Direct Partners. Rather, the Commission identifies as All Sites Direct Partners only certain companies owned by those groups because those companies: (i) were the legal entities that entered into the GSAs containing the Exclusivity Clause;[478] and (ii) typically included all of their websites displaying search ads in their GSAs:

(1) As regards [redacted], as recital (348)(1) explains, it is only [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. Altice has never entered into a GSA with Google.[479]

(2) As regards [redacted], as recital (348)(3) explains, it is only [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. In an email dated 3 May 2017, [redacted] confirmed that, in its reply to the 24 February 2017 RFI, it had incorrectly stated that [redacted] had never entered into a GSA containing the Exclusivity Clause and provided an updated data sheet showing GSA revenue.[480]

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475 SO Response, paragraphs 188 and 189.

476 Google's submission of 11 October 2017, paragraph 15 and annex 3.

477 Reply of [redacted] to Question 1 of the RFI of 24 February 2017.

478 Google's reply to the request for information of 27 April 2017, Annex 1.

479 [redacted]'s reply to the RFI of 24 February 2017, Q1.

480 [redacted]'s further reply to the RFI of 24 February 2017 in the email of 3 May 2017.

(3) As regards [redacted], as recital (348)(24) explains, it is only [redacted]. that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. [redacted] has never entered into a GSA with Google.[481]

(4) As regards [redacted], as recital (348)(7) explains, it is only [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. In its reply to the RFI of 24 February 2017, [redacted] confirmed that while *"[i]t is possible that a few* [redacted] *properties have not been included in the AFS Direct Agreements with Google for the provision of AFS service, however, this scenario is unlikely and would represent properties with no significant revenue impact."*[482]

(5) As regards Priceline, as recital (348)(23) explains, it is only [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. No other company part of the [redacted], including [redacted], [redacted], [redacted], [redacted] (trading as [redacted]), has ever entered into a GSA with Google.[483]

(6) As regards [redacted], as recitals (348)(25) and (348)(26) explain, it is only [redacted], [redacted] and [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of their websites displaying search ads in that GSA. [redacted] has never entered into a GSA with Google.[484]

(7) As regards [redacted], as recital (348)(27) explains, it is only [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. In an email dated 11 May 2017, [redacted] confirmed that it has *"seen very few traces of any other intermediates than Google supplying search ads to websites owned by Schibsted ASA."*[485]

(8) As regards [redacted], as recital (348)(30) explains, it is only [redacted] that entered into a GSA containing the Exclusivity Clause and which typically included all of its websites displaying search ads in that GSA. In emails dated 22 March 2017, 28 April 2017 and 15 May 2017, [redacted] confirmed that: (i) between 2006 and 2016, [redacted]'s website, [redacted], was the only website displaying search ads;[486] and (ii) between 2013 and 2016, while [redacted] generated revenue on other websites displaying search ads via Online Contracts, that revenue amounted to less than EUR 1000.[487]

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481 [redacted]'s reply to the RFI of 24 February 2017, Q1.

482 [redacted]' reply to the RFI of 24 February 2017, Q1.

483 [redacted]'s reply to the RFI of 24 February 2017, Q1; [redacted]'s reply to the RFI of 24 February 2017, Q1 and Q3; [redacted]'s reply to the RFI of 24 February 2017, Q3; [redacted]'s reply to the RFI of 24 February 2017, Q3; [redacted]'s reply to the RFI of 24 February 2017, Q3.

484 Email from [redacted] dated 18 April 2017; [redacted]'s reply to the RFI of 24 February 2017, Q1.

485 Email from [redacted] dated 11 May 2017.

486 [redacted] email dated 22 March 2017.

487 [redacted] email of 15 May 2017.

(356) As to (3), Google's claim that less than half of Direct Partners are All Sites Direct Partners cannot affect the characterisation of the Exclusivity Clause in GSAs with All Sites Direct Partners as an exclusive supply obligation. Google's claim is in effect a challenge to the Commission's assessment of the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition, which the Commission addresses in Section 8.3.4.

(357) As to (4), the characterisation of the Exclusivity Clause in GSAs with All Sites Direct Partners as an exclusive supply obligation does not depend on whether an All Sites Direct Partner included *all* of their websites displaying search ads in GSAs with Google. Rather, it is sufficient that an All Sites Direct Partner typically included all of its websites displaying search ads in GSAs with Google containing the Exclusivity Clause because, as a result, the Exclusivity Clause required that All Sites Direct Partner to obtain all or most of its search ad requirements from Google.

(358) As to (5), as recital (350) explains, [redacted] and [redacted] were contractually required to include all of their websites in the GSAs because those GSAs also covered both successor websites to websites originally included as well as any site that [redacted] or [redacted] may have accidentally omitted to include.

(359) As to (6), [redacted] is not an All Sites Direct Partner because it never entered into a GSA containing the Exclusivity Clause.[488]

(360) As to (7), Google is wrong to claim that the Exclusivity Clause in GSAs with All Sites Direct Partners cannot be characterised as an exclusive supply obligation because, between 2006 and 2009, [redacted], [redacted] and [redacted] sourced search ads from competing providers of online search advertising intermediation services:

(1) The companies from whom [redacted] allegedly sourced competing search ads ([redacted], [redacted], [redacted], [redacted] and [redacted]) [489] do not provide online search advertising intermediation services;

(2) [redacted] never entered into a GSA containing the Exclusivity Clause;[490] and

(3) [redacted] never entered into a GSA containing the Exclusivity Clause.[491] Moreover while, in 2015, it acquired [redacted]'s and [redacted]'s websites, [redacted] and [redacted] are not All Sites Direct Partners because they included only some of their websites in their GSAs containing the Exclusivity Clause (see footnote 464).[492]

(361) As to (8), Google's claim that All Sites Direct Partners could have moved away from GSAs and used Online Contracts to display competing search ads on their websites displaying search ads is in effect a challenge to the Commission's assessment of the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition (which the Commission addresses in Section 8.3.4). That claim cannot

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488 See [redacted]'s reply to the Commission's request for information of 24 February 2017.

489 See [redacted]' s reply to the Commission's request for information of 24 February 2017.

490 See: (i) agreement of 1 October 2010 (entered into by [redacted]); (ii) agreement of 1 December 2014 (entered into by [redacted]); and (iii) agreement of 1 April 2016 (entered into by [redacted]).

491 Reply of [redacted] to Question 1 of the RFI of 24 February 2017.

492 See: (i) agreement of 1 November 2005, entered into by [redacted]; (ii) agreement of 1 November 2008, entered into by [redacted]; and (iii) agreement of 1 November 2005, entered into by [redacted].

alter, however, the finding that the Exclusivity Clause was an exclusive supply obligation.

8.3.4. Restriction of competition

(362) While not legally required to do so, the Commission concludes, based on an analysis of all the relevant circumstances, that the Exclusivity Clause in GSAs with All Sites Direct Partners was capable of restricting competition. This is because:

(1) the Exclusivity Clause in GSAs with All Sites Direct Partners deterred those Direct Partners from sourcing competing search ads (Section 8.3.4.1);

(2) the Exclusivity Clause in GSAs with All Sites Direct Partners prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation (Section 8.3.4.2);

(3) the Exclusivity Clause in GSAs with All Sites Direct Partners may have deterred innovation (Section 8.3.4.3);

(4) the Exclusivity Clause in GSAs with All Sites Direct Partners helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA, except Portugal (Section 8.3.4.4); and

(5) the Exclusivity Clause in GSAs with All Sites Direct Partners may have harmed consumers (Section 8.3.4.5).

(363) In addition, the English Clause exacerbated the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition (Section 8.3.4.6).

(364) As part of the analysis of all the relevant circumstances, the Commission has assessed and taken into account, in particular: (i) the extent of Google's dominant position in each national market for online search advertising in the EEA, except Portugal and in the EEA-wide market for online search advertising intermediation (see Section 7); (ii) the share of the EEA-wide market for online search advertising intermediation covered by the Exclusivity Clause in GSAs with All Sites Direct Partners (see Section 8.3.4.2); and (iii) the duration of the Exclusivity Clause in GSAs with All Sites Direct Partners (see Section 8.3.4.2).

(365) The Commission has also considered and rejected Google's arguments regarding the Commission's alleged failure to consider all the circumstances relevant to the assessment of the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition (Section 8.3.4.7).

8.3.4.1. The Exclusivity Clause in GSAs with All Sites Direct Partners deterred those Direct Partners from sourcing competing search ads

(366) The Commission concludes that the Exclusivity Clause in GSAs with All Sites Direct Partners deterred those Direct Partners from sourcing competing search ads. This is for the following reasons.

(367) First, absent the Exclusivity Clause in their GSAs, All Sites Direct Partners would have sourced competing search ads, both within the same website and across different websites. A number of All Sites Direct Partners have confirmed this:

(1) [redacted] indicated that "[the] *exclusivity clauses prevented* [redacted] *from using providers of sponsored links* [redacted]".[493] [494]

(2) [redacted] indicated that "[redacted]".[495]

(3) [redacted] indicated that "*The exclusivity clauses in question have had a significant impact on our advertising strategy, particularly when we first contemplated adding third party text advertising to our websites* […] *Since Google would not permit us to work with both companies, we maximized our revenue by signing with Google on an exclusive basis and foregoing any opportunity to work with Yahoo or other text advertising service*".[496]

(4) [redacted] indicated that "[redacted]".[497]

(5) [redacted] indicated that the Exclusivity Clause "*has meant that developments and partnerships with other market players needed to be considered thoroughly and possibly even delayed or rejected*".[498]

(6) [redacted] indicated that, absent the Exclusivity Clause, "*we would have experimented with other advertisers/ad-networks. As we are present in 28 different markets the partners would differ from market to market, but global partners that would have been considered would typically be Yahoo and Bing/Microsoft*".[499]

(7) [redacted] indicated that, absent the Exclusivity Clause, "*[u]ltimately this* [displaying competing ads] *is something that we would definitely consider if it would be, in aggregate, revenue enhancing and we would, in those circumstances, consider partnering with any intermediary*".[500]

(368) Second, the Exclusivity Clause prevented All Sites Direct Partners from evaluating the commercial impact of sourcing competing search ads. A number of All Sites Direct Partners have confirmed this:

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493 Reply of [redacted] to Question 8.1 of the Commission's request for information of 22 December 2010, (original text: [redacted].")

494 [redacted] is a holding company that includes, among its subsidiaries, [redacted]. [redacted] was acquired by [redacted] in [redacted] and it publishes a number of websites in [redacted]. See Reply of [redacted] to Question 1 of the Commission's request for information of 3 August 2015.

495 Reply of [redacted] to Question 5.2(c) of the Commission's request for information of 22 December 2010.

496 Reply of [redacted] to Question 8.5 of the Commission's request for information of 22 December 2010.

497 Reply of [redacted] to Question 8.5 of the Commission's request for information of 22 December 2010.

498 Reply of [redacted] to Question 8.9 of the Commission's request for information of 22 December 2010.

499 Reply of [redacted] to Question 8.5 of the Commission's request for information of 22 December 2010.

500 Reply of [redacted] to Question 8.5 of the Commission's request for information of 22 December 2010.

(1) [redacted] indicated that "*existing restrictions made it impossible to begin testing other providers and upgrading our system to work with multiple ad partners*".[501]

(2) [redacted] indicated that "[redacted]".[502]

(369) The Commission's conclusion that the Exclusivity Clause in GSAs with All Sites Direct Partners deterred those Direct Partners from sourcing competing search ads is not affected by Google's claims that:

(1) one All Sites Direct Partner - [redacted][503] - indicated in a letter provided to Google that the Exclusivity Clause in its GSA had not prevented it from sourcing competing search ads;[504]

(2) All Sites Direct Partners could have used Online Contracts to display competing search ads on some of their websites and certain Direct Partners, such as [redacted] or [redacted], did use such Online Contracts;[505]

(3) All Sites Direct Partners could have sourced competing search ads for their websites not included in the GSAs containing the Exclusivity Clause;[506]

(4) All Sites Direct Partners could have displayed other types of ads (including paid specialised search results or graphic ads) on their websites included in the GSAs;[507]

(5) absent the Exclusivity Clause, All Sites Direct Partners would have had no commercial interest in sourcing competing search ads, due to the superior quality of Google's search ads.[508] To support its claim, Google refers to a study prepared for assessing multi-homing by Online Partners between online search advertising providers;[509] and

(6) the demand of All Sites Direct Partners was fully contestable at all times. In support of its claim, Google refers to the fact that, on expiry of their GSAs, All Sites Direct Partners such as [redacted], [redacted] and [redacted] sourced all of their search ads requirements from competing providers of online search advertising intermediation services.[510]

(370) As to (1), the probative value of the letter by [redacted] is limited. On the one hand, while [redacted] claims in its letter that it sourced search ads from competing providers of online search advertising intermediation services on websites not included in its GSA containing the Exclusivity Clause, in its response to a

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501 Reply of [redacted] to Question 8.2 of the Commission's request for information of 22 December 2010.

502 Reply of [redacted] to Question 5.2(e) of the Commission's request for information of 22 December 2010.

503 SO Response, Annex 2.

504 SO Response, paragraph 212.

505 SO Response, paragraph 188, 189.

506 Google submission of 11 October 2017, paragraph 39.

507 SO Response, paragraph 219; Second LoF Response, paragraph 23 second bullet.

508 SO Response, paragraphs 215, 224; Google's submission of 11 October 2017, Annex 2, page 1 and Second LoF Response, paragraph 7 second bullet and paragraph 28.

509 SO Response, Annex 8.

510 SO Response, paragraph 204; Second LoF Response, paragraph 31 and Annex 3 p. 3-4.

Commission RFI, [redacted] stated that it sourced all or most of its search ads requirements from Google (see recital (348)(28)). On the other hand, the context in which Google obtained the letter is unknown, the letter having not been submitted in response to a request for information but provided to Google, which subsequently annexed it to its SO Response.

(371) As to (2), All Sites Direct Partners could not have used Online Contracts to display competing search ads on their websites displaying search ads because those contracts did not meet their needs. The structure of Online Contracts is standardised and non-negotiable (see recital (107))) whereas Direct Partners have specific needs, which is why GSAs are highly customised. Google has publically confirmed this:

(1) in her deposition of 2 May 2012 before the FTC, [redacted], then [redacted] at Google, explained that individually negotiated, paper-based, GSAs "*are for our larger partners. And it is for our larger partners because they want to – they have more complicated types of requests and more complicated types of implementations.* […] *any large partner can sign up for the online agreement. That's available to anybody. But if you are a large partner -- and large partners usually have specific requests* […] *They need to have certain requirements. Their implementations may be more complicated. That's why we would have a direct deal.*"[511]

(2) in her deposition of 3 May 2012 before the FTC, [redacted], then [redacted], explained that Online Contracts are not meant for Direct Partners that generate sufficient traffic and revenue to justify Google offering them individually negotiated, paper-based GSAs:

"Well, generally they [Direct Partners] do. That's why they would qualify for direct contract. […] *I think in North America we said they have to generate at least a million dollars a month to qualify to become a direct partner. […] So we want to make sure we've talked to the partner and made sure we understand what their likely page views are and make sure that they would hit the minimum threshold.* […] *you don't want to take a site on that's only going to generate for you $10,000 net revenue per year. You've already invested more than $10,000 worth of people and support. So it doesn't make sense sign them up under direct terms and put all those resources on them.*"[512]

(3) in a "FAQ" section in its revenue share guidelines dated 3 July 2008 Google explained "the benefits of becoming a Direct Google Partner" as follows: *"Financial terms are revealed and committed to for the term of the agreement. Partner has flexibility over the implementation and layout. Partner receives Google's assurance that the Products will exit and be maintained for the duration of your agreement. Dedicated support to help with implementation and on-going optimizations"*.[513]

(372) Moreover, neither [redacted] nor [redacted] were All Sites Direct Partners.

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511 Deposition of [redacted] before the FTC of 2 May 2012, pages 78-79.

512 Deposition of [redacted] before the FTC of 3 May 2012, pages 90-92.

513 Internal Google document [redacted]-000004721, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0098, page 2.

(373) As to (3), All Sites Direct Partners typically included all of their websites displaying search ads in their GSAs (see recital (346)). Moreover, while an All Sites Direct Partner could choose not to include all of its websites displaying search ads in its GSA, once it chose to include a website, the Exclusivity Clause required it to source all or most of its search ads requirements from Google for the duration of the GSA. Furthermore, an All Sites Direct Partner could not remove a website from its GSA containing the Exclusivity Clause without Google's consent (see recital (87)).

(374) As to (4), it is irrelevant whether All Sites Direct Partners could have displayed other types of ads on their websites displaying search ads included in their GSAs. Even if this were true, this would not alter the fact that the Exclusivity Clause required All Sites Direct Partners to source all or most of their search ads requirements from Google.

(375) As to (5), absent the Exclusivity Clause, All Sites Direct Partners would have had a commercial interest in sourcing search ads from competing providers of online search advertising intermediation services.

(376) In the first place, as recitals (367) and (368) explain, at least some All Sites Direct Partners were willing to multi-source among different providers of online search advertising intermediation services.

(377) In the second place, the fact that Google entered into GSAs with All Sites Direct Partners containing the Exclusivity Clause indicates that, notwithstanding its alleged superior quality, Google considered that, absent the Exclusivity Clause, All Sites Direct Partners would have had a commercial interest in sourcing search ads from competing providers of online search advertising intermediation services.

(378) In the third place, the study prepared for Google for assessing multi-homing is irrelevant because it analyses the conduct of Online Partners and not Direct Partners.[514] As recital (371) explains, the needs of Direct Partners and Online Partners were different.

(379) As to (6), the fact that, on expiry of their GSAs, All Sites Direct Partners like [redacted], [redacted] and [redacted] sourced all their search ads requirements entirely from competing providers of online search advertising intermediation services supports, rather than weakens, the Commission's conclusion that the Exclusivity Clause in GSAs with All Sites Direct Partners was capable of restricting competition. It was only upon expiry of the Exclusivity Clause that All Sites Direct Partners were able to source search ads from competing providers of online search advertising intermediation services.

8.3.4.2. The Exclusivity Clause in GSAs with All Sites Direct Partners prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation

(380) The Exclusivity Clause in GSAs with All Sites Direct Partners prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation. This is for the following reasons.

514 See Section 5.

(381) First, the gross revenues generated by Google in the EEA from All Sites Direct Partners represented a significant percentage of the total value of the EEA-wide market for online search advertising intermediation.

(382) Between 2006 and 2009, the gross revenues generated by Google in the EEA from All Sites Direct Partners represented between [30-40%] and [60-70%] of the total value of the EEA-wide market for online search advertising intermediation, depending on the year.[515] In particular, the gross revenues generated by Google in the EEA from [redacted], [redacted] and [redacted] alone represented between [20-30%] and [40-50%] of the total value of that market (See Table 13).[516]

(383) Between 2010 and 2012, the gross revenues generated by Google in the EEA from All Sites Direct Partners represented between [10-20%] and [20-30%] of the total value of the EEA-wide market for online search advertising intermediation.[517] Moreover, during that same period, the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause increased from [20-30%] of the total value of the EEA-wide market for online search advertising intermediation in 2010 to [40-50%] in 2012 (See Table 24).

(384) Between 2013 and 2015, the gross revenues generated by Google in the EEA from All Sites Direct Partners represented at least [20-30%] of the total value of the EEA-wide market for online search advertising intermediation (See Table 26).[518] Moreover, during that same period, the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause represented at least [30-40%] of the total value of the EEA-wide market for online search advertising intermediation (See Table 24).

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515 The Commission has based these revenues on conservative assumptions that are favourable to Google, see recital (349).

516 Google's reply to Question 4 of the Commission's request for information of 28 March 2017, paragraphs 4.1-4.2 and Annex 4, as updated on 18 April 2017.

517 The Commission has based these revenues on conservative assumptions that are favourable to Google, see recital (349).

518 The Commission has based these revenues on conservative assumptions that are favourable to Google, see recital (349).

Table 13: Gross revenues generated by Google in the EEA between 2006 and 2012 from All Sites Direct Partners as a percentage of the total value of the EEA-wide market for online search advertising intermediation[519]

All Sites Direct Partner whose GSA contained the Exclusivity Clause[520]	2006 (million EUR)	2007 (million EUR)	2008 (million EUR)	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)
[redacted]	110-120	90-100	120-130	100-110	60-70	40-50	40-50
[redacted]	10-20*	70-80	160-170	70-80*	***	***	***
[redacted]	80-90	70-80	110-120	110-120	140-150	190-200	280-290
Gross revenues generated by Google in the EEA from [redacted], [redacted] and [redacted] as percentage of the total value of the EEA-wide market for online search advertising intermediation	***30-40%***	***30-40%***	***40-50%***	***20-30%***	***10-20%***	***10-20%***	***10-20%***
[redacted]	10-20	10-20	20-30	10-20	5-10*	***	***
[redacted]	10-20	20-30*	30-40	0-5*	***	***	***
[redacted]	5-10	5-10*	10-20	10-20	0-5*	***	***
[redacted]	0-5*	5-10	10-20	10-20	10-20	10-20	0-5*
[redacted]	0-5	0-5	0-5*	***	***	***	***

519 Estimates of the EEA-wide market for online search advertising intermediation provided in Google's reply to the Commission's request for information of 20 December 2016, Annex 2. Data converted to EUR currency. *Adjusted amount to reflect the duration of the GSAs with All Sites Direct Partners. The Commission has adopted a conservative approach that is favourable to Google, by applying a downward adjustment whenever the duration of the GSA with All Sites Direct Partners was less than 12 months for a given year. ** No annual EEA AFS revenue. *** Annual EEA AFS revenue omitted from calculations on the basis that the Direct Partner was not an All Sites Direct Partner in that year.

520 See recital (348).

[redacted]	***	0-5*	50-60	30-40*	***	***	***
[redacted]	**/***	0-5*	5-10	10-20	5-10*	***	***
[redacted]	0-5*	**	5-10	5-10	10-20	10-20	0-5*
[redacted]	**	**	0-5*	5-10	0-5*[522]	***	***
[redacted]	**/***	**/***	0-5*	10-20	***	***	***
[redacted]	**/***	***	***	5-10*	10-20	10-20*	***
[redacted]	0-5	0-5	0-5	5-10*	20-30	10-20*	***
[redacted]	**	0-5	0-5	0-5	0-5*[523]	***[524]	***[525]
[redacted]	0-5	0-5	0-5*	***	***	***	***
[redacted]	**	0-5	0-5	0-5	0-5*	***	***
[redacted]	**/***	***	0-5*	0-5	0-5	0-5*	***
[redacted]	**/***	**/***	0-5*	0-5	0-5*	***	***

[521] These revenues are conservative and favourable to Google. On the one hand, information on the Commission's file suggests that between October 2007 and October 2011, Google entered into GSAs with another [redacted] entity, [redacted], containing the Exclusivity Clause. On the other hand, the Commission has not taken into account those GSAs for the purposes of its calculations because it was unable to verify whether [redacted] included all of its websites displaying search ads in those agreements.

[522] While Table 3 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2010 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

[523] While Table 3 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2010 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

[524] While Table 3 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

[525] While Table 3 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2012 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

[redacted]	**	0-5	0-5	0-5	0-5*	***	***
[redacted]	0-5	0-5	0-5	0-5	***	***	***
[redacted]	**/***	0-5*	0-5	0-5	0-5*	***	***
[redacted]	0-5*	0-5	0-5	0-5	0-5*	**/***	**/***
[redacted]	**/***	0-5*	0-5	0-5*	***	***	***
Revenues generated by Google from All Sites Direct Partners	260-270	310-320	570-580	440-450	310-320	280-290	330-340
Total value of the EEA-wide market for online search advertising intermediation	630-640	810-820	890-900	1030-1040	1200-1210	1340-1350	1770-1780
Total revenue generated by All Sites Direct Partners above as a percentage of the total value of the EEA-wide market for online search advertising intermediation	***40-50%***	***30-40%***	***60-70%***	***40-50%***	***20-30%***	***20-30%***	***10-20%***

Source: Google; All Sites Direct Partners[526]

(385) Second, Google systematically included the Exclusivity Clause in the GSAs that were of greatest value to it. Table 14 illustrates this.

(1) Between 2006 and 2009, All Sites Direct Partners represented approximately [50-60%] to [70-80%] of the gross revenues generated by Google in the EEA from all Direct Partners.

526 The Commission has based (i) the numerator on Google's reply to the request for information of 28 March 2017, Annex 4, as updated; (ii) the denominator on Google's reply to the request for information of 16 March 2016, Annex 2 and (iii) the downward adjustments ("*") on GSA documentation; Direct Partner request for information responses and associated correspondence.

(2) Between 2010 and 2012, All Sites Direct Partners represented approximately [20-30%] to [20-30%] of the gross revenues generated by Google in the EEA from all Direct Partners.

Table 14: Gross revenues generated by Google in the EEA from All Sites Direct Partners between 2006 and 2012 as a percentage of gross revenues generated by Google in the EEA from all Direct Partners[527]

All Sites Direct Partner[528]	2006	2007	2008	2009	2010	2011	2012
[redacted]	20-30%	10-20%	10-20%	10-20%	5-10%	0-5%	0-5%
[redacted]	10-20%	10-20%	10-20%	10-20%	10-20%	10-20%	20-30%
[redacted]	0-5%*	10-20%	20-30%	10-20%*	***[529]	***[530]	***[531]
[redacted]	0-5%	0-5%	0-5%	0-5%	0-5%*	***[532]	***[533]
[redacted]	0-5%	0-5%*	0-5%	0-5%*	***	***	***
[redacted]	0-5%	0-5%*	0-5%	0-5%	0-5%*	**/***	**/***
[redacted]	0-5%*	0-5%	0-5%	0-5%	0-5%	0-5%	0-5%*
[redacted]	0-5%	**	**	**/***	**/***	**/***	**/***

527 *Adjusted amount to reflect the duration of the GSAs with All Sites Direct Partners. The Commission has adopted a conservative approach that is favourable to Google by applying a downward adjustment whenever the duration of the GSAs with All Sites Direct Partners was less than 12 months for a given year. ** Annual EEA AFS revenue omitted from calculations on the basis that - when rounded to the nearest percent per Google's Reply to Question 4 of the request for information of 28 April 2017, Annex 4 it constituted <1% of total. *** Annual EEA AFS revenue omitted from calculations on the basis that the Direct Partner was not an All Sites Direct Partner in that year.

528 See recital (348).

529 While Table 5 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2010 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of gross revenues generated by Google in the EEA from all Direct Partners. Moreover, the Commission has corrected that error in this Decision.

530 While Table 5 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of gross revenues generated by Google in the EEA from all Direct Partners. Moreover, the Commission has corrected that error in this Decision.

531 While Table 5 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of gross revenues generated by Google in the EEA from all Direct Partners. Moreover, the Commission has corrected that error in this Decision.

532 While Table 5 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of gross revenues generated by Google in the EEA from all Direct Partners. Moreover, the Commission has corrected that error in this Decision.

533 While Table 5 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]s 2012 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners as a percentage of gross revenues generated by Google in the EEA from all Direct Partners. Moreover, the Commission has corrected that error in this Decision.

[redacted]	**/***	0-5%%*	5-10	0-5%*	***	***	***
[redacted]	**	0-5%*	0-5%	0-5%	0-5%*	***	***
[redacted]	**	**	0-5%*	0-5%	**	***	**/***
[redacted]	**	**	**	0-5%	***	***	***
[redacted]	**/***	***	***	0-5%*	0-5%	0-5%*	***
[redacted]	**	**	**	0-5%*	***	***	***
[redacted]	**	**	0-5%	0-5%	0-5%	0-5%	0-5%*
[redacted]	**	**	**	0-5%	**	**	**
[redacted]	**/***	**/***	**	**	**	0-5%*	***
[redacted]	**/***	**	**	**	***	***	***
[redacted]	0-5%*	**	**	**	**	***	***
Total %	***50-60%***	***50-60%***	***60-70%***	***50-60%***	***20-30%***	***20-30%***	***20-30%***

Source: Google; All Sites Direct Partners[534]

(386) Third, the volume of queries conducted in the EEA on the websites of All Sites Direct Partners was significant compared to the volume of queries conducted in the EEA on general search services competing with Google. For example, [redacted]'s total volume of queries in the EEA between October 2009 and September 2010 corresponded to [20-30%] of Yahoo's and [30-40%] of Bing's total volume of queries in the EEA during that same period.[535]

(387) By contrast, the volume of queries conducted in the EEA on the websites of All Sites Direct Partners was insignificant compared to the volume of queries conducted in the EEA on Google's general search service. For example [redacted]'s total volume of queries in the EEA in 2010 corresponded to only [0%-1%] of Google's total volume of queries in the EEA during that same period.[536]

(388) Fourth, the period during which the Exclusivity Clause required All Sites Direct Partners to source all or most of their search ads requirements from Google was long, between 1 to more than 10 years.[537] For example, the Exclusivity Clause applied to all the websites of [redacted] (which represented on average [10%-20%] of the gross revenues generated by Google in the EEA from online search advertisement intermediation between 2006 and 2012[538]), between 15 October 2004 and 31 December 2015. Moreover, the Exclusivity Clause applied to all the websites of [redacted] (which represented on average [10%-20%] of the gross revenues generated by

534 The Commission has based: (i) the numerator and denominator on Google's reply to the request for information of 28 March 2017, Annex 4, as updated and (ii) the downward adjustments ("*") on GSA documentation; Direct Partner request for information responses and associated correspondence.

535 Between October 2009 and September 2010, [redacted] had a query volume of around 1.7 billion in the EEA. Microsoft's complaint of 31 March 2011, page 25.

536 Google's reply to Question 77 of the Commission's request for information of 1 April 2011, paragraph 77.3, Table 8.

537 Google's response to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1; and Google's response to Question 75 of the Commission's request for information of 1 April 2011, Annex 75.1.

538 Google's reply to Question 4 of the Commission's request for information of 28 March 2017, Annex 4, as updated.

Google in the EEA from online search advertisement intermediation between 2006 and 2012[539]), from 15 May 2003 to 31 March 2016.

Table 15: Period during which the All Sites Direct Partners were party to GSAs

All Sites Direct Partner[540]	Start and end date of the period during which the All Sites Direct Partner was party to a GSA	
[redacted]	1 June 2007	31 October 2009
[redacted]	15 October 2004	31 December 2015
[redacted]	1 September 2005	30 September 2008
[redacted]	1 June 2005	30 June 2011
[redacted]	1 July 2008	30 June 2009
[redacted]	1 January 2006	31 October 2010
[redacted]	1 August 2008	31 July 2011
[redacted]	25 August 2006	31 July 2009
[redacted]	15 September 2008	30 September 2010
[redacted]	1 December 2007	30 November 2010
[redacted]	15 May 2003	31 March 2016
[redacted]	1 May 2006	30 April 2007
[redacted]	15 April 2008	30 April 2010
[redacted]	1 July 2007	30 June 2010

539 Google's reply to Question 4 of the request for information of 28 March 2017, Annex 4, as updated.

540 See recital 348.

[redacted]		
[redacted]	17 December 2004 1 January 2009	31 August 2008 31 December 2009
[redacted]	18 December 2003	1 October 2010
[redacted]	1 March 2005	28 February 2007
[redacted]	30 September 2003	28 February 2007
[redacted]	1 July 2007	28 February 2009
[redacted]	2 October 2007	30 September 2009
[redacted]	2 October 2007	30 September 2009
[redacted]	1 April 2006	31 March 2009
[redacted]	1 April 2009	31 March 2012
[redacted]	1 July 2008	31 December 2009
[redacted]	21 August 2006	31 January 2012
[redacted]	1 February 2005 1 February 2006	31 December 2005 31 August 2010
[redacted]	4 July 2009	31 October 2011
[redacted]	28 June 2004 1 August 2007	30 June 2007 31 August 2010
[redacted]	1 June 2006	30 June 2010
[redacted]	1 July 2007	30 June 2009
[redacted]	1 April 2007	30 June 2010

[redacted]	1 October 2005	31 July 2010

Source: GSA documentation; All Sites Direct Partner submissions[541]

(389) Fifth, the fact that the Exclusivity Clause in GSAs with All Sites Direct Partners prevented access by competing providers of online search advertising intermediation to a significant part of the EEA-wide market for online search advertising intermediation is consistent with the evolution of shares of that market (see Section 7.3.1).

(390) Sixth, the Exclusivity Clause in GSAs with All Sites Direct Partners covered some of the most visited websites in the EEA. A Keystone study submitted by Microsoft in 2011 (updated in 2013)[542] indicated that, in 2010 Google provided search intermediation services to [90-100%] of the most visited web domains displaying search ads in France, Germany, Italy, Spain and the United Kingdom (See Table 16) by page views. All Sites Direct Partners were listed as the registrants of several of those web domains, including:

(1) [redacted][543] in France;

(2) [redacted][544] in France;

(3) [redacted][545] in Germany;

(4) [redacted][546] in Germany;

(5) [redacted][547] in Germany, Italy and the UK;

(6) [redacted][548] in Germany;

(7) [redacted][549] in Italy;

(8) [redacted][550] in Italy;

(9) [redacted][551] in Italy and Spain;

(10) [redacted][552] in the UK;

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541 See recital 348.

542 Microsoft's complaint of 31 March 2011, Annex 2, Keystone study on "*Most trafficked Web Domains in Europe and Their Search Intermediation Providers"* of 22 June 2010; reply of Microsoft to Question 14 of the Commission's request for information of 26 July 2013, Annex B, Keystone study on "*Most trafficked Web Domains in Europe and Their Search Intermediation Providers*" of 8 August 2013.

543 Domain registrant is [redacted], according to afnic.fr online "WhoIs" directory.

544 Domain registrant is [redacted], according to afnic.fr online "WhoIs" directory.

545 Domain registrant is [redacted], according to whois.icann.org online "WhoIs" directory.

546 Domain registrant is [redacted], according to denic.de online "WhoIs" directory.

547 Domain registrant is [redacted], according to dot fm/whois online "WhoIs" directory.

548 Domain registrant is [redacted], according to denic.de online "WhoIs" directory.

549 Domain registrant is [redacted], according to web-whois nic.it online "WhoIs" directory.

550 Domain registrant is [redacted], according to web-whois nic.it online "WhoIs" directory.

551 Domain registrant is [redacted], according to whois.icann.org online "WhoIs" directory.

(11) [redacted][553] in the UK;

(12) [redacted][554] in the UK;

(13) [redacted][555] in the UK.

Table 16: Web domains in the EEA with the most traffic and their providers of online search advertising intermediation services (2010 and 2013)

Region	Category	2010	2013
Aggregate	Total number of Ad Supported web domains	102	92
	Domains without Intermediated Search	44 (43%)	54 (59%)
	Domains with Intermediated Search	58 (57%)	38 (41%)
	- Google	56 (97%)	35 (92%)
Germany	Domains without Intermediated Search	10 (40%)	16 (64%)
	Domains with Intermediated Search	15 (60%)	9 (36%)
	- Google	14 (93%)	7 (78%)
France	Domains without Intermediated Search	8 (32%)	14 (56%)
	Domains with Intermediated Search	17 (68%)	11 (44%)
	- Google	16 (94%)	9 (82%)
United Kingdom	Domains without Intermediated Search	13 (52%)	13 (52%)
	Domains with Intermediated Search	12 (48%)	12 (48%)
	- Google	12 (100%)	9 (75%)
Italy	Domains without Intermediated Search	15 (60%)	16 (64%)
	Domains with Intermediated Search	10 (40%)	9 (36%)
	- Google	10 (100%)	7 (78%)
Spain	Domains without Intermediated Search	11 (44%)	16 (64%)
	Domains with Intermediated Search	14 (56%)	9 (36%)
	- Google	14 (100%)	7 (78%)

Source: Keystone[556]

(391) Seventh, between 2006 and 2009, 69 other Direct Partners included at least some of their websites displaying search ads in their GSAs containing the Exclusivity Clause (see recital (349)). The Exclusivity Clause therefore also prevented access by competing providers of online search advertising intermediation services to those websites during that period.

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552 Domain registrant is [redacted], according to nominet.uk/whois online "WhoIs" directory.

553 Domain registrant is [redacted], according to whois.icann.org online "WhoIs" directory.

554 Domain registrant is [redacted], according to whois.icann.org online "WhoIs" directory.

555 Domain registrant is [redacted], according to nominet.uk/whois online "WhoIs" directory.

556 Microsoft's complaint of 31 March 2011, Annex 2, Keystone study on "*Most trafficked Web Domains in Europe and Their Search Intermediation Providers"* of 22 June 2010. The study was subsequently updated in 2013, see reply of Microsoft to Question 14 of the Commission's request for information of 26 July 2013, Annex B, Keystone study on "*Most trafficked Web Domains in Europe and Their Search Intermediation Providers*" of 8 August 2013.

(392) The Commission's conclusion that the Exclusivity Clause in GSAs with All Sites Direct Partners prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation is not affected by Google's claims that:

(1) the Commission's calculations in Table 13 and Table 14, based on the gross revenues generated by Google in the EEA from All Sites Direct Partners are flawed because: [557]

(1) Google's own data on the total value of the EEA-wide market for online search advertising intermediation is unreliable;[558]

(2) the Commission has artificially increased the revenues that Google derived from All Sites Direct Partners by taking into account the revenue associated with the entire group of an All Sites Direct Partner, while only particular companies within those groups entered into GSAs.[559] In support of its claim, Google refers to two examples of All Sites Direct Partners: [redacted] and [redacted];

(2) considerable revenues generated in the EEA from online search advertising intermediation remained available to competing providers;[560]

(3) competing providers of online search advertising intermediation have entered into agreements containing exclusive supply obligations;[561]

(4) when calculating the revenue generated by All Sites Direct Partners as a percentage of the total value of the EEA-wide market for online search advertising intermediation, the Commission should exclude the gross revenues generated by Google in the EEA from All Sites Direct Partners with whom Google entered into bespoke GSAs;[562]

(5) competing providers of online search advertising intermediation services had frequent opportunities to bid for the search ad requirements of All Sites Direct Partners given that the duration of GSAs with All Sites Direct Partners was short (typically not longer than two years) and certain Direct Partners ([redacted], [redacted] and [redacted]) had early termination rights;[563]

(6) it is because of the dynamic nature of competition in the online search advertising intermediation market not of the Exclusivity Clause in GSAs with All Sites Direct Partners that competing providers of online search advertising intermediation services failed to win more business; and[564]

(7) it is because of Yahoo's insufficient investments in search advertising technology, not of the Exclusivity Clause in GSAs with All Sites Direct

557 Second LoF Response, paragraph 11.
558 Second LoF Response, Annex 2, p. 1-2.
559 Second LoF Response, Annex 2, p.4.
560 Second LoF Response, paragraphs 38, 58-60 and Annex 3, p. 7.
561 SO Response, paragraph 56 and Annex 4 to SO Response.
562 Google's submission of 11 October 2017, Annex 2, page 4.
563 SO Response, paragraphs 228-229; Google's submission of 11 October 2017, paragraphs 41-42; Second LoF Response, paragraph 7 third bullet and paragraphs 26-27.
564 Second LoF Response, paragraph 20.

Partners, that Yahoo failed to access a significant part of the EEA-wide market for online search advertising intermediation.[565]

(393) As to (1), Google's criticisms of the Commission's calculations in Table 13 and Table 14 based on the gross revenues generated by Google in the EEA from All Sites Direct Partners are unfounded:

(1) Google has neither provided any justification for its claim that the data it provided regarding the EEA-wide market for online search advertising intermediation is unreliable, nor proposed any alternative method of calculation;

(2) The Commission properly takes into account the revenues associated with the entire group of an All Sites Direct Partner, even though only particular companies within those groups entered into GSAs;

(3) Google was only able to provide data regarding the revenues associated with the entire group of an All Sites Direct Partner because, in its own words, it "*has no internal systems for matching the partner names listed in this data with the legal entities which are signatories to its AFS Direct Partner agreements (GSAs)*";[566]

(4) Regarding [redacted], the revenues taken into account by the Commission are only the revenues of [redacted] because that company was the only one within the [redacted] that entered into a GSA containing the Exclusivity Clause;[567]

(5) Regarding [redacted], the revenues taken into account by the Commission are only the revenues of [redacted] and [redacted] because those companies were the only ones within the [redacted] group that entered into GSAs containing the Exclusivity Clause.[568] Furthermore, as explained in footnote 521, these revenues are conservative and favourable to Google.

(394) Moreover, and in any event, the Exclusivity Clause in GSAs with All Sites Direct Partners prevented access by competing providers of online search advertising intermediation to a significant part of the EEA-wide market for online search advertising intermediation, even if one takes only into account the largest three All Sites Direct Partners: [redacted], [redacted] and [redacted] (see recital (382)).

(395) As to (2), it is irrelevant that considerable revenues generated in the EEA from online search advertising intermediation remained available to competing providers of online search advertising intermediation services. The gross revenues generated by Google in the EEA from All Sites Direct Partners represented a significant

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565 SO Response, paragraphs 27, 232; Second LoF Response, paragraph 20.

566 Google's reply to the request for information of 27 April 2017.

567 GSA signed by [redacted] with effective date 15 December 2004, running from 17 December 2004 to 31 December 2009), Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1; [redacted]'s reply to the RFI of 24 February 2017, Q1; [redacted]'s reply to the RFI of 24 February 2017, Q1 and Q3; [redacted]'s reply to the RFI of 24 February 2017, Q3; [redacted]'s reply to the RFI of 24 February 2017, Q3; [redacted]'s reply to the RFI of 24 February 2017, Q3.

568 GSA signed by [redacted] with effective date 2 October 2007, running from 2 October 2007 to 30 September 2009; GSA signed by [redacted] with effective date 2 October 2007, running from 2 October 2007 to 30 September 2009.

percentage of the total value of the EEA-wide market for online search advertising intermediation (see recitals (381) to (383)).

(396) As to (3), it is irrelevant whether competing providers of online search advertising intermediation services may have entered into agreements containing exclusive supply obligations. The special responsibility imposed on dominant undertakings by Article 102 of the Treaty means that Google cannot enter into exclusive supply obligations even though such obligations may be unobjectionable when entered into by competing providers of online search advertising intermediation services.[569]

(397) As to (4), the fact that the Exclusivity Clause was included in a bespoke GSA with an All Sites Direct Partner does not alter the fact that the clause constituted an exclusive supply obligation and that the Commission therefore properly includes the gross revenues generated by Google in the EEA from that clause in its calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners. Moreover all GSAs and not just those with All Sites Direct Partners were bespoke agreements.

(398) As to (5), the period during which the Exclusivity Clause required All Sites Direct Partners to source all or most of their search ads requirements from Google was long, between 1 to more than 10 years (see recital (388)). Google and All Sites Direct Partners also extended many of their GSAs, sometimes several times, without substantial modifications. [570]

(399) Moreover, the right of an All Sites Direct Partner to terminate its GSA in no way prevented the actual application of the Exclusivity Clause until such time as an All Sites Direct Partner exercised that right.[571]

(400) As to (6), the stability of Google's share of the EEA-wide market for online search advertising intermediation (see Section 7.3.1) and the duration of the GSAs with All Sites Direct Partners (see Table 15) contradicts Google's claim that competition was dynamic.

(401) As to (7), Yahoo reported substantial yearly capital investments in its general search services between 2006 and 2015.

Table 17: Yahoo's yearly worldwide capital investments (in millions of USD) in its general search service between 2006 and 2016

2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
689	602	675	434	714	593	506	338	396	543	11[572]

569 Case 322/81 *Nederlandsche Banden-Industrie Michelin v Commission*, EU:C:1983:313, paragraph 57; Case T-111/96 *ITT Promedia v Commission*, EU:T:1998:183, paragraph 139.

570 See for example: (i) GSA signed by [redacted] with effective date 16 May 2003, running from 16 May 2003 to 31 December 2007 (duration of four years, seven months – including one extension); (ii) GSA signed by [redacted] with effective date 30 September 2003, running from 30 September 2003 to 28 February 2007 (duration of three years, five months – including three extensions); and (iii) GSA signed by [redacted] with effective date 1 August 2007, running from 1 August 2007 to 31 August 2010 (duration of three years, one month – including one extension).

571 Case T-65/89 *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 73.

Source: Yahoo![573]

(402) The level of those investments was similar to that of Google as a 2006 internal Google document confirms:

(1) *"Yahoo! is profitable and investing heavily […] Yahoo! and Google have the highest profitability related to the fast growing advertising market […] Yahoo! and Google are out-investing others, and Yahoo! leads in total R&D expenses";*

(2) *"Today more than 40% of Yahoo! revenues are from search monetization", "Yahoo! acquired Overture in 2003 and in 2005 for their search capabilities and launched Yahoo! Search", "Most of Yahoo's current vacancies (535/668) are in engineering and 40% of those are in "search"" and "One of the three focus areas of Yahoo! Labs is search"; and*

(3) *"Merged MSN and Yahoo! will have a big lead in investments […] Combining Microsoft's investments capabilities with Yahoo!'s R&D will enable the combined entity to beat Google's R&D […] MSN and Yahoo! are focusing their engineering efforts on search and ad platform – a combination of these efforts could lead to a strong competitive position vs. Google"*[574]

8.3.4.3. The Exclusivity Clause in GSAs with All Sites Direct Partners may have deterred innovation

(403) The Commission concludes that the Exclusivity Clause in GSAs with All Sites Direct Partners may have deterred innovation.

(404) First, the Exclusivity Clause in GSAs with All Sites Direct Partners deterred those Direct Partners from establishing parallel partnerships and sourcing search ads from competing providers of online search advertising intermediation services. In turn those providers could have served or developed different search ads, at least for certain queries.

(405) Second, the Exclusivity Clause in GSAs with All Sites Direct Partners deterred competing providers of online search advertising intermediation services from investing in the development of innovative services, the improvement of the relevance of their existing services and the creation of new types of services. Due to their high query volumes (see recital (390)), access to All Sites Direct Partners is of particular importance for competing providers of online search advertising intermediation services to grow their scale, attract advertisers and compete against

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572 Yahoo explained the decrease in capital expenditure between 2015 and 2016 as follows: "Capital expenditures for the year ended December 31, 2016 were reduced by net cash proceeds of $246 million received from the sale of land in Santa Clara, California." – see https://www.sec.gov/Archives/edgar/data/1011006/000119312517065791/d293630d10k htm downloaded and printed on 30 June 2017.

573 Yahoo's form 10-K filing available on https://investor.yahoo net/sec.cfm?DocType=Annual&Year=&FormatFilter=, downloaded and printed on 24 May 2017; Yahoo! Form 10K for 2013 https://www.sec.gov/Archives/edgar/data/1011006/000119312514077321/d636872d10k htm downloaded and printed on 30 June 2017 and Yahoo! Form 10K for 2016 https://www.sec.gov/Archives/edgar/data/1011006/000119312517065791/d293630d10k htm downloaded and printed on 30 June 2017.

574 Internal document [redacted]-000012712, discussed in the deposition of [redacted] before the FTC of 17 May 2012, under the reference CX00121, pages 2-8.

Google. For example, a research study published in 2013 by Google's employees states that "*Predicting ad click-through rates (CTR) is a massive-scale learning problem that is central to the multi-billion dollar online advertising industry* […] *It is necessary to make predictions many billions of times per day and to quickly update the model as new clicks and non-clicks are observed. Of course, this data rate means that training data sets are enormous*."[575]

(406) Third, the Exclusivity Clause in GSAs with All Sites Direct Partners deprived competing providers of online search advertising intermediation services– and their investors – of a return on investment that would have been proportionate to the success of their online search advertising intermediation services.

8.3.4.4. The Exclusivity Clause in GSAs with All Sites Direct Partners helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA except Portugal

(407) The Commission concludes that the Exclusivity Clause in GSAs with All Sites Direct Partners helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA, except Portugal.

(408) First, the Exclusivity Clause in GSAs with All Sites Direct Partners deprived competing online search advertising providers of data and revenues from All Sites Direct Partners that they could have used to improve their online search advertising services. Data and revenues from All Sites Direct Partners are particularly important for competing online search advertising providers for three reasons:

(1) Google displays only search ads drawn from AdWords in its own products and services, in particular in Google Search;

(2) the data and revenues that online search advertising providers generate from the display of search ads in their own general search services is limited compared to the data and revenues that Google generates from the display of its own search ads in Google Search; and

(3) due to the high query volumes that they generate, All Sites Direct Partners are of particular importance for competing providers of online search advertising services to grow their scale, attract advertisers and compete against Google (see recital (390)).

(409) The internal Google documents describing the importance of data (see recital (246)) and Google's competitive advantages resulting from scale and network effects (see recitals (251) and (296)) confirm the value of data and revenues for online search advertising providers.

(410) Second, the attractiveness of the online search advertising side of a general search engine platform also influences the general search service side 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; revenue which can be reinvested in the maintenance and improvement of the general search service so as to

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575 See "Ad Click Prediction: a view from the Trenches", by H. Brendan McMahan, Gary Holt, D. Sculley, Michael Young, Dietmar Ebner, Julian Grady, Lan Nie, Todd Phillips, Eugene Davydov, Daniel Golovin, Sharat Chikkerur, Dan Liu, Martin Wattenberg, Arnar Mar Hrafnkelsson, Tom Boulos, Jeremy Kubica - Google, Inc., available at http://research.google.com/pubs/pub41159 html, downloaded and printed on 19 July 2017.

attract more users. Google derives substantial revenue from its online search advertisement business: in 2015, it generated EUR [10-20 billion] in revenues from online search advertising in the EEA.[576]

(411) The following evidence confirms the link between online search advertising and online search advertising intermediation:

(1) In his deposition of 11 July 2012 before the FTC, [redacted] stated the following in response to a question inquiring about the strategic considerations behind the conclusion of deals with publishers "*So advertisers who sold games would want to be able to reach that audience effectively. If we brought that customer into the Google ad network, then those advertisers would also be advertising on Google.com and other properties within the network. So that would be a strategic consideration where we seek a publisher in part because of the advertisers that the publisher could bring with it*".[577]

(2) An internal Google presentation of 2006 entitled "Yahoo! MSFT merger",[578] discusses the potential synergies that it considered would result from a merger between Yahoo and Microsoft. Among those synergies, the document lists: "*Exploit search revenue synergies – higher cost per keyword, and increased scale lead to a multiplicative increase in revenue*", "*Scale enables MD to "catch up" to Google" and build out a leading advertising platform and consumer ecosystem*", "*Scale enables MS to compete on cost of operations (e.g., storage and in technology investments (e.g., search, ad platform)*", "*A greater share of search volume leads to a multiplicative increase in search advertising revenue*" and "*The greater search scale achieved by combining MSN/Yahoo! is critical to achieving favourable economics in search*".

(412) The Commission's conclusion that the Exclusivity Clause in GSAs with All Sites Direct Partners helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA, except Portugal, is not affected by Google's claims that:

(1) by defining separate relevant markets for online search advertising and online search advertising intermediation, the Commission acknowledges that the competitive conditions in these two markets are different and there is no link between them;[579] and

(2) neither the data nor the revenues that competing providers of online search advertising services could have generated from All Sites Direct Partners would have been particularly important to compete in the national markets for online search advertising in the EEA.[580] Competing online search advertising providers could not have made use of data derived from serving search ads to All Sites Direct Partner's to improve their services because that data would not have helped them predict CTRs for search ads displayed on their own websites. Moreover, the revenues that Google derives from online search advertising

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576 Annex 1 to Google's reply to Commission's request for information of 16 March 2016.

577 Deposition of [redacted] before the FTC of 11 July 2012, page 158.

578 Internal Google document [redacted]-000012712, discussed in the deposition of [redacted] before the FTC of 17 May 2012 under the reference CX00121, pages 5-7.

579 SO Response, paragraph 309.

580 SO Response, paragraphs 310-312.

intermediation are minimal compared to the revenues that it derives from online search advertising.

(413) As to (1), the evidence cited in recitals (291) to (292) and (410) confirms the link between online search advertising for online search advertising intermediation and the importance of the market position in the former for the latter.

(414) As to (2), internal Google documents confirm the importance for an online search advertising provider both in general of data and revenues and in particular of data and revenues derived from All Sites Direct Partners:

(1) an internal Google presentation entitled "Syndication Discussion for Engineering" of 20 December 2002, states that "*Almost half our clicks/revenue now come from Syndication* […] *Winning market share in syndication is a defining event for Google*";[581]

(2) the deposition of 9 May 2012 of [redacted], then [redacted], before the FTC, in which he indicated the following about the importance for an online search advertiser of *"ad performance data"*, such as CPC or CTR or ad depth: "*(…) ad depth which is the number of ads that return after you – you generate a query. But I'm certain I've -- I've seen reports and things over time usually by, you know, an ads stats person or an ads product manager who goes into a lot more detail…* [they] *do a lot of things in ad performance data*";[582]

(3) an internal Google document entitled "2008 AdSense Business Review", in which [redacted], then [redacted] at Google, stated that:

"Our AdSense Business continues to evolve and expand, having transitioned from an extension of the core search business serving a handful of large partners to Google's primary advertising inventory acquisition vehicle, enabling the company to scale and advertisers to target users on AFS and AFC sites from the head to the tail."[583]

"*As shown in the chart below, roughly [60-70%] of AdSense revenue comes from AFS […].*"[584]

"*Google's AFS (and by extension Web Search) partnership strategy has been guided by two objectives: 1) to provide users with web search where they find it easy and convenient to use and monetize to generate incremental advertising revenue; and 2) to extend the utility of AdWords for advertisers through increasing the breadth and depth of audience reach. To this extent, AFS has been a key inventory acquisition vehicle and has enabled our search advertising business to scale and become a valuable network. [20-30%] of*

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581 Internal Google document [redacted]-000006008, discussed in the deposition of [redacted] before the FTC of 22 June 2012 under the reference CX-179, page 2 and 4

582 Deposition of [redacted] before the FTC of 9 May 2012, pages 176-177.

583 Internal Google document [redacted]-000056769, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0083.2, page 9.

584 Internal Google document [redacted]-000056769, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0083.2, page 14.

total Google network queries, representing [600-650 million] queries per day, occur on our AFS Network."[585]

(4) An internal Google presentation of August 2007 entitled "*Strategic Review: Impact of Losing* [redacted] *and/or* [redacted]"[586] in which [redacted] and [redacted] (Google's [redacted] team) state that: "[redacted] *inventory represents significant search share gains for Yahoo! or Microsoft with the opportunity to gain torso and tail advertisers* […] *Opportunity for Y!/MSN to pick up new torso and tail advertisers;* […] *Competitor advertiser network impact – Medium* […] [redacted] *and/or* [redacted] *represent significant search traffic gains that could accelerate network effects improving monetization of competing search advertising networks*."

(5) An internal Google presentation of July 2009 entitled "[redacted] Renewal Analysis" in which [redacted], [redacted] (Google's [redacted] team), [redacted] and [redacted] (Google's [redacted] team) state that if Google were not to renew its GSA with [redacted] containing the Exclusivity Clause, this would lead to a "*material increase in scale of Microsoft's search & ads platform*" and could positively affect Microsoft's scale: "*Pros: Economies of Scale: Increase scale across search and ads platforms;* […] *Reach:* […] *Compelling advertiser offering given reach and data; Value of Data: Collect search behaviour and ad performance data to improve relevancy and targeting*".[587]

(6) An internal email exchange of February 2010 between several Google's employees ([redacted], [redacted] and [redacted]) regarding the [redacted] renewal[588] stating the following regarding the consequences for Google of not renewing its GSA with [redacted] containing the Exclusivity Clause:"*I wanted to see if there is a way to update an analysis we've done in the past where we answer the question of "Can we afford to lose the* [redacted] *deal **?* […] *** Answers questions such as, a) what is the value of the* [redacted] *partnership to Google b) what is the strategic/defensive value (preventing it from going to Microsoft/Yahoo)?*".

(415) Microsoft has also confirmed the relevance of scale as a factor determining the success of an online search advertiser:

(1) "*Absent scale, a search platform will inevitably offer less relevant results to some queries, especially tail queries. Since Google is one click away, users will return to it quickly if they find that another search engine returns less relevant results for their queries* […]. *Fewer users and fewer queries mean fewer advertisers with smaller budgets attracted to the search engine. As a result, the search engine will have lower revenues with which to innovate and to share with potential intermediation partners. In other words, the scale gap causes a monetization gap-and the monetization gap further increases the scale gap.*

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585 Internal Google document [redacted]-000056769, discussed in the deposition of [redacted] before the FTC of 2 May 2012 under the reference CX0083.2, pages 22-23.

586 Internal Google document [redacted]-000006355, slides 3, 10, 13 and 23.

587 Internal Google document [redacted]-000006354, slides 4 and 9.

588 Internal Google document [redacted]-000006353, page 2.

The search engine is pulled into a downward spiral that weakens its competitiveness to a point where it is forced to exit."[589]

(2) "[a]*dvertisers consider relative scale when determining their entry, engagement, bidding and budgets. On the publisher side of the market, the platform that generates higher revenue per search on the advertising side will attract more publishers*"[590]. Therefore, once established as the player with the highest relative scale, Google could "*attract the lion's share of the users and high-quality publishers*"[591].

8.3.4.5. The Exclusivity Clause in GSAs with All Sites Direct Partners may have harmed consumers

(416) The Commission concludes that the Exclusivity Clause in GSAs with All Sites Direct Partners may have harmed consumers.

(417) First, the Exclusivity Clause in GSAs with All Sites Direct Partners contributed to weakening the constraints on Google's pricing ability and contributed to keeping bidder density on Google's search advertising platform at a higher level (see recital (269)). This is likely to have led to higher prices for search ads paid by advertisers that, at least in part, were passed on to consumers by increasing the cost of the advertised good or services.

(418) Second, in the absence of the Exclusivity Clause in GSAs with All Sites Direct Partners, users would have had a wider choice of search ads as competing providers of online search advertising intermediation could have served or developed different search ads, at least for certain queries. Moreover, competing providers of online search advertising intermediation services could have developed a wider choice of search ads in terms of quality or range.

(419) The Commission's conclusion that the Exclusivity Clause in GSAs with All Sites Direct Partners may have harmed consumers is not affected by Google's claims that:

(1) consumers already had a wide choice of ads because a number of ad formats competed for advertising space on the websites of All Sites Direct Partners;[592] and

(2) absent the Exclusivity Clause in GSAs with All Sites Direct Partners, competing providers of online search advertising intermediation services would not have been able to provide a wider choice of search ads than Google, because those providers *"were likely to have access to the same portfolio of search ads"* as Google.[593]

(420) As to (1), even though consumers may already have a wide choice of ads, this does not alter the fact that consumers may have had an even wider choice of ads in the absence of the Exclusivity Clause in GSAs with All Sites Direct Partners.

(421) As to (2), even though the competing providers of online search advertising intermediation services in 2008 may have had access to the same portfolio of search

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589 Microsoft's complaint of 31 March 2011, pages 7-8.

590 Microsoft's submission of 11 October 2012, "Scale paper", p. 2.

591 Microsoft's submission of 11 October 2012, "Scale paper", p. 3.

592 SO Response, Annex 1, page 10.

593 SO Response, Annex 1, page 10.

ads, this does not alter the fact that those providers could have developed a wider choice of search ads in the absence of the Exclusivity Clause in GSAs with All Sites Direct Partners.

8.3.4.6. The relevance of the English Clause

(422) The Commission concludes that the English Clause (see recital (86)) exacerbated the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition.

(423) By requiring All Sites Direct Partners to inform Google before contacting competing providers of online search advertising intermediation services and to grant Google a right of first refusal to match any more competitive offer, the English Clause further deterred those Direct Partners from sourcing competing search ads.

(424) The Commission's conclusion is not affected by Google's claims that:

(1) the English Clause did not apply when a competing provider of online search advertising intermediation services tried to approach a Direct Partner;[594]

(2) Google did not enforce the English Clause in practice;[595] and

(3) the English Clause was less restrictive than other "English clauses" found by the Commission in previous decisions to restrict competition.[596]

(425) As to (1), the English Clause exacerbated the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition because of its impact on those Direct Partners, not on competing providers of online search advertising intermediation services. The scope of the English Clause was broad: All Sites Direct Partners had to inform Google before contacting competing providers of online search advertising intermediation services and to grant Google a right of first refusal to match any more competitive offer.

(426) As to (2), Google has provided no evidence that it did not enforce the English Clause in practice. Moreover, the unilateral ability of Google not to enforce the English Clause in no way prevented the actual application of that clause until such time as Google informed an All Sites Direct Partner of its intention to enforce the clause.[597]

(427) As to (3), Google has not demonstrated that the economic and legal context of the English Clauses in the previous decisions on which it relies is comparable to the English Clause in this case. Consequently, those previous decisions are irrelevant from the point of view of whether the English Clause exacerbated the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition.[598]

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594 SO Response, paragraph 237 first bullet.

595 SO Response, paragraph 237 second bullet.

596 SO Response, paragraph 237 third bullet.

597 Case T-65/89 *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 73.

598 Case T-67/01 *JCB Service v Commission*, EU:T:2004:3, paragraph 187; Case T-59/02 *Archer Daniels Midland v Commission*, EU:T:2006:272, paragraph 316; Case T-53/03 *BPB v Commission*, EU:T:2008:254, paragraph 404; Case T-26/06 *Trioplast Wittenheim v Commission*, EU:T:2010:387, paragraph 146; Case T-40/06 *Trioplast Industrier v Commission*, EU:T:2010:388, paragraph 145; Case T-378/06 *IMI and Others v Commission*, EU:T:2011:109, paragraph 42; Case T-381/06 *FRA.BO v Commission*, EU:T:2011:111, paragraph 102; Case T-448/07 *YKK and Others v Commission*, EU:T:2012:322, paragraph 151; Case T-360/09 *E.ON Ruhrgas and E.ON* v *Commission*,

8.3.4.7. Google's arguments regarding the Commission's alleged failure to consider all the circumstances relevant to the assessment of the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition

(428) Google claims that the Commission has failed to consider the following circumstances relevant to the assessment of the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition:[599]

(1) the Commission has failed to adduce evidence that the Exclusivity Clause in GSAs with All Sites Direct Partners had actual anticompetitive effects, despite the clause having been in place "*for several years in the past*".[600]

(2) the Commission has failed to consider the "counterfactual" i.e. whether absent the Exclusivity Clause in their GSAs, All Sites Direct Partners would have sourced all or most of their search ads requirements exclusively from Google;[601]

(3) the Commission has ignored the fact that the Exclusivity Clause in GSAs with All Sites Direct Partners did not foreclose as-efficient competing providers of online search advertising intermediation services;[602]

(4) the Commission has failed to adduce evidence of the existence of a strategy by Google aiming to exclude such as-efficient competitors;[603] and

(5) the Commission has failed to prove that there is a causal link between the Exclusivity Clause in GSAs with All Sites Direct Partners and any alleged effects on competition. Google has demonstrated that the Microsoft/Yahoo! JV was unable to compete successfully with Google because it failed to upgrade its ad-serving technology and had a poor quality product compared to Google.[604]

(429) Google's claims are unfounded.

(430) As to (1), as recital (344) explains, the Commission is not required to demonstrate that the Exclusivity Clause in GSAs with All Sites Direct Partners was capable of restricting competition, let alone that it had actual effects.[605]

(431) Moreover, the Commission has demonstrated the capability of the Exclusivity Clause in GSAs with All Sites Direct Partners to restrict competition (see Sections 8.3.4.1 - 8.3.4.5).

EU:T:2012:332, paragraph 261; Case T-370/09 *GDF v Commission*, EU:T:2012:333, paragraph 387; Case T-90/10 *Ferriere Nord v Commission*, EU:T:2014:1035, paragraph 374; Case T-84/13 *Samsung SDI and Others v Commission*, EU:T:2015:611, paragraph 203; Case T-92/13 *Philips v Commission*, EU:T:2015:605, paragraph 205; Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 810.

599 Google's submission of 11 October 2017, paragraph 34.

600 Google's submission of 11 October 2017, paragraph 31.

601 Google's submission of 11 October 2017, paragraph 45.

602 Google's submission of 11 October 2017, paragraphs 46 - 48.

603 Google's submission of 11 October 2017, paragraph 46.

604 SO Response, paragraphs 53, 54 and 232; Google's submission of 11 October 2017, paragraph 49.

605 Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 272.

(432) As to (2), this Decision demonstrates that, absent the Exclusivity Clause in their GSAs, All Sites Direct Partners could have sourced competing search ads, both within the same website and across different websites (see recital (367)).

(433) As to (3), the Exclusivity Clause in GSAs with All Sites Direct Partners was capable of foreclosing a hypothetical as-efficient competing provider of online search advertising intermediation services. This is because:

(1) between 2006 and 2009, the revenues generated from the Exclusivity Clause in GSAs with All Sites Direct Partners represented [30-40%] to [60-70%] of the total value of the EEA-wide market for online search advertising intermediation (see recital (382));

(2) between 2009 and 2015, the Exclusivity Clause in GSAs with All Sites Direct Partners and the Premium Placement and Minimum Google Ads Clause together represented between [50-60%] and [60-70%] of the total value of the EEA-wide market for online search advertising intermediation (see Table 25: and Table 26);

(3) between 2006 and 2016, Google held a very large share of that market (see Section 7.3.1); and

(4) that market is prone to network effects (see Section 7.3.2).

(434) Moreover, in light of the above-mentioned features of the EEA-wide market for online search advertising intermediation, it is doubtful whether a hypothetical as-efficient competing provider of online search advertising intermediation services could have emerged at any point during the period of application of the Exclusivity Clause in GSAs with All Sites Direct Partners.[606]

(435) As to (4), it is irrelevant whether Google pursued a strategy aiming to exclude hypothetical as-efficient competitors. While the Commission may take into account the possible existence of such a strategy when determining the existence of an abuse of a dominant position, the absence of such a strategy cannot exonerate an undertaking from liability for conduct that is objectively an infringement.[607]

(436) As to (5), the Commission is not required to demonstrate that the Exclusivity Clause in GSAs with All Sites Direct Partners was the sole cause of the failure of the Microsoft/Yahoo! JV to compete. Moreover, as recitals (401) and (402) explain, Yahoo! made substantial investments in an attempt to compete with Google in the EEA-wide market for online search advertising intermediation.

8.3.5. Objective justification and efficiency claims

(437) Google has essentially put forward four justifications for the Exclusivity Clause in GSAs with All Sites Direct Partners.

(438) First, the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary to support Google's customer-specific investments in Direct Partners, including attractive monetisation terms, such as minimum revenue guarantees, minimum revenue shares, individual customisation or technical support.[608]

606 Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 59.

607 Case C-549/10 P *Tomra Systems v Commission*, EU:C:2012:221, paragraph 21.

608 SO Response, paragraphs 319-326, Google's submission of 11 October 2017, paragraph 51.

(439) Second, the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary for Google to invest in running a search advertising intermediation platform, in particular in 2003 when Google lacked experience in running such a service.[609]

(440) Third, the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary to maintain and improve the quality of Google's search advertising intermediation platform by reducing the risk that Google would have displayed irrelevant search ads thereby degrading the user experience and damaging the Google brand.[610]

(441) Fourth, Google's search advertising intermediation platform has delivered procompetitive benefits in terms of higher quality experience for users, more advertising revenue, increased usefulness of search results pages for publishers and increased exposure to interested users for advertisers.[611]

(442) For the reasons set out in recitals (442) to (454) the Commission concludes that Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners was objectively justified or that the exclusionary effect produced by that clause was counterbalanced or outweighed by advantages in terms of efficiency gains that also benefit consumers.

(443) First, Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary to support its customer-specific investments in All Sites Direct Partners.

(444) In the first place, Google has submitted no evidence demonstrating that, but for the Exclusivity Clause in GSAs with All Sites Direct Partners, it would not have made customer-specific investments in Direct Partners and in running a search advertising intermediation platform. Some of the evidence submitted by Google does not even relate to Direct Partners.[612]

(445) In the second place, All Sites Direct Partners indicated that Google did not make any customer-specific investments that it would not have made in the absence of the Exclusivity Clause.[613]

(446) In the third place, if the Exclusivity Clause in GSAs with All Sites Direct Partners had been necessary to finance minimum revenue guarantees or minimum revenue shares, Google ought to have removed that clause from all GSAs with All Sites Direct Partners at the same time that it ceased to provide minimum revenue guarantees to All Sites Direct Partners in 2013 and reduced the minimum revenue it shared with All Sites Direct Partners between 2007 and 2016 (see recital (307)). Google did not do so, however.

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609 Google's reply to Question 30 of the Commission's request for information of 10 February 2010, paragraph 30.11; and Google's reply to Question 101 of the Commission's request for information of 13 July 2010, paragraph 101.6 and footnote 27.

610 SO Response, paragraphs 327-334.

611 SO Response, paragraphs 315-316.

612 For example the [confidential] was an investment made for Online Partners because Direct Partners had already all the customisation options available. See Annex 5 to the SO Response p. 2.

613 See replies of [redacted] to Question 8.9 of the Commission's request for information of 22 December 2010.

(447) Second, Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary for Google to invest in running a search advertising intermediation platform.

(448) In the first place, even assuming that in 2003 Google may have lacked experience in running a search advertising intermediation platform, this was no longer the case as of 2006, when it became dominant in the EEA-wide market for online search advertising intermediation.

(449) In the second place, in her deposition of 3 May 2012 before the FTC, [redacted], then [redacted], stated that even during the period when Google may have lacked experience in running a search advertising intermediation platform, Google did not need to require All Sites Direct Partners to source all or most of their search ads requirements from Google in order to invest in running a search advertising intermediation platform:

"… in earlier years, when we had to, you know, pay more to get into the game because we were new, you know, before there was others, and you had to get people convinced to try you, you ended up having to put more on the table to get them to try you. And then over time, you want to try to manage that down to a more reasonable level because generally, by that time, we're generating higher RPMs for them than they would have made elsewhere. They're growing. So we try to get them into a more reasonable range. So that's what it means, to manage TAC".[614]

(450) Third, Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary to maintain and improve the quality of its search advertising intermediation platform.

(451) In the first place, Google has not explained how the presence of other competing search ads on a given publisher search result page would have affected the quality of Google's own search ads and search advertising intermediation service.

(452) In the second place, Google could have achieved the aim of maintaining and improving the quality of its search advertising intermediation platform in a less restrictive manner, such as brand guidelines or content policies.

(453) In the third place, the Exclusivity Clause in GSAs with All Sites Direct Partners was unnecessary to avoid user confusion. The following All Sites Direct Partners confirmed this:

(1) [redacted] indicated that "*We do not believe that the exclusivity clauses in question are necessary to avoid user confusion. The content of an advertisement and the disclosure of the specific web site to which a user will be redirected after a click are the critical components from a user perspective. Whether those advertisements are sourced from Google, directly by an [redacted] company, or from a competing third party service is largely irrelevant from a customer's point of view*". [615]

614 Deposition of [redacted] before the FTC of 3 May 2012, page 116.

615 Reply of [redacted] to Question 8.4 of the Commission's request for information of 22 December 2010.

(2) [redacted] indicated that: "*Such a clause is not required to avoid user confusion. The text ads provided using Google are specified as Google Ads. Other ad-types (in case of text ads) are specified as well*". [616]

(3) [redacted] indicated that "*In our view, when the ads on the site are clearly identified and approved by the publisher, there are no risks that users are injured or mislead*".[617]

(454) Fourth, it is irrelevant, for the purposes of assessing the existence of an objective justification, whether Google's search advertising intermediation platform as a whole may deliver procompetitive benefits. Even if this were true, it would not alter the fact that Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners was necessary for the achievement of those benefits.

(455) Fifth, the fact that Google phased-out the Exclusivity Clause in GSAs with All Sites Direct Partners and replaced it with the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause (see Sections 8.4.5 and 8.5.5), confirms that Google could have implemented less restrictive, albeit still abusive, measures than the Exclusivity Clause in GSAs with All Sites Direct Partners.

8.3.6. Duration of the infringement

(456) The start date of the infringement was 1 January 2006. This is because as of this date: (i) Google held a dominant position in the EEA-wide market for online search advertising intermediation (Section 7.3); and (ii) the Exclusivity Clause required All Sites Direct Partners to source all or most of their search ads requirements from Google (Section 8.3.3).

(457) The end date of the infringement was 31 March 2016. This is because, on that date, the last GSA with an All Sites Direct Partner - the GSA of 1 January 2010 between Google and [redacted] – expired (see Table 15).

8.4. Abuse of Google's dominant position: Premium Placement and Minimum Google Ads Clause

8.4.1. Principles

(458) The relevant legal principles are set out in Section 8.1 above.

8.4.2. The abusive conduct

(459) For the reasons set out below, the Commission concludes that the Premium Placement and Minimum Google Ads Clause constituted an abuse of Google's dominant position in the EEA-wide market for online search advertising intermediation.

(460) First, the Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for a minimum number of Google search ads (Section 8.4.3).

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616 Reply of [redacted] to Question 9.4 of the Commission's request for information of 31 July 2015, less redacted version provided to Google on 21 September 2016.

617 Reply of [redacted] to Question 9.4 of the Commission's request for information of 31 July 2015, less redacted version provided to Google on 21 September 2016.

(461) Second, the, Premium Placement and Minimum Google Ads Clause was capable of restricting competition (Section 8.4.4).

(462) Third, Google has not demonstrated that the Premium Placement and Minimum Google Ads Clause was either objectively justified or that the exclusionary effect it produced was counterbalanced, or outweighed, by advantages in terms of efficiency gains that also benefit consumers (Section 8.4.5).

8.4.3. The Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for a minimum number of Google search ads

(463) The Commission concludes that the Premium Placement and Minimum Google Ads Clause required Direct Partners (i) to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads (Section 8.4.3.1), and (ii) to fill the most prominent space on their search results pages covered by the relevant GSA with a minimum number of Google search ads (Section 8.4.3.2).

8.4.3.1. The Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads

(464) The Commission concludes that the Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads.

(465) First, when Google served search ads on the search results pages of Direct Partners covered by the relevant GSA, the Direct Partner could not show any competing search ad either above or immediately next to the Google search ads. This meant that the Direct Partner had to show Google ads in the most prominent position, normally at the top left position, above the search results. Where a Direct Partner did not show any search ads at the top left position, above the search results,[618] it had to show Google search ads in the search advertising space that users viewed first when scrolling down the page – which for some users was the bottom of the page.

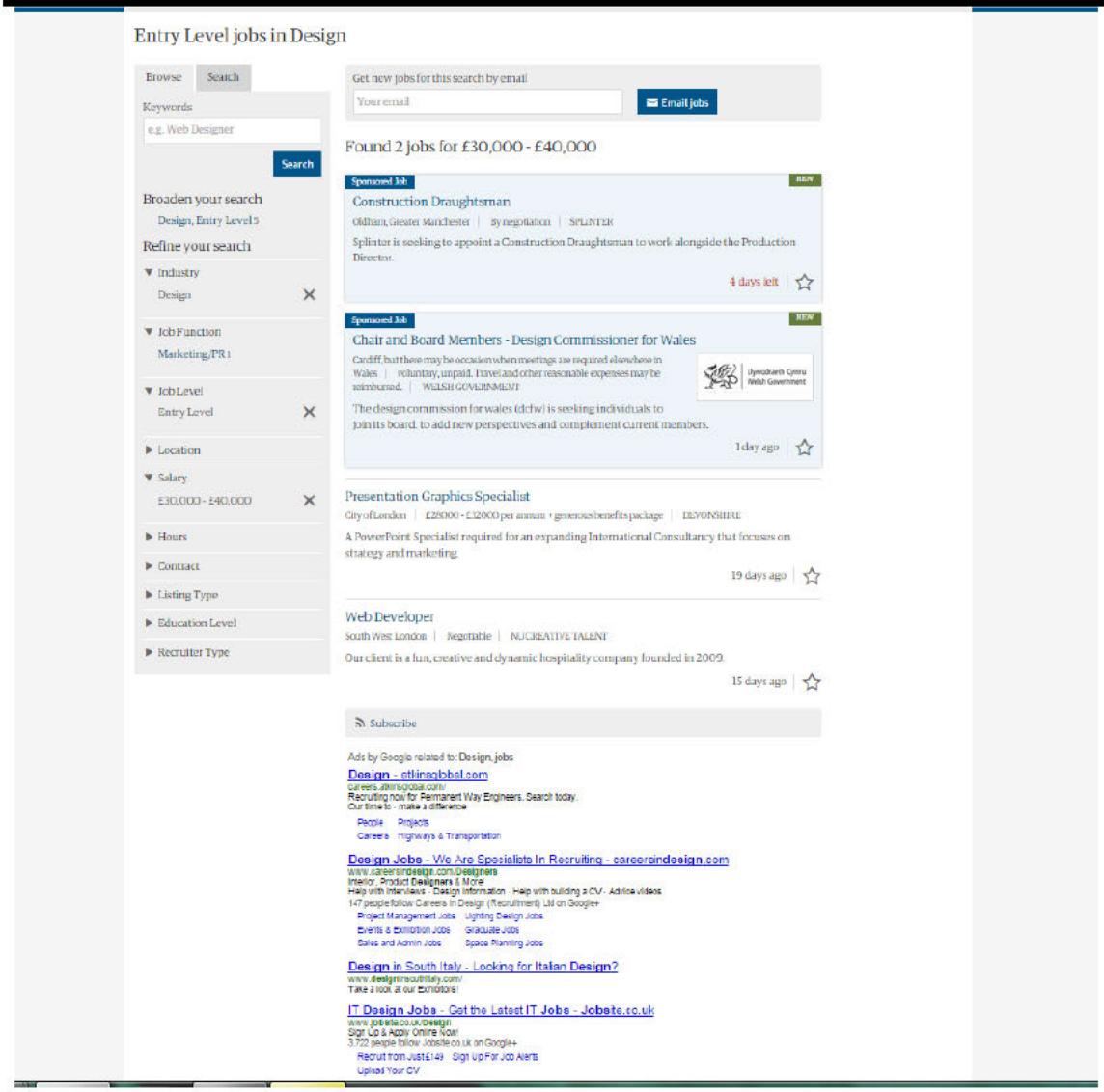
(466) This is evident from [redacted]'s reply[619], in which permissible and non-permissible set-ups are shown, as follows:

[618] Mock up attached to [redacted]'s Order Form effective from 1 January 2010 provided by [redacted] in its reply to the Commission's request for information of 22 December 2010, Schedule B, Exhibit A.

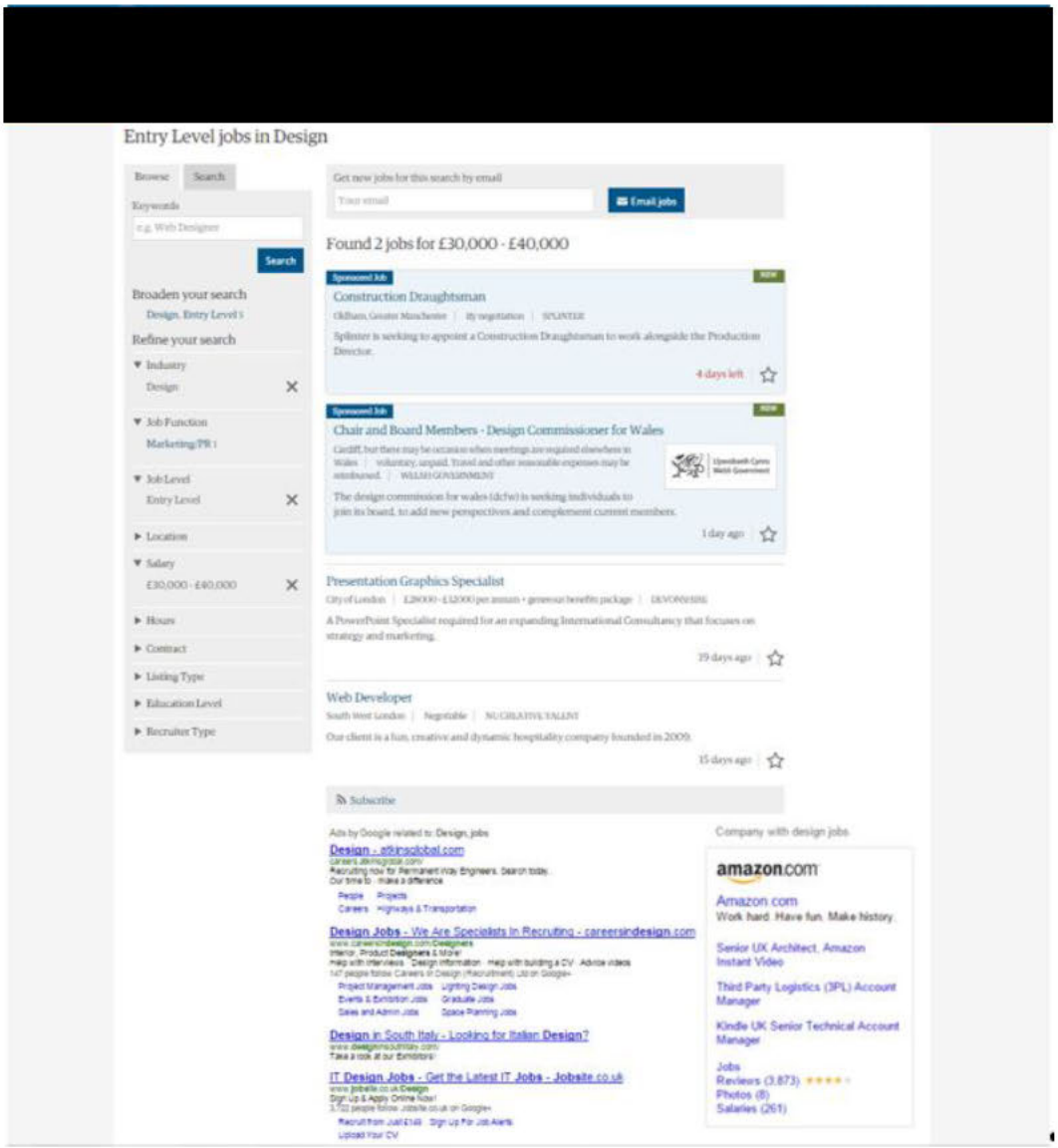
[619] See reply of [redacted] to the Commission's request for information of 31 July 2015, Annex "screenshots for Question 9". See also reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016.

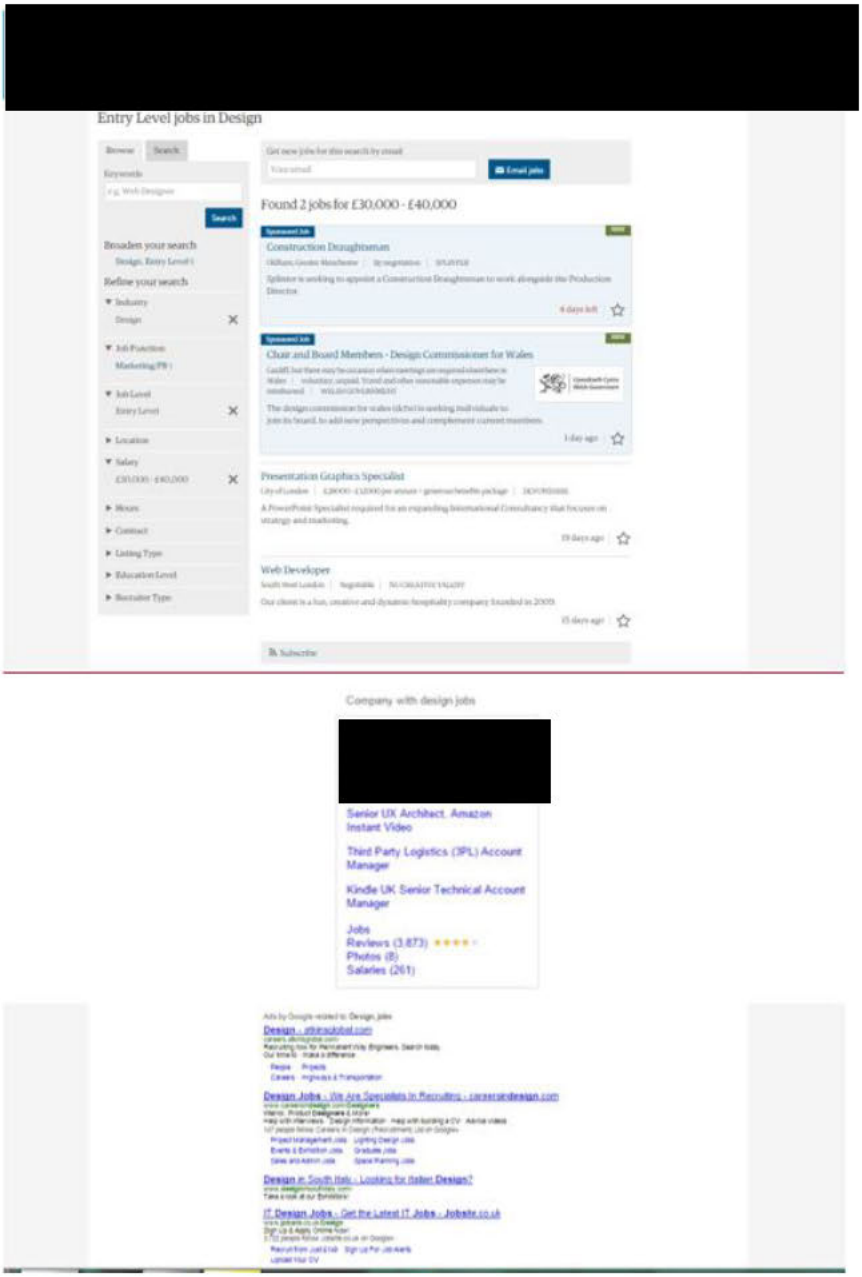
(1) permissible set up, only Google search ads placed at the bottom of the results page

[redacted]



(2) non permissible set-ups: one showing competing search ads next to Google's search ads and one showing competing search ads under the search results but just above Google search ads:





(467) Second, Google itself referred to the Premium Placement and Minimum Google Ads Clause as "*our [Google's] relaxed exclusivity*".[620]

(468) Third, Google included the Premium Placement and Minimum Google Ads Clause in the "Exclusivity" sections of certain GSAs with Direct Partners:

(1) In the [redacted] agreement of 1 October 2009, the Premium Placement and Minimum Google Ads Clause was in clause 6.2.b under section 6, entitled "Exclusivity";

620 Reply of [redacted] to the Commission's request for information of 30 October 2015, Annex "[redacted]", redline version of the GSA contract.

(2) In the [redacted] agreement of 1 January 2009, the Premium Placement and Minimum Google Ads Clause was in clause 6.2.b under section 6, entitled "Exclusivity";

(3) In the [redacted] agreement of 1 January 2010, the Premium Placement and Minimum Google Ads Clause was in clause 7.2.b under section 7, entitled "Exclusivity".

(469) Fourth, Google provided the following reply to a Direct Partner that sought clarification regarding the scope of the Premium Placement and Minimum Google Ads Clause:

"[redacted]"[622]

(470) Google also provided the following reply to [redacted] that had sought to amend the scope of the Premium Placement and Minimum Google Ads Clause so that it could display competing search ads above Google search ads: "*This is a clause that we cannot amend in any way, and there are no exceptions I am afraid. The provision is meant, to prevent "co-mingling" of ads, so allowing any 3rd party ads above (whether directly or on some other part of the page) goes against that objective.*"[623]

(471) Fifth, the space above the search results on a Direct Partner's search results page is the most profitable space for search ads. The following evidence confirms this.

(472) In the first place, data submitted by Google for the years 2011-2015[624] indicates that the CTR on search ads shown at the top of a search results page is consistently higher than the CTR on ads shown elsewhere on the page. More specifically: (i) search ads shown at the top of a search results page have significantly higher CTR than those shown on the right hand side ("RHS") or at the bottom of a search results page; and (ii) with limited exceptions, the higher the display of a search ad at the top of a search results page, the greater the CTR. Table 18 to Table 22, illustrate this.

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621 [redacted] is a company active in supplying contextual advertising.

622 See reply of [redacted] to the Commission's request for information to publishers of 31 July 2015, email attached as Annex 3, email from Google to [redacted] dated 21 December 2010, Commission's own translation from [redacted].

623 See submission of [redacted] to the Commission on 23 June 2016, attached email from Google to [redacted] dated 3 April 2014, title "[redacted]".

624 Annex 6 to Google's reply to the Commission's request for information of 16 March 2016.

Table 18: Impressions, clicks and CTR in 2011

Search ad position and rank	Impressions	Clicks	CTR (%)
Top			
1	310-320 million	17-18 million	5,5-6
2	200-210 million	7-8 million	3,5-4
3	120-130 million	4-5 million	3,5-4
4	50-60 million	2-3 million	3-3,5
5	40-50 million	1-2 million	2,5-3
6	20-30 million	600-650 thousand	2-2,5
7	10-20 million	400-450 thousand	2-2,5
8	5-10 million	100-150 thousand	1,5-2
9	0-5 million	50-60 thousand	1-1,5
10	0-5 million	40-50 thousand	1-1,5
Right Hand Side			
1	1.180-1.190 million	12-13 million	1-1,5
2	950-960 million	6-7 million	0,5-1
3	800-810 million	4-5 million	0,5-1
4	500-510 million	2-3 million	0-0,5
5	380-390 million	1-2 million	0-0,5
6	150-160 million	450-500 thousand	0-0,5
7	90-100 million	350-4000 thousand	0-0,5
8	70-80 million	200-250 thousand	0-0,5
9	30-40 million	100-150 thousand	0-0,5
10	30-40 million	80-90 thousand	0-0,5
11	20-30 million	40-50 thousand	0-0,5
12	10-20 million	20-30 thousand	0-0,5

13	0-5 million	0-10 thousand	0-0,5
14	0-5 million	0-10 thousand	0-0,5
15	0-5 million	0-10 thousand	0-0,5
16	0-5 million	0-10 thousand	0-0,5
17	0-5 million	0-10 thousand	0-0,5
18	0-5 million	0-10 thousand	0-0,5
Bottom			
N/A[625]			

Table 19: Impressions, clicks and CTR in 2012

Search ad position and rank	Impressions	Clicks	CTR (%)
Top			
1	630-640 million	31-32 million	4,5-5
2	390-400 million	13-14 million	3,5-4
3	180-190 million	8-9 million	4,5-5
4	80-90 million	3-4 million	3,5-4
5	40-50 million	1-2 million	2,5-3
6	30-40 million	650-600 thousand	2-2,5
7	10-20 million	300-350 thousand	1,5-2
8	0-5 million	50-60 thousand	1,5-2
9	0-5 million	20-30 thousand	1-1,5
10	0-5 million	10-20 thousand	1-1,5
Right Hand Side			
1	1.200-1.210 million	6-7 million	0,5-1

625 In its reply to the Commission's request for information of 2 February 2016, Annex 5, Google stated that it was unable to provide data for the bottom positions in 2011.

2	1.020-1.030 million	3-4 million	0-0,5
3	890-900 million	2-3 million	0-0,5
4	640-650 million	1-2 million	0-0,5
5	520-530 million	800-850 thousand	0-0,5
6	110-120 million	250-300 thousand	0-0,5
7	70-80 million	200-250 thousand	0-0,5
8	40-50 million	80-90 thousand	0-0,5
9	20-30 million	40-50 thousand	0-0,5
10	20-30 million	30-40 thousand	0-0,5
11	20-30 million	10-20 thousand	0-0,5
12	10-20 million	10-20 thousand	0-0,5
13	0-5 million	0-10 thousand	0-0,5
14	0-5 million	0-10 thousand	0-0,5
15	0-5 million	0-10 thousand	0-0,5
Bottom			
1	0-5 million	50-60 thousand	1,5-2
2	0-5 million	20-30 thousand	1,5-2
3	0-5 million	10-20 thousand	1,5-2

Table 20: Impressions, clicks and CTR in 2013

Search ad position and rank	Impressions	Clicks	CTR (%)
Top			
1	310-320 million	24-25 million	7,5-8
2	220-230 million	12-13 million	5-5,5
3	150-160 million	7-8 million	5-5,5

4	100-110 million	4-5 million	4,5-5
5	40-50 million	1-2 million	3,5-4
6	20-30 million	700-750 thousand	2,5-3
7	20-30 million	550-600 thousand	2,5-3
8	0-5 million	30-40 thousand	2,5-3
9	0-5 million	0-10 thousand	1,5-2
Right Hand Side			
1	1.220-1.1230 million	7-8 million	0,5-1
2	1.030-1.040 million	4-5 million	0-0,5
3	880-890 million	3-4 million	0-0,5
4	630-640 million	2-3 million	0-0,5
5	460-470 million	800-850 thousand	0-0,5
6	230-240 million	250-300 thousand	0-0,5
7	180-190 million	200-250 thousand	0-0,5
8	40-50 million	90-100 thousand	0-0,5
9	30-40 million	40-50 thousand	0-0,5
10	30-40 million	40-50 thousand	0-0,5
11	20-30 million	10-20 thousand	0-0,5
12	20-30 million	10-20 thousand	0-0,5
13	0-5 million	0-10 thousand	0-0,5
14	0-5 million	0-10 thousand	0-0,5
15	0-5 million	0-10 thousand	0-0,5
16	0-5 million	0-10 thousand	0-0,5
17	0-5 million	0-10 thousand	0-0,5
18	0-5 million	0-10 thousand	0-0,5
19	0-5 million	0-10 thousand	0-0,5

Bottom			
1	20-30 million	400-450 thousand	1-1,5
2	20-30 million	250-300 thousan	1-1,5
3	10-20 million	200-250 thousand	1-1,5

Table 21: Impressions, clicks and CTR in 2014

Search ad position and rank	Impressions	Clicks	CTR (%)
Top			
1	260-270 million	15-16 million	5,5-6
2	160-170 million	7-8 million	4-4,5
3	100-110 million	4-5 million	3,5-4
4	70-80 million	2-3 million	3,5-4
5	20-30 million	1-2 million	3,5-4
6	10-20 million	450-500 thousand	3-3,5
7	10-20 million	300-350 thousand	2,5-3
8	0-5 million	30-40 thousand	2,5-3
9	0-5 million	0-10 thousand	1-1,5
10	0-5 million	0-10 thousand	1-1,5
Right Hand Side			
1	1.070-1.080 million	4-5 million	0-0,5
2	900-910 million	2-3 million	0-0,5
3	780-790 million	1-2 million	0-0,5
4	540-550 million	1-2 million	0-0,5
5	310-320 million	550-600 thousand	0-0,5
6	120-130 million	200-250 thousand	0-0,5
7	80-90 million	90-100 thousand	0-0,5
8	20-30 million	30-40 thousand	0-0,5
9	10-20 million	20-30 thousand	0-0,5
10	10-20 million	10-20 thousand	0-0,5
11	5-10 million	0-10 thousand	0-0,5
12	5-10 million	0-10 thousand	0-0,5

13	0-5 million	0-10 thousand	0-0,5
14	0-5 million	0-10 thousand	0-0,5
15	0-5 million	0-10 thousand	0-0,5
16	0-5 million	0-10 thousand	0-0,5
17	0-5 million	0-10 thousand	0-0,5
18	0-5 million	0-10 thousand	0-0,5
Bottom			
1	50-60 million	1-2 million	1,5-2
2	40-50 million	750-800 thousand	1,5-2
3	30-40 million	650-700 thousand	1,5-2

Table 22: Impressions, clicks and CTR 2015

Search ad position and rank	Impressions	Clicks	CTR (%)
Top			
1	230-240 million	13-14 million	5-5,5
2	130-140 million	5-6 million	4-4,5
3	80-90 million	3-4 million	3,5-4
4	30-40 million	1-2 million	4,5-5
5	10-20 million	600-650 thousand	3,5-4
6	5-10 million	250-300 thousand	3-3,5
7	5-10 million	200-250 thousand	2,5-3
8	0-5 million	0-10 thousand	3-3,5
Right Hand Side			
1	1.140-1.150 million	3-4 million	0-0,5
2	890-900 million	2-3 million	0-0,5
3	760-770 million	1-2 million	0-0,5
4	550-560 million	900-950 thousand	0-0,5
5	320-330 million	500-550 thousand	0-0,5
6	150-160 million	150-200 thousand	0-0,5
7	90-100 million	70-80 thousand	0-0,5
8	30-40 million	30-40 thousand	0-0,5
9	20-30 million	20-30 thousand	0-0,5
10	10-20 million	10-20 thousand	0-0,5

11	5-10 million	0-10 thousand	0-0,5
12	5-10 million	0-10 thousand	0-0,5
13	0-5 million	0-10 thousand	0-0,5
14	0-5 million	0-10 thousand	0-0,5
15	0-5 million	0-10 thousand	0-0,5
16	0-5 million	0-10 thousand	0-0,5
17	0-5 million	0-10 thousand	0-0,5
18	0-5 million	0-10 thousand	0-0,5
19	0-5 million	0-10 thousand	0-0,5
20	0-5 million	0-10 thousand	0-0,5
21	0-5 million	0-10 thousand	0-0,5
22	0-5 million	0-10 thousand	0-0,5
23	0-5 million	0-10 thousand	0-0,5
24	0-5 million	0-10 thousand	0-0,5
Bottom			
1	60-70 million	1-2 million	2,5-3
2	50-60 million	1-2 million	2-2,5
3	40-50 million	1-2 million	2-2,5

Source: Google[626]

(473) In the second place, an internal Google document entitled "*Overview of Click-through rates for key Google partners*" stated that "*The better the placement the greater the number of clicks per ad impressions. Optimal placement is above the fold and before any other content of competing ad units.*"[627]

(474) In the third place, as Google stated on its own website, "*Ads that appear above the search results are more visible to users and tend to receive more clicks than ads that appear along the right side of the search result page*."[628]

626 Annex 6 to Google's reply to the Commission's request for information of 16 March 2016

627 Internal Google document [redacted]-000019099, slide 3.

628 See https://www.google.co.uk/ads/innovations/topimpressions html, downloaded and printed on 12 April 2016.

(475) In the fourth place, the websites of competing search advertising providers contain similar statements:

(1) Bing's search ads help page explained that "*There's nothing wrong with appearing on the sidebar, but most advertisers strive to get one of those coveted mainline spots. For suggestions on how to improve your ad position, see Get my ad to the top of the search results page*"[629];

(2) Yandex's search ads help page explained that *"The premium placement block is located above the search results. It may contain up to three ads. Ads displayed in this block generate the highest number of clicks."*[630]

(476) In the fifth place, Direct Partners have made similar statements:

(1) [redacted] indicated that "*[T]he area reserved by Google is by far the most attractive placement area for advertisements and the effect of ads below the dotted line* [i.e. where competing ads could potentially be placed] *is limited*";[631]

(2) [redacted] indicated that "[redacted]";[632]

(3) [redacted] indicated that it "*does not know which part of the SRP* [Search Results Page] *is most profitable because its partner (Google) does not break out revenue by placement location. Based on* [redacted]*'s experience with its* [redacted] *product, ads displayed at the top of the page generate the majority of the returns* [>90%]";[633]

(4) [redacted] indicated that "*The most profitable part of the SRP is the top of the SRP above the organic search results (e.g.* [redacted]*, currently shows five ad units in that part of the SRP)*";[634]

(5) [redacted] indicated that "[translated from [redacted]] [redacted]";[635]

(6) [redacted] indicated that "*Everything above the fold and on the top of page is the most profitable part of SRP, because: (i) it generates the majority of clicks and the higher revenues, (ii) ads are ranked by decreasing CPC, from top to bottom. The more the ad spaces cover the size of displayed page, the more revenue it generates*";[636]

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629 See http://help.bingads microsoft.com/, downloaded and printed on 12 April 2016.

630 See https://yandex.com/support/direct/general/positions.xml, downloaded and printed on 12 April 2016.

631 Reply of e.g. [redacted] to Question 8.1 of the Commission's request for information of 22 December 2010 and attached Schedule D.

632 Reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016.

633 Reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016.

634 Reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016.

635 Reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016, Commission's own translation from [redacted].

636 Reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016.

(7) [redacted] indicated that the best position for a search ad is "*The very first sponsored ad position at the head of the page of the SRP*";[637]

(8) [redacted] indicated that "[redacted]";[638]

(9) [redacted] indicated that "[redacted]";[639]

(10) [redacted] indicated that "[redacted]";[640]

(11) [redacted] indicated that "[redacted]";[641]

(12) [redacted] indicated that "*The highest revenue is generated with the ad block above the organic search results. Less revenue will be generated when the ad block is placed aside the organic search results, for example, on the right side beside the organic search results*";[642]

(13) [redacted] indicated that "[redacted]";[643]

(14) [redacted] indicated that "[redacted]";[644]

(15) [redacted] indicated that "*Online search advertisements that appear at the top of the results page generally generate higher revenues*";[645] and

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637 Reply of [redacted] to Question 15 of the Commission's request for information to publishers of 18 March 2016.

638 Reply of [redacted] to Question 1 of the Commission's request for information to SEMs of 18 April 2016.

639 Reply of [redacted] to Question 1 of the Commission's request for information to SEMs of 18 April 2016. See also the [redacted] answer to QuestionS 3 of the Commission's request for information to SEMs of 18 April 2016.

640 Reply of [redacted] to Question 1 of the Commission's request for information to SEMs of 18 April 2016. See also the reply of [redacted] to Question 3 and 8 of the Commission's request for information to SEMs of 18 April 2016.

641 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

642 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

643 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

644 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

(16) [redacted] indicated that "*we know based on experience from our own search results that highest revenue is achieved at the Top of the page position because there is a higher CTR (Click through rate)*".[646]

(477) Sixth, the remaining space on a Direct Partner's search results page for competing search ads was less prominent and thus less profitable. As [redacted] indicated, "[redacted]".[647]

(478) The Commission's conclusion that the Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads is not affected by Google's claims that:

(1) "*Direct Partners were not in fact required to display Google ads at the top of the page*";[648]

(2) "*even when Direct Partners showed text-based search ads at the top of the page, this position was not all "reserved" for Google*". There remained space above the search results for more than three wide format search ads on desktop and one search ad on mobile devices.[649] To support its claim, Google submits screenshots from the search results pages of a Direct Partner, [redacted];

(3) Google and Direct Partners generally interpreted the requirement that Direct Partners cannot display any competing search ad "directly adjacent" to Google search ads as only preventing Direct Partners from displaying competing search ads next to (horizontally), but not immediately below (vertically), Google search ads.[650] To support its claim, Google refers to [redacted]'s interpretation of the wording of its GSA;

(4) two Direct Partners ([redacted] and [redacted]) provided letters to Google indicating that, absent the Premium Placement and Minimum Google Ads Clause, they would still have displayed only Google search ads in the most prominent space on their search results pages;[651]

(5) the Commission's calculations in Table 18 to Table 22 are unreliable because: (i) they are based on "*aggregate and average data from a multitude of different Direct Partners, page layouts and strategies*"; and (ii) by aggregating different

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645 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

646 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

647 Reply of [redacted] to Question 8.5 of the Commission's request for information of 22 December 2010.

648 SO Response, paragraphs 250-251. See also SO Response, paragraph 247; Letter of Facts Response, paragraph 23; Google's submission of 11 October 2017, paragraph 64.

649 SO Response, paragraph 252 and Google's submission of 11 October 2017, paragraph 64; Second LoF Response, paragraph 10.

650 See SO Response, paragraph 253, Google's reply to the request for information of 20 December 2016, Annex 15 and Google's reply to Question 1 of the request for information of 28 March 2017.

651 SO response, paragraph 258.

devices, the data does not accurately reflect CTR on desktop and mobile devices;[652]

(6) the Commission's calculations in Table 18 to Table 22 indicate that, notwithstanding the Premium Placement and Minimum Google Ads Clause, Direct Partners could, on a given search results page, have displayed Google search ads to the right of generic search results and competing search ads below generic search results. In such a configuration, Direct Partners could have displayed competing search ads in the most prominent position on their search results pages i.e. below the generic search results;[653] and

(7) there is no link between CTR and the position of a search ad on a search results page.[654] For example, the average CTR in 2015 on search ads in the fourth position above the generic search results on a given search results page was higher than the average CTR on search ads in the second and third position above the generic search results on a given search results page.

(479) As to (1), this Decision does not establish that the Premium Placement and Minimum Google Ads Clause required Direct Partners to display Google search ads at the top of their search results pages. Rather, this Decision establishes that the Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads.

(480) As to (2), it is irrelevant whether there remained space above the search results for more than three wide format search ads on desktop devices and one search ad on mobile devices. This does not alter the fact that when Direct Partners displayed search ads above the search results, the Premium Placement and Minimum Google Ads Clause required them to source the entire block of search ads from Google because of the minimum number requirement and the obligation not to place competing search ads in a position “directly adjacent” to Google’s search ads.

(481) As to (3), Direct Partners did not generally interpret the phrase "directly adjacent" as only preventing Direct Partners from displaying competing search ads next to (horizontally) Google search ads. Rather, Direct Partners generally interpreted this phrase as also preventing the display of competing search ads immediately below (vertically) Google search ads. This is confirmed by the following.

(482) In the first place, the ordinary meaning of "adjacent",[655] coupled with the additional stipulation "directly", indicates that the requirement that Direct Partners refrain from displaying competing search ads "directly adjacent" to Google search ads was to be interpreted as preventing the display of competing ads vertically or horizontally adjacent to Google search ads.

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652 SO Response, paragraph 254.

653 SO Response, paragraph 255 and Google's submission of 11 October 2017, paragraph 64 and Second LoF Response, paragraph 10..

654 SO Response, paragraph 257.

655 The online Oxford English Dictionary defines "adjacent" as "next to or adjoining something else" https://en.oxforddictionaries.com/definition/adjacent downloaded and printed on 19 July 2017. The online Merriam Webster dictionary defines "adjacent" as "not distant", "having a common endpoint or border", "immediately preceding or following" https://www merriam-webster.com/dictionary/adjacent downloaded and printed on 19 July 2017.

(483) In the second place, the wording of the Premium Placement and Minimum Google Ads Clause in a number of GSAs indicates that the requirement that Direct Partners cannot display competing search ads "directly adjacent" to Google search ads was to be interpreted as preventing the display of competing ads "below and adjacent" Google search ads:

(a) Clause 6.2.b of the [redacted] GSA of 1 October 2009;[656]

(b) Clause 7.3.b of the [redacted] GSA of 1 August 2011;[657]

(c) Clause 7.3.b of the [redacted] GSA of 1 February 2014;[658]

(d) Clause 6.2.b of the [redacted] GSA of 1 October 2009;[659]

(e) Clause 7.3.b of the [redacted] GSA of 1 August 2011;[660]

(f) Clause 7.3.b of the [redacted] GSA of 1 February 2014;[661]

(g) Clause 7.3.b of the [redacted] GSA of 1 June 2012;[662] and

(h) Clause 7.3.b of the [redacted] GSA of 1 August 2011.[663]

(484) In the third place, Google has provided only one example of a Direct Partner, [redacted], which interpreted the Premium Placement and Minimum Google Ads Clause as not preventing from displaying competing search ads directly below the Google search ads at the top of its search results pages. [664] This is the exception to the observable trend that no other Direct Partner showed any equivalent ads directly below the Google search ads.

(485) As to (4), the probative value of the letters by [redacted] and [redacted] is limited. The context in which Google obtained these letters is unknown, the letters having not been submitted in response to a request for information but provided to Google, which subsequently annexed them to its SO Response.

(486) As to (5), the Commission's calculations in Table 18 to Table 22 are reliable:

(1) the average and aggregate data in Table 18 to Table 22 is consistent with the submissions of individual Direct Partners, according to which the space on

656 Reply of [redacted] to question 7 of the Commission's Request for Information of 20 December 2010.

657 Reply of [redacted] to question 5 of the Commission's Request for Information of 24 February 2017.

658 Reply of [redacted] to question 5 of the Commission's Request for Information of 24 February 2017.

659 Reply of [redacted] to question 7 of the Commission's Request for Information of 20 December 2010.

660 Reply of [redacted] to question 5 of the Commission's Request for Information of 24 February 2017.

661 Reply of [redacted] to question 5 of the Commission's Request for Information of 24 February 2017.

662 Reply of [redacted] to question 5 of the Commission's Request for Information of 24 February 2017.

663 Reply of [redacted] to question 5 of the Commission's Request for Information of 24 February 2017.

664 SO Response, Figure 30.

~~their~~ search results pages above the generic search results is the most profitable (see recital (476));

(2) despite being in possession of all relevant click data, Google has not provided any data indicating the contrary.

(487) As to (6), while Direct Partners could, on a given search results page, have displayed Google search ads to the right of generic search results and competing search ads below generic search results, they rarely did so. Table 18 to Table 22 indicate that, at most, Direct Partners displayed search ads at the bottom and on the right hand sides in 3.8% of the instances where Direct Partners displayed search ads on the right hand side in the years 2012-2015.[665]

(488) Moreover, the Premium Placement and Minimum Google Ads Clause prevented Direct Partners from displaying competing search ads adjacent to Google ads above the generic search results – namely, on the top right hand side adjacent to Google's, where the competing ads would have achieved a higher CTR (see recital (472)).

(489) As to (7), Google has only provided one example of ads in the fourth position above the generic search results enjoying greater average CTR in 2015 than those in the second and third positions before the generic search results. This is an exception to the observable trend that the average CTR generally increases the higher the display of a search ad at the top of a search results page.

8.4.3.2. The Premium Placement and Minimum Google Ads Clause also required Direct Partners to fill the most prominent space on their search results pages covered by the relevant GSA with a minimum number of Google search ads

(490) The Commission concludes that the Premium Placement and Minimum Google Ads Clause also required Direct Partners to fill the most prominent space on their search results pages covered by the relevant GSA by sourcing and displaying together in a block a minimum of three wide format Google search ads on desktop devices and at least one Google search ad on mobile devices.

(491) First, Direct Partners wanting to source only a limited number of search ads for their search results pages on desktop devices were obliged to source all or most of those ads from Google. For example, by requiring Direct Partners to source at least three wide format Google search ads on desktop devices and show them together in a block the Premium Placement and Minimum Google Ads Clause prevented Direct Partners from sourcing one or two search ads from Google and one or two ads from competitors.

(492) Second, the Premium Placement and Minimum Google Ads Clause required Direct Partners that wanted to source and display search ads for their search results pages on mobile devices to source all or most of their search ads requirements from Google. Even if those Direct Partners had wanted to source only one competing search ad in addition to the one Google search ad, the Premium Placement and Minimum Google

665 This is conservative and favourable to Google because, in its reply to the Commission's request for information of 2 February 2016, Annex 5, Google stated that it was unable to provide data for the bottom positions in 2011.

Ads Clause deterred them from doing so because of the limited space available for search ads on mobile devices.[666]

(493) Third, the three wide format Google search ads that the Premium Placement and Minimum Google Ads Clause required Direct Partners to source for their search results pages on desktop devices had the highest CTR compared to all other search ads displayed on that same page (see recital (465)). Table 23 further illustrates this. It shows that the average number of clicks on the three Google search ads displayed the highest at the top of a given search results page on a desktop device is consistently higher than the clicks on any other Google search ad shown on the same page, irrespective of whether the search results page shows four, five, six, seven or eight Google search ads at the top. The three Google search ads displayed at the top of a given search results page on a desktop device attract on average between [60-70%] and [170-180%] more clicks than any other Google search ad also displayed at the top of that page.

666 See, for example, Exhibit A showing mock-ups of AFS results on a mobile screen, attached to the [redacted] Order Form and GSA Agreement of 24 May 2012, attached as Annex 2 to [redacted]'s reply to the Commission's request for information of 31 July 2015.

Table 23: Number of clicks on the three Google search ads displayed at the top of a given search results page on a desktop device versus the number of clicks on other Google search ads also displayed at the top of the same search results page

Number of queries when the first search results pages ("SRPs") of Direct Partners display 3 Google search ads at the top	Total clicks and total clicks per ad on 1 of the 3 Google search ads displayed at the top of the first SRPs of Direct Partners when those SRPs display 3 Google search ads at the top	Total clicks and total clicks per ad on the 1 other Google search ad displayed at the top of the first SRPs of Direct Partners SRPs when those SRPs display 3 Google search ads at the top	Additional percentage of total clicks per ad on 3 Google search ads at the top versus total clicks per ads on other Google search ad at the top
3 088 071 106	150-200 million clicks =50-60 million clicks/ad	Not applicable	Not applicable
Number of queries when the first SRPs of Direct Partners display 4 Google search ads at the top	Total clicks and total clicks per ad on 1 of the 3 Google search ads displayed at the top of the first SRPs of Direct Partners when those SRPs display 4 Google search ads at the top	Total clicks and total clicks per ad on the 1 other Google search ad displayed at the top of the first SRPs of Direct Partners SRPs when those SRPs display 4 Google search ads at the top	Additional percentage of total clicks per ad on 3 Google search ads at the top versus total clicks per ads on other Google search ad at the top
2 456 049 971	450-500 million clicks = 150-200 million clicks/ad	90-100 million clicks = 90-100 million clicks/ad	60-70%
Number of queries when the first SRPs of Direct Partners display 5 Google search ads at the top	Total clicks and total clicks per ad on 1 of the 3 Google search ads displayed at the top of the first SRPs of Direct Partners when those SRPs display 5 Google search ads at the top	Total clicks and total clicks per ad on the 2 other Google search ads displayed at the top of the first SRPs of Direct Partners SRPs when those SRPs display 5 Google search ads at the top	Additional percentage of total clicks per ad on 3 Google search ads at the top versus total clicks per ads on other 2 Google search ads at the top
947 705 735	100-150 million clicks = 40-50 million clicks/ad	40-50 million clicks = 20-30 million clicks/ad	100-110%
Number of queries when the first SRPs of Direct Partners display 6 Google search ads at the top	Total clicks and total clicks per ad on 1 of the 3 Google search ads displayed at the top of the first SRPs of Direct Partners when those SRPs display 6 Google search ads at the top	Total clicks and total clicks per ad on the 3 other Google search ads displayed at the top of the first SRPs of Direct Partners SRPs when those SRPs display 6 Google search ads at the top	Additional percentage of total clicks per ad on 3 Google search ads at the top versus total clicks per ads on other 3 Google search ads at the top
241 896 562	40-50 million clicks = 10-20 million clicks/ad	10-20 million clicks = 0-10 million clicks/ad	160-170%

Number of queries when the first SRPs of Direct Partners display 7 Google search ads at the top	Total clicks and total clicks per ad on 1 of the 3 Google search ads displayed at the top of the first SRPs of Direct Partners when those SRPs display 7 Google search ads at the top	Total clicks and total clicks per ad on the 4 other Google search ads displayed at the top of the first SRPs of Direct Partners SRPs when those SRPs display 7 Google search ads at the top	Additional percentage of total clicks per ad on 3 Google search ads at the top versus total clicks per ads on other 4 Google search ads at the top
719 954 308	200-250 million clicks =70-80 million clicks/ad	100-150 million clicks = 30-40 million clicks/ad	130-140%
Number of queries when the first SRPs of Direct Partners display 8 Google search ads at the top	Total clicks and total clicks per ad on 1 of the 3 Google search ads displayed at the top of the first SRPs of Direct Partners when those SRPs display 8 Google search ads at the top	Total clicks and total clicks per ad on the 5 other Google search ads displayed at the top of the first SRPs of Direct Partners SRPs when those SRPs display 8 Google search ads at the top	Additional percentage of total clicks per ad on 3 Google search ads at the top versus total clicks per ads on other 5 Google search ads at the top
53 481 490	10-20 million clicks =0-10 million clicks/ad	10-20 million clicks = 0-10 million clicks/ad	170-180%

Source: Google[667]

8.4.4. Restriction of competition

(494) The Commission concludes, based on an analysis of all the relevant circumstances, that the Premium Placement and Minimum Google Ads Clause was capable of restricting competition. This is because:

(1) the Premium Placement and Minimum Google Ads Clause deterred Direct Partners from sourcing competing search ads (Section 8.4.4.1);

(2) the Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation to a significant part of the EEA-wide market for online search advertising intermediation (Section 8.4.4.2);

(3) the Premium Placement and Minimum Google Ads Clause may have deterred innovation (Section 8.4.4.3);

(4) the Premium Placement and Minimum Google Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA, except Portugal (Section 8.4.4.4); and

(5) the Premium Placement and Minimum Google Ads Clause may have harmed consumers (Section 8.4.4.5).

667 See Annex 7 to Google's reply to the Commission's request for information of 16 March 2016.

(495) In addition, the binding nature of the mock-ups until July 2014 exacerbated the capability of the Premium Placement and Minimum Google Ads Clause to restrict competition (see Section 8.4.4.6).

(496) As part of its analysis of all the relevant circumstances, the Commission has assessed and taken into account, in particular: (i) the extent of Google's dominant position in each national market for online search advertising in the EEA, except Portugal and in the EEA-wide market for online search advertising intermediation (see Section 7); (ii) the share of the EEA-wide market for online search advertising intermediation covered by the Premium Placement and Minimum Google Ads Clause (see Section 8.4.4.2) and (iii) the duration of the Premium Placement and Minimum Google Ads Clause (see recital (510)).

(497) The Commission has also considered and rejected Google's arguments regarding the Commission's alleged failure to consider all the circumstances relevant to the assessment of the capability of the Premium Placement and Minimum Google Ads Clause to restrict competition (Section 8.4.4.7).

8.4.4.1. The Premium Placement and Minimum Google Ads Clause deterred Direct Partners from sourcing competing search ads

(498) The Commission concludes that the Premium Placement and Minimum Google Ads Clause deterred Direct Partners from sourcing competing search ads. This is for the following reasons.

(499) First, the Premium Placement and Minimum Google Ads Clause prevented Direct Partners from evaluating the commercial impact of sourcing competing search ads. A number of Direct Partners have confirmed this:

(1) [redacted] indicated that its "*advertising strategy for webpages is affected with regard to the adspots for which the Google Search Advertising Service Agreement is implemented. This is mostly because we aim for the highest yield per adspot/webpage and one way to accomplish this is to have different advertisers competing with each other, resulting in the best financial mix and at the same time serving the best ad to each visitor using the most efficient technology.* […] *We are also affected because we are limited in the way we can implement text ads provided by other search providers. Finally we are limited in our possibilities to look for alternatives on mobile where Google has indicated that it will probably terminate various services on mobile in the short term (mainly Google's Websearch), but it holds on to exclusivity (default position for Google Websearch) on mobile. Hence no real comparison can be made with other intermediaries*".[668]

(2) Furthermore, "*Google has a strict policy on where AdSense for Search must be placed and thereby limits possible positions for ads from competing intermediaries*".[669]

(3) [redacted] indicated that "*With the significant growth of programmatic and Real Time Bidding (RTB), we could challenge several intermediaries, and the*

668 See reply of [redacted] to Question 9.5 of the Commission's request for information of 31 July 2015.

669 Reply of [redacted] to Question 9 of the Commission's request of information of 31 July 2015, revised non confidential version provided to Google on 22 September 2016.

highest auction would get the ad placement. Based on observed market trends, the fact of not being able to compete we lost a potential increase in turnover."[670]

(500) Second, the Premium Placement and Minimum Google Ads Clause prevented Direct Partners from deciding on different combinations and positions of the search ads they sourced on desktop devices. Regardless of how many search ads Direct Partners sourced on desktop devices, they were always obliged to source at least three wide format Google search ads and display them together in a block. This was particularly true for Direct Partners that wanted to source less than three wide format search ads on desktop devices: even if those Direct Partners wished to source only one or two wide format Google search ads and/or one or two competing search ads, they were obliged to source at least three wide format Google search ads and show them together in a block.

(501) The Commission's conclusion that the Premium Placement and Minimum Google Ads Clause deterred Direct Partners from sourcing competing search ads is not affected by Google's claims that:

(1) absent the Premium Placement and Minimum Google Ads Clause, Direct Partners would have had no commercial interest in sourcing search ads from competing providers of online search advertising intermediation services, due to the superior quality of Google's search ads. [671] To support its claim, Google refers to a submission by [redacted][672] and to a study prepared for it assessing the multi-homing by Online Partners between online search advertising providers;[673]

(2) absent the Premium Placement and Minimum Google Ads Clause, "*it is reasonable to suppose*"[674] that Direct Partners would have requested many more Google search ads than the minimum required by the clause.[675] To support its claim, Google refers to a letter provided to it by [redacted];

(3) the Commission has failed to consider that the Premium Placement and Minimum Google Ads Clause only applied to individual websites displaying search ads that Direct Partners chose to include in their GSAs;[676] and

(4) [redacted], [redacted] and [redacted] have confirmed to the Commission that, between 2009 and 2015, they sourced search ads from competing providers of online search advertising intermediation services. [677]

(502) As to (1), absent the Premium Placement and Minimum Google Ads Clause, Direct Partners would have had a commercial interest in sourcing search ads from competing providers of online search advertising intermediation services.

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670 See reply of [redacted] Question 9.5 of the Commission's request for information of 31 July 2015.

671 SO Response, paragraph 268, Google submission of 11 October 2017, paragraphs 67-69, Second LoF Response, paragraphs 28-29 of Part One.

672 Second LoF Response, paragraph 20 and footnote 34 as well as paragraph 28 and footnote 45.

673 SO Response, paragraph 269.

674 SO Response, paragraph 270.

675 SO Response, paragraph 270 and Second LoF response, paragraph 28 and Annex 3, pages 8-9.

676 Google submission of 11 October 2017, paragraphs 62-65; Second LoF Response, paragraphs 23-24 of Part One.

677 Google's submission of 11 October 2017, paragraph 72.

(503) In the first place, as recitals (499) to (500) explain, at least some Direct Partners were willing to multi-source among different providers of online search advertising intermediation services.

(504) In the second place, the fact that Google entered into GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause indicates that, notwithstanding its alleged superior quality, Google considered that, absent that clause, Direct Partners would have had a commercial interest in sourcing search ads from competing providers of online search advertising intermediation services.

(505) In the third place, the [redacted] submission to which Google refers[678] does not support its claim. As [redacted] explains in that same submission:

(1) the reason why Google may have "*higher overall merchant yields*" and thus that Direct Partners choose Google is because Google's "*CTR is far superior to that of competitors*" as a result of "*its years of abuse*", including, *inter alia*, the Premium Placement and Minimum Google Ads Clause;[679] and

(2) Direct Partners, "*if possible would like to avoid working with Google*".[680]

(506) In the fourth place, the study prepared for Google does not assess the only relevant question, namely, absent the Premium Placement and Minimum Google Ads Clause, how many competing search ads would Direct Partners have sourced from Google, and where would Direct Partners have placed them on their search results pages. Furthermore, the study analyses the conduct of Online Partners and not Direct Partners, which have different characteristics (see recital (371)).

(507) As to (2), apart from the [redacted] letter, Google has not provided any evidence to substantiate its claim that, absent the Premium Placement and Minimum Google Ads Clause, Direct Partners would have requested many more Google search ads than the minimum required by the clause. This is confirmed by [redacted], which indicated that the Premium Placement and Minimum Google Ads Clause limited its ability to "[…] *implement text ads provided by other search providers*" (see recital (499)(1)).

(508) Furthermore, the probative value of the letter by [redacted] is limited. The circumstances under which Google has obtained the letter are unknown, the letter not having been submitted in response to a request for information but provided to Google, which subsequently annexed it to its SO Response.

(509) As to (3), it is irrelevant that the Premium Placement and Minimum Google Ads Clause only applied to individual websites displaying search ads that Direct Partners chose to include in their GSAs. While a Direct Partner could initially choose not to include a given website displaying search ads in its GSA containing the Premium Placement and Minimum Google Ads Clause, once it chose to include a website, the Premium Placement and Minimum Google Ads Clause required it to reserve the most prominent space on its search results pages on that website for Google search ads for the duration of the GSA.

678 [redacted]'s submission of 29 November 2017.

679 [redacted]'s submission of 29 November 2017, paragraph 1.4.

680 [redacted]'s submission of 29 November 2017, paragraph 1.7.

(510) As to (4), it is irrelevant whether, during the period between 2009 and 2015, [redacted], [redacted] or [redacted] sourced search ads from competing providers of online search advertising intermediation services:

(1) [redacted] never entered into a GSA containing the Premium Placement and Minimum Google Ads Clause; and

(2) because of the Premium Placement and Minimum Google Ads Clause, [redacted] and [redacted] could not display competing search ads in the most prominent space on their search results pages covered by the relevant GSA.

8.4.4.2. The Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation

(511) The Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation. This is for the following reasons.

(512) First, from March 2009, Google gradually included the Premium Placement and Minimum Google Ads Clause in the overwhelming majority of GSAs with Direct Partners. The gross revenues generated by Google in the EEA from those GSAs represented a significant percentage of the total value of the EEA-wide market for online search advertising intermediation. Table 24 and Table 25 illustrate this:

(a) Table 24 illustrates the gross revenues generated by Google in the EEA between 2009 and 2015 from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation; and

(b) Table 25 illustrates the gross revenues generated by Google in the EEA between 2009 and 2015 from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a proportion of the total value of the EEA-wide market for online search advertisement intermediation.

(513) The two tables indicate that, between 2009 and 2015:

(1) the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause represented [10-20%] to [40-50%] of the total value of the EEA-wide market for online search advertising intermediation; and

(2) the gross revenues generated by Google in the EEA from All Sites Direct Partners and from GSAs with Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause represented [50-60%] to [60-70%] of the total value of the EEA-wide market for online search advertising intermediation.

Table 24: Gross revenues generated by Google in the EEA between 2009 and 2015 from GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation

Year	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)	2013 (million EUR)	2014 (million EUR)	2015 (million EUR)
Gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause	100-150	300-350	500-550	800-850	700-750	500-550	400-450
Total value of the EEA-wide market for online search advertising intermediation	1.000-1.050	1.200-1.250	1.300-1.350	1.750-1.800	1.600-1.650	1.250-1.300	1100-1.150
%	10-20%	20-30%	40-50%	40-50%	40-50%	40-50%	30-40%

Source: Google[681]

Table 25: Gross revenues generated by Google in the EEA between 2009 and 2015 from All Sites Direct Partners and from GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation

Year	2009 (million EUR)		2010 (million EUR)		2011 (million EUR)		2012 (million EUR)		2013 (million EUR)		2014 (million EUR)		2015 (million EUR)	
Revenue generated by clause	EXC[682]	PPC[683]	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC
	400-450	100-150	300-350[684]	300-350	250-300	500-550	300-350	800-850	300-350	700-750	250-300	500-550	250-300	400-450
Total revenue	550-600		600-650[685]		800-850		1100-1150		1050-1100		800-850		700-750	

681 Google's reply to Question 2 of the request for information of 20 December 2016, Annex 2; Google's reply to Question 4 of the request for information of 28 March 2017, Annex 4 (as updated on 18 April 2017).

682 Gross revenues generated by Google in the EEA from All Sites Direct Partners.

683 Gross revenues generated by Google in the EEA from GSAs containing the Premium Placement and Minimum Google Ads Clause.

684 See footnotes 525 to 528.

685 Idem.

Total value of the EEA-wide market for online search advertising intermediation	1.000-1.050	1.200-1.250	1.300-1.350	1.750-1.800	1.600-1.650	1.250-1.300	1100-1.150
Revenues generated by Google as a percentage of the total value of the EEA-wide market for online search advertising intermediation	50-60%	50-60%	60-70%	60-70%	60-70%	60-70%	60-70%

Source: Google[686]

(514) Table 24 and Table 25 are excerpts of Table 26, which shows the gross revenue data for each Direct Partner.

Table 26: Gross revenues generated by Google in the EEA between 2009 and 2015 from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation[687]

Direct Partner	2009		2010		2011		2012		2013		2014		2015	
	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC	EXC	PPC
[redacted]	100-150		60-70		40-50		40-50		40-50		50-60		70-80	
[redacted]	100-150		100-150		150-200		250-300		250-300		200-250		200-250	
[redacted]	70-80*	50-60*		100-150		100-150		150-200		150-200		100-150		90-100
[redacted]	10-20		0-10*	0-10*		10-20		0-10		0-10		0-10		0-10
[redacted]	0-10*	10-20*		10-20		10-20		10-20		0-10		0-10*		0-10*

686 Google's reply to Question 2 of the request for information of 20 December 2016, Annex 2; Google's reply to Question 4 of the request for information of 28 March 2017, Annex 4 (as updated on 18 April 2017).

687 * Adjusted amount to reflect the duration of the GSA with All Sites Direct Partners or the GSAs with Direct Partners. The Commission has adopted a conservative approach by applying a downward adjustment whenever the duration of the GSA that included the relevant clause was less than 12 months for any given year. ** No annual EEA AFS revenue reported by Google or annual EEA AFS revenue omitted from calculations on the basis that it constituted <1% of total. *** Annual EEA AFS revenue omitted from calculations on the basis that in that year the Direct Partner was not an All Sites Direct Partner or its GSA did not contain the Premium Placement and Minimum Google Ads Clause in that year.

[redacted]	10-20		0-10*	0-10*		0-10		0-10		0-10		0-10		0-10
[redacted][688]	10-20		10-20		10-20		0-10*	10-20*		10-20		10-20		10-20
[redacted]				0-10*		0-10		0-10		0-10		0-10		0-10
[redacted][689]	30-40*	10-20*		30-40		30-40		20-30		20-30		10-20		10-20
[redacted]	10-20		10-20*	0-10*		20-30		30-40		30-40		40-50		40-50
[redacted]	0-10		10-20		10-20		0-10*	10-20*		0-10		0-10		0-10
[redacted]	0-10		0-10*[690]	0-10*[691]	***	0-10	***	0-10		0-10		0-10*		***
[redacted]	10-20			10-20		20-30		20-30		20-30		10-20		10-20
[redacted]	0-10*		10-20		10-20*	0-10*		10-20		0-10		0-10		0-10
[redacted]	0-10*		20-30*		10-20*	10-20*		20-30		10-20		10-20		10-20
[redacted]	0-10		0-10*[692]		***[693]		***[694]	0-10*		0-10		0-10		0-10
[redacted]		10-20*		40-50		20-30		10-20*		10-20		0-10		0-10
[redacted]		***		***		50-60		30-40		20-30		10-20		10-20
[redacted][695]						30-40*		50-60		70-80		40-50		30-40

688 [redacted] sites and [redacted] sites.

689 Agreements with [redacted], [redacted], [redacted], [redacted], [redacted] (the [redacted], [redacted], [redacted], [redacted] and [redacted] companies of the [redacted] Group).

690 While Tables 3 and 8 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2010 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

691 While Tables 3 and 8 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2010 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

692 While Tables 3 and 8 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2010 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

693 While Tables 3 and 8 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

694 While Tables 3 and 8 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2012 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners and from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

695 The Commission's calculations regarding [redacted] are conservative and favourable to Google. While Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex

[redacted]								40-50		30-40		30-40		30-40
[redacted]	**	**		0-10		20-30		60-70		50-60		10-20		0-10
[redacted]		***		***		0-10*[696]		0-10		0-10		0-10		0-10
[redacted]		0-10		0-10		0-10		0-10		0-10		0-10		0-10
[redacted]		***		***		10-20		30-40		30-40		30-40		30-40
[redacted]												0-10*		0-10
[redacted]												0-10		0-10
[redacted]	0-10		0-10*	0-10*		0-10		0-10		0-10		0-10		0-10
[redacted]		0-10*		0-10		30-40		90-100		40-50		**		**
[redacted]	0-10		0-10*	0-10*		0-10		0-10		0-10		0-10		0-10
[redacted]										20-30*		0-10*		**
[redacted]	0-10		0-10		0-10*	0-10*		10-20		0-10*		0-10		0-10*
[redacted]						0-10*		0-10		10-20		20-30		10-20
[redacted]		0-10*		0-10		0-10		0-10		0-10		0-10		0-10*
[redacted]	0-10		0-10*	0-10*		0-10		0-10		0-10		0-10		0-10
[redacted]						0-10		0-10		0-10		0-10		0-10*
[redacted]						0-10*		0-10		0-10		0-10		0-10
[redacted][697]		10-20*		20-30		20-30		50-60		30-40		0-10		0-10
[redacted]		***		***		0-10*		0-10		0-10		0-10		0-10
[redacted]				0-10*		0-10		0-10		0-10		0-10		0-10*
[redacted]		***		***		***		0-10*		10-20		0-10*		***
[redacted]	***	***	***	***	***	***	***	***	***	***		0-10*		0-10
[redacted]	***	***	***	***	***	***	***	***	***	0-10*		0-10		0-10
[redacted]	0-10		***	0-10*		0-10		0-10		0-10		0-10		0-10

102.1 indicates that, in 2009 and 2010, [redacted] entered into a GSA containing the Premium Placement and Minimum Google Ads Clause, the Commission cannot verify this because it does not have a copy of the GSA. The Commission therefore only includes revenue for the years for which it can verify that [redacted] entered into a GSA containing the Premium Placement and Minimum Google Ads Clause.

696 While Table 8 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from All Sites Direct Partners and Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation. Moreover, the Commission has corrected that error in this Decision.

697 The Commission's calculations regarding the Perion Group are conservative and favourable to Google. The Perion group revenues cover the group companies [redacted], [redacted] and [redacted] Between July 2009 and May 2011 [redacted] had in its GSA with effective date 1/06/2011 an Exclusivity Clause. However, given that the Commission has only received from Google revenue data for the whole [redacted] group, with no breakdown according to each subsidiary, it could only attribute such revenue either entirely to the Exclusivity Clause period or to the Premium Placement and Minimum Google Ads Clause period. The Commission conservatively attributed the revenues from the "exclusivity" period of Imvent to the "premium placement" period.

[redacted]		**		0-10		0-10		0-10		0-10		0-10*		*** 698
[redacted]				0-10*		0-10		0-10*	***	***	***	***	***	***
[redacted]								0-10*		0-10		0-10		0-10
[redacted]		***		***		***		***		0-10		0-10		0-10
[redacted] 699		***		0-10*		0-10		0-10*	***	***	***	***	***	***
[redacted]	**	**		0-10		0-10*		***	***	***	***	***	***	***
[redacted]	0-10*	0-10*		0-10		0-10		0-10		0-10*		0-10		0-10
[redacted]	0-10		0-10	0-10*		0-10		0-10		0-10		0-10		0-10
[redacted]				0-10*		0-10		0-10		0-10		0-10*		0-10
[redacted]		0-10*		0-10		0-10		0-10		0-10		0-10		0-10
[redacted]	0-10		0-10*	0-10*		0-10		0-10		0-10		10-20		0-10
[redacted] 701		0-10*		0-10		0-10*								
Total WITHOUT EXC		100-150		300-350		500-550		800-850		700-750		500-550		400-450
Segment		*1.000-1.050*		*1.200-1.250*		*1.300-1.350*		*1.750-1.800*		*1.600-1650*		*1.250-1.300*		*1100-1.150*
%		10-20%		20-30%		40-50%		40-50%		40-50%		40-50%		30-40%
Total WITH EXC	400-450	550-600	300-350	600-650	250-300	800-850	300-350	1100-1150	300-350	1050-1100	250-300	800-850	250-300	700-750
Segment		*1.000-1.050*		*1.200-1.250*		*1.300-1.350*		*1.750-1.800*		*1.600-1.650*		*1.250-1.300*		*1100-1150*
%		50-60%		50-60%		60-70%		800-850		800-850		800-850		800-850

Source: Google[702]

698 The Commission's calculations regarding [redacted] are conservative and favourable to Google. While [redacted] has submitted the relevant GSA with an effective date of 1 April 2014, the Commission cannot verify the end date of the GSA because [redacted] has not submitted any accompanying Order Form. The Commission therefore only includes revenue for the years for which it can verify the end date from the GSA.

699 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

700 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

701 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

702 The Commission has based: (i) the numerator on Google's reply to the RFI of 28 March 2017, Annex 4, as updated; (ii) the denominator on Google's reply to the RFI of 16 March 2016, Annex 2; and (iii) the downward adjustments ("*") on GSA documentation; Direct Partner RFI responses and associated correspondence.

(515) Second, GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause covered some of the most visited websites in the EEA (see recital (390)).

(516) Third, by requiring Direct Partners to source a minimum of three wide format Google search ads on desktop devices, the Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation services to the significant revenues derived from the display of such ads by Direct Partners. This is confirmed by an undated internal Google document entitled "*Overview of Click-through rates for key Google partners*" in which Google employees observed the following:

(1) for CompuServe, "*5 Wides contribute [90-100%] of revenue – 2 Narrows contribute [0-5%] of revenue*";

(2) for ATT Worldnet, "*5 Wides contribute [90-100%] of revenue – 2 Narrows contribute [0-5%] of revenue*".[703]

(517) Fourth, by requiring Direct Partners to source at least one Google search ad on mobile devices, the Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation services to the significant revenues derived from the display of such ads by Direct Partners (see recital (491)).

(518) Fifth, Direct Partners generated high query volumes constituting a large part of all search queries in the EEA. Table 27 illustrates this based on query volume generated in 2015 by Google's top 20 Direct Partners in the United Kingdom, Germany, France, Spain and Italy as a percentage of total queries.

Table 27: Query volume generated by Google's top 20 Direct Partners in 2015 as a percentage of total queries

2015	Total Searches[704] *Excluding queries on search engines Google, Bing, Yahoo, Yandex, Baidu as well as queries on Microsoft own websites and Yahoo own websites*	Searches generated by top 20 Direct Partners by revenue - EEA	Percentage of total queries on Direct Partners' websites covered by the Premium Placement and Minimum Google Ads Clause
UK	10 000 - 11 000	7 000 – 8 000	70-80%
Germany	14 000 – 15 000	12 000 – 13 000	80-90%
France	7 000 – 8 000	5 000 – 6 000	70-80%

703 Internal Google document Googmaye-000019099, slides 11, 12, and 13.

704 Measures/Media.

Spain	2 000 – 3 000	1 000 – 2 000	60-70%
Italy	3 000 – 4 000	2 000 – 3 000	70-80%

Source: comScore qSearch[705]*, Google*[706]

(519) Sixth, the average duration of GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause was long. Google and Direct Partners extended many of their GSAs, sometimes several times, without substantial modifications.[707]

(520) Seventh, the fact that Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation to a significant part of the EEA-wide market for online search advertising intermediation is consistent with the evolution of shares in that market (see recital (276)).

(521) The Commission's conclusion that the Premium Placement and Minimum Google Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertisement intermediation is not affected by Google's claims that:

(1) the Commission's calculations in Table 25 and 26 based on the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause are flawed:

(1) because the Commission did not narrow, like for the Exclusivity Clause, the set of included Direct Partners for the Premium Placement and Minimum Google Ads Clause to All Sites Direct Partners;[708] and

(2) because the Premium Placement and Minimum Google Ads Clause cannot have had any impact on Direct Partners that typically requested more than the minimum requirement of Google search ads;[709]

(2) competing providers of online search advertising intermediation services had frequent opportunities to bid for the search ads requirements of Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause given that the duration of GSAs with Direct Partners containing the

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705 Submitted by Microsoft in reply to the Commission's request for information of 3 May 2016.

706 Data submitted by Google in Annex 4 to the reply to the Commission's request for information of 16 March 2016, AFS query volume generated in the EEA by each of Google's top 20 Direct Partners by revenue on a yearly basis.

707 See for example (i) GSAs signed by [redacted], from 1 November 2011, renewed twice and in force until 31 March 2017 (reply of [redacted] to the Commission's request for information of 31 July 2015); (ii) GSAs signed by [redacted] from 1 August 2011, renewed until 31 October 2015 ([redacted] reply to the Commission's request for information of 31 July 2015); (iii) GSA signed by [redacted] from 1 August 2010, renewed twice and amended twice, until 31 March 2016 (reply of [redacted] to the Commission's request for information of 31 July 2015); and (iv) GSAs signed by [redacted], from 1 February 2011, renewed twice until 31 January 2017 (reply of [redacted] to the Commission's request for information of 31 July 2015).

708 Second Letter of Facts Response, section 4 of Annex 3.

709 Second Letter of Facts Response, section 5 of Annex 3.

Premium Placement and Minimum Google Ads Clause was short and at least one Direct Partner ([redacted]) had early termination rights;[710]

(3) it is because of the dynamic nature of competition in the online search advertising intermediation market, not the Premium Placement and Minimum Google Ads Clause, that competing providers of online search advertising intermediation services failed to win more business;[711] and

(4) it is because of Yahoo's insufficient investments in search advertising technology, not the Premium Placement and Minimum Google Ads Clause, that Yahoo failed to access a significant part of the EEA-wide market for online search advertising intermediation.[712]

(522) As to (1), Google's criticisms of the Commission's calculations in Table 25 and Table 26 based on the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Premium Placement and Minimum Google Ads Clause are unfounded.

(523) On the one hand, the Commission has narrowed the set of included Direct Partners to All Sites Direct Partners, despite 69 other Direct Partners having included at least some of their websites in their GSAs containing the Exclusivity Clause (see recital (391)).

(524) On the other hand, the Premium Placement and Minimum Google Ads Clause had an impact on Direct Partners that typically requested more than the minimum requirement of Google search ads. While a Direct Partner was free to choose how many search ads to display, the Premium Placement and Minimum Google Ads Clause required it to reserve the most prominent space on its search results pages for Google search ads.

(525) As to (2), the average duration of the GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause was long (see recital (519)). Furthermore, the period during which the Direct Partners were required to reserve the most prominent space on their search results pages covered by the relevant GSA for a minimum number of Google search ads was also long.[713]

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710 SO Response, para 284; Google submission of 11 October 2017, paragraph 66; Second Letter of Facts Response, paragraphs 25-26-27.

711 Second LoF Response, paragraph 20; Google submission of 11 October 2017, paragraphs 59 - 61.

712 SO response, paragraph 286-287-288, Google submission of 11 October 2017, paragraph 59.

713 See for example: (i) GSA signed by [redacted] with effective date 1 October 2010, running from 1 October 2010 to 30 November 2014 (duration of four years, two months); (ii) GSA signed by [redacted] with effective date 1 August 2010, running from 1 August 2010 to 31 December 2013 (duration of three years, five months); (iii) GSA signed by [redacted] with effective date 1 October 2008, running from 1 October 2008 to 30 September 2012 (duration of four years); (iv) GSA signed by [redacted] with effective date 1 February 2011, running from 1 February 2011 to 30 November 2014 (duration of three years, ten months); (v) GSA signed by [redacted] with effective date 1 May 2010, running from 1 May 2010 to 30 April 2014 (duration of four years); (vi) GSA signed by [redacted] with effective date 1 January 2010, running from 1 January 2010 to 31 January 2014 (duration of four years, one month); (vii) GSA signed by [redacted] with effective date 1 December 2010, running from 1 December 2010 to 31 January 2015 (duration of four years, two months); (viii) GSA signed by [redacted] with effective date 1 September 2010, running from 1 September 2010 to 31 December 2013 (duration of three years, four months); (ix) GSA signed by [redacted] with effective date 1 July 2012, running from 1 July 2012 to 30 June 2015 (duration of three years); (x) GSA signed by [redacted] with effective date 1

(526) Moreover, Google has provided only one example of a Direct Partner, [redacted], with early termination rights. This is the exception to the observable trend that no other Direct Partner had early termination rights.

(527) As to (3), the stability of Google's share of the EEA-wide market for online search advertising intermediation (see Section 7.3.1) and the average duration of the GSAs with Direct Partners containing the Premium Placement and Minimum Google Ads Clause (see recital (519)) contradicts Google's claim that competition is dynamic.

(528) As to (4), Yahoo reported substantial yearly capital investments in its general search services between 2006 and 2015 and the level of those investments was similar to that of Google (see recital (401)).

8.4.4.3. The Premium Placement and Minimum Google Ads Clause may have deterred innovation

(529) The Commission concludes that the Premium Placement and Minimum Google Ads Clause may have deterred innovation.

(530) First, the Premium Placement and Minimum Google Ads Clause deterred Direct Partners from establishing parallel partnerships and sourcing search ads from competing providers of online search advertising intermediation. In turn, those providers could have served or developed different search ads, at least for certain queries.

(531) Second, the Premium Placement and Minimum Google Ads Clause deterred competing providers of online search advertising intermediation from investing in the development of innovative services, the improvement of the relevance of their existing services and the creation of new types of services. Due to their high query volumes (see recital (518)), access to Direct Partners is of particular importance for competing providers of online search advertising intermediation to grow their scale, attract advertisers and ultimately challenge Google's position.

(532) Third, the Premium Placement and Minimum Google Ads Clause deprived competing providers of online search advertising intermediation – and their investors – of a return on investment that would have been proportionate to the success of their online search advertising intermediation services.

8.4.4.4. The Premium Placement and Minimum Google Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA except Portugal

(533) The Commission concludes that the Premium Placement and Minimum Google Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA except Portugal.

(534) First, the Premium Placement and Minimum Google Ads Clause deprived competing online search advertising providers of data and revenues from Direct Partners that they could have used to improve their online search advertising services. As recitals (408) to (409) explain, data and revenues from Direct Partners are particularly important for competing online search advertising providers.

December 2012, running from 1 December 2012 to 30 November 2016 (duration of four years); and (xi) GSA signed by [redacted] with effective date 1 January 2011, running from 1 January 2011 to 30 June 2014 (duration of three years, six months).

(535) Second, as recital (410) explains, the attractiveness of the online search advertising side of a general search engine platform also influences the general search service side of that platform.

(536) The Commission's conclusion that the Premium Placement and Minimum Google Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA except Portugal is not affected by Google's claim that "*data from clicks on search ads on Direct Partner websites are of little of no use in predicting CTRs for ads on search providers' own websites*".[714]

(537) Google's claim is contradicted by a statement of its own [redacted] and by Microsoft, the largest competing provider of online search advertising services:

(1) In his deposition of 6 June 2012 before the FTC, [redacted], then Google's [redacted], stated that: "*the feedback that we get from clicks allows us to understand that roughly, we're triggering them in the right places*.[…] *Absence of that feedback, we would have no idea, is that the right number, are those the right ads* […] *this has been thoroughly tested over many – over many years*";[715] and "*Improving ads quality, making better ads turns out to produce more revenue for the company because a better ad is also are* [sic] *worth more* [...] *that's a feedback, a nice positive feedback system*"[716];

(2) Microsoft stated that: "*The search engine in effect "learns" that for a particular query, users clicked on some results more frequently that others, which suggests that those results were more relevant. This "machine learning" improves the ranking of results for all future users. The more user queries the search engine handles, the more data it obtains to improve the relevance of the results it serves. Greater query scale also enables faster innovation: developing and improving search algorithms is done in real time, as users interact with the search engine*."[717]

8.4.4.5. The Premium Placement and Minimum Google Ads Clause may have harmed consumers

(538) The Commission concludes that the Premium Placement and Minimum Google Ads Clause may have harmed consumers.

(539) First, the Premium Placement and Minimum Google Ads Clause contributed to weakening the constraints on Google's pricing ability and contributed to keeping bidder density on Google's search advertising platform at a higher level (see recitals (269) and (417)). This is likely to have led to higher prices for search ads paid by advertisers that, at least in part, were passed on to consumers by increasing the cost of the advertised goods or services.

(540) Second, in the absence of the Premium Placement and Minimum Google Ads Clause users may have had a wider choice of search ads as competing providers of online search advertising intermediation could have served or developed different search ads, at least for certain queries. Moreover, competing providers of online search

714 SO Response, paragraph 310.

715 Deposition of [redacted] before the FTC of 6 June 2012, , page 190, points 1-16.

716 Deposition of [redacted] before the FTC of 6 June 2012, , page 191, points 10-15.

717 Microsoft's complaint of 31 March 2011, page 13.

advertising intermediation could have developed a wider choice of search ads in terms of quality or range.

8.4.4.6. The binding nature of the mock-ups until July 2014

(541) The Commission concludes that the binding nature of the mock-ups until July 2014 exacerbated the capability of the Premium Placement and Minimum Google Ads Clause to restrict competition (see recital (95)).

(542) The binding nature of the mock-ups meant that Direct Partners had no room to modify the precise positioning of Google search ads and the number and placement of competing search ads (see recital (95)).

(543) The Commission's conclusion is not affected by Google's claim[718] that the mock-ups were "*mere illustrations of the partner's intention regarding the layout of search ads on its page and were not intended to impose additional obligations on the partner*".

(544) This claim is contradicted by the ordinary meaning of the clauses in the new template GSA (see recital (95)), which required Direct Partners to respect the mock-ups: "*Company will ensure that the AdSense Services and Search Services are implemented and maintained in accordance with: … (iv) the mock-ups*".

8.4.4.7. Google's arguments regarding the Commission's alleged failure to consider all the circumstances relevant to the assessment of the capability of the Premium Placement and Minimum Google Ads Clause to restrict competition

(545) Google claims that the Commission has failed to consider all the circumstances relevant to the assessment of the capability of the Premium Placement and Minimum Google Ads Clause to restrict competition:[719]

(1) the Commission has failed to adduce evidence that the Premium Placement and Minimum Google Ads Clause had actual anticompetitive effects, despite the clause having been in place "*for several years in the past*";[720]

(2) the Commission has failed to consider the "counterfactual" i.e. whether absent the Premium Placement and Minimum Google Ads Clause, Direct Partners would still have either sourced search ads only from Google or placed Google search ads in the same position on their pages;[721]

(3) the Commission has ignored the fact that the Premium Placement and Minimum Google Ads Clause did not foreclose as-efficient competing providers of online search advertising intermediation services;[722]

(4) the Commission has failed to adduce evidence of the existence of a strategy by Google aiming to exclude such as-efficient competitors;[723] and

(5) the Commission has failed to prove that there is a causal link between the Premium Placement and Minimum Google Ads Clause and any alleged effects on competition. Google has demonstrated that the Microsoft/Yahoo! JV was

718 SO Response, paragraph 292.
719 Second Letter of Facts Response, paragraph 12; Google's submission of 11 October 2017, paragraph 58
720 Google's submission of 11 October 2017, paragraph 31.
721 Second Letter of Facts Response, paragraphs 28-29; Google's submission of 11 October 2017, paragraphs 68-69.
722 Google's submission of 11 October 2017, paragraphs 71-72.
723 Second Letter of Facts Response, paragraph 30.

unable to compete successfully with Google because it failed to upgrade its ad-serving technology and had a poor quality product compared to Google.[724]

(546) Google's claims are unfounded.

(547) As to (1), the Commission is required to demonstrate the capability of the Premium Placement and Minimum Google Ads Clause to restrict competition, not that it had actual effects.[725]

(548) As to (2), this Decision demonstrates that, absent the Premium Placement and Minimum Google Ads Clause, Direct Partners could have sourced search ads from competing providers of online search advertising intermediation services and could have had the possibility to position the ads differently (see recitals (502) to (504) and (499)).

(549) As to (3), the Premium Placement and Minimum Google Ads Clause was capable of foreclosing a hypothetical as-efficient competing provider of online search advertising intermediation services. This is because:

(1) between 2009 and 2015, the Premium Placement and Minimum Google Ads Clause alone represented [10-20%] to [40-50%] of the total value of the EEA-wide market for online search advertising intermediation (see Table 24);

(2) between 2009 and 2015, the Premium Placement and Minimum Google Ads Clause and the Exclusivity Clause in GSAs with All Sites Direct Partners together represented between [50-60%] and [60-70%] of the total value of the EEA-wide market for online search advertising intermediation (see Table 25: and Table 26);

(3) between 2006 and 2016, Google held a very large share of that market (see Section 7.3.1); and

(4) that market is prone to network effects (see Section 7.3.2).

(550) Moreover, in light of the above-mentioned features of the EEA-wide market for online search advertising intermediation, it is doubtful whether a hypothetical as-efficient competing provider of online search advertising intermediation services could have emerged at any point during the period of application of the Premium Placement and Minimum Google Ads Clause.[726]

(551) As to (4), it is irrelevant whether Google pursued a strategy aiming to exclude as-efficient competitors. While the Commission may take into account the possible existence of such a strategy when determining the existence of an abuse of a dominant position, the absence of such a strategy cannot exonerate an undertaking from liability for conduct that is objectively an infringement.[727]

(552) As to (5), the Commission is not required to demonstrate that the Premium Placement and Minimum Google Ads Clause was the sole cause of the failure of the Microsoft/Yahoo! JV to compete. Moreover, as recitals (401) and (402) explain, Yahoo! made substantial investments in an attempt to compete with Google in the EEA-wide market for online search advertisement intermediation.

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724 Google's submission of 11 October 2017, paragraphs 73-74.

725 Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 272.

726 Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 59.

727 Case C-549/10 P *Tomra Systems v Commission*, EU:C:2012:221, paragraph 21.

8.4.5. Objective justification and efficiency claims

(553) Google has essentially put forward two justifications for the Premium Placement and Minimum Google Ads Clause.

(554) First, Google claims that the Premium Placement and Minimum Google Ads Clause was necessary (i) because Google required "*some degree of revenue assurance to justify its substantial and ongoing investments in Direct Partners' websites*" and (ii) to maximise Direct Partners' revenues.[728]

(555) Second, the Premium Placement and Minimum Google Ads Clause was necessary to help maintain the relevance of Google's search advertising intermediation service by ensuring a greater degree of consistency in the placement of Google search ads by Direct Partners.[729]

(556) For the reasons set out in recitals (558) to (562), the Commission concludes that Google has not demonstrated that the Premium Placement and Minimum Google Ads Clause was objectively justified or that exclusionary effect produced by that clause was counterbalanced, or outweighed even, by advantages in terms of efficiency gains that also benefit consumers.

(557) First, Google has not demonstrated that the Premium Placement and Minimum Google Ads Clause was necessary either because Google required some degree of revenue assurance to support its investments in Direct Partners' websites or to maximise Direct Partners' revenues.

(558) In the first place, Google has submitted no evidence demonstrating that, but for the Premium Placement and Minimum Google Ads Clause, it would not have made those investments in Direct Partners' websites.

(559) In the second place, Direct Partners indicated that Google did not make any investments that it would not have made in the absence of the Premium Placement and Minimum Google Ads Clause.[730]

(560) In the third place, it is irrelevant whether the Premium Placement and Minimum Google Ads Clause may have maximised the revenues of Direct Partners. Google cannot justify the exclusionary effect of the Premium Placement and Minimum Google Ads Clause by the possible subjective benefit that a Direct Partner may have obtained from that clause. This would run counter to the established principle that the concept of abuse of a dominant position is objective.

(561) Second, Google has not demonstrated that the Premium Placement and Minimum Google Ads Clause was necessary to help maintain the relevance of Google's search ads. In particular, Google could have achieved that aim in a less restrictive manner, such as via brand guidelines or content policies.

(562) Third, the fact that in 2016, Google sent waiver letters to Direct Partners amending the Premium Placement and Minimum Google Ads Clause (see recital (104)) confirms that Google could have implemented less restrictive measures than Premium Placement and Minimum Google Ads Clause as originally worded.

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728 SO Response, paragraphs 335, 336 and 338; Google's submission of 11 October 2017, paragraph 76.

729 SO Response, paragraph 339; Google's submission of 11 October 2017, paragraph 76.

730 See replies of [redacted] (in relation to [redacted]), [redacted], [redacted] and [redacted] to Question 8.9 of the Commission's request for information of 22 December 2010.

8.4.6. Duration of the infringement

(563) The start date of the infringement was 31 March 2009. This is because as of this date: (i) Google held a dominant position in the EEA-wide market for online search advertising intermediation (Section 7.3); and (ii) the Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for a minimum number of Google search ads.

(564) The end date of the infringement was 6 September 2016. This is because, on that date, Google sent the last letter to a Direct Partner waiving the application of the Premium Placement and Minimum Google Ads Clause (see recitals (99) to (106)).

8.5. Abuse of Google's dominant position: the Authorising Equivalent Ads Clause

8.5.1. Principles

(565) The relevant legal principles are set out in Section 8.1 above.

8.5.2. The abusive conduct

(566) For the reasons set out below, the Commission concludes that the Authorising Equivalent Ads Clause constituted an abuse of Google's dominant position on the EEA-wide market for online search advertising intermediation.

(567) First, the Authorising Equivalent Ads Clause required Direct Partners to seek Google's approval before making any change to the display of competing search ads (Section 8.5.3).

(568) Second, the, Authorising Equivalent Ads Clause was capable of restricting competition (Section 8.5.4)

(569) Third, Google has not demonstrated that the Authorising Equivalent Ads Clause was either objectively justified or that the exclusionary effect it produced was counterbalanced, or outweighed, by advantages in terms of efficiency gains that also benefit consumers (Section 8.5.5).

8.5.3. The Authorising Equivalent Ads Clause required Direct Partners to seek Google's approval before making any change to the display of competing search ads

(570) As described in Section 5.1 above, the Authorising Equivalent Ads Clause required Direct Partners to seek Google's approval before making any change to the display of competing search ads on their search result pages.

(571) If a Direct Partner wished to change the display of competing search ads on its search results pages, it had to submit such proposed changes to Google. If Google failed to respond to the Direct Partner within 15 business days, the Direct Partner was entitled to assume that Google had approved the changes. If, however, Google responded to the Direct Partner within 15 business days and refused to give its approval, the Direct Partner could not implement the changes without breaching its GSA with Google (see recital (97)).

(572) The consequence of the Authorising Equivalent Ads Clause was, therefore, that Direct Partners needed to seek Google's approval before they could make any change to the display of competing search ads on their search results pages.

8.5.4. Restriction of competition

(573) The Commission concludes, based on an analysis of all the relevant circumstances, that the Authorising Equivalent Ads Clause was capable of restricting competition. This is because:

(1) the Authorising Equivalent Ads Clause deterred Direct Partners from sourcing competing search ads (Section 8.5.4.1);

(2) the Authorising Equivalent Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation (Section 8.5.4.2);

(3) the Authorising Equivalent Ads Clause may have deterred innovation (Section 8.5.4.3);

(4) the Authorising Equivalent Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA, except Portugal (Section 8.5.4.4); and

(5) the Authorising Equivalent Ads Clause may have harmed consumers (Section 8.5.4.5).

(574) As part of its analysis of all the relevant circumstances the Commission has assessed and taken into account in particular: (i) the extent of Google's dominant position in each national market for online search advertising in the EEA, except Portugal and in the EEA-wide market for online search advertising intermediation (see Section 7); (ii) the share of the EEA-wide market for online search advertising intermediation covered by the Authorising Equivalent Ads Clause (see Section 8.5.4.2); and (iii) the duration of the Authorising Equivalent Ads Clause (see Section 8.5.4.2).

(575) The Commission has also considered and rejected Google's arguments regarding the Commission's alleged failure to consider all the circumstances relevant to the assessment of the capability of the Authorising Equivalent Ads Clause to restrict competition (see Section 8.5.4.6).

8.5.4.1. The Authorising Equivalent Ads Clause deterred Direct Partners from sourcing competing search ads

(576) The Commission concludes that the Authorising Equivalent Ads Clause deterred Direct Partners from sourcing competing search ads. This is for the following reasons.

(577) First, absent the Authorising Equivalent Ads Clause, Direct Partners could have evaluated the commercial impact of sourcing competing search ads. By requiring Direct Partners to seek approval from Google before making any change to the display of competing search ads, the Authorising Equivalent Ads Clause imposed, however, a more burdensome, triangular negotiation involving Google, the Direct Partner and the competitor.

(578) Second, the scope of the Authorising Equivalent Ads Clause and Google’s refusal to discuss or clarify the scope of the clause further deterred Direct Partners from sourcing competing search ads. A number of Direct Partners have confirmed this:

(1) [redacted] indicated that "*we are not sure of its scope*";[731]

(2) [redacted] indicated that "[redacted]." While Google responded that [redacted] was allowed to show ads of other providers "[redacted]";[732]

(3) [redacted] indicated that, prior to signing a GSA in 2014, it sought to clarify the meaning of the Authorising Equivalent Ads Clause: "[redacted] *attempted to amend clause 5.2(b), to include wording that Google would act reasonably.* [redacted] *also attempted to include wording to oblige Google to exercise rights of approval by reference to the Google brand guidelines and other Google policies*". Google, however, refused to provide any such clarification: "*Google did not accept* [redacted] *'s proposed amendments*."[733]

(579) Third, absent the Authorising Equivalent Ads Clause, Direct Partners would have sourced competing search ads more freely. A number of Direct Partners have confirmed this:

(1) [redacted] indicated that "[redacted]";[734]

(2) [redacted] indicated that the Authorising Equivalent Ads Clause was "*to avoid user confusion but* [in reality] *more aimed at Google maintaining a monopoly on this product/service*";[735]

(3) [redacted] indicated that the Authorising Equivalent Ads Clause "*de facto impos*[es] *constraints to ads potentially provided by alternative intermediation providers*".[736]

(580) The Commission's conclusion that the Authorising Equivalent Ads Clause deterred Direct Partners from sourcing competing search ads is not affected by Google's claims that:

(1) [redacted], [redacted] and [redacted] have confirmed to the Commission that, between 2009 and 2015, they sourced search ads from competing providers of online search advertising intermediation services;[737]

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731 Reply of [redacted] to Question 4 of the Commission's request for information of 30 October 2015.

732 Reply of [redacted] to Question 4 of the Commission's request for information of 30 October 2015.

733 Reply of [redacted] to Question 4 of the Commission's request for information of 30 October 2015 and attached correspondence with Google regarding 2014 GSA.

734 Reply of [redacted] to Question 3 of the Commission's request for information of 30 October 2015.

735 Reply of [redacted] to Question 9.4 of the Commission's request for information of 31 July 2015.

736 Reply of [redacted] to Question 4 of the Commission's request for information of 30 October 2015.

(2) Direct Partners understood the scope of the Authorising Equivalent Ads Clause.[738] To support its claim, Google refers to a letter provided to Google by [redacted];[739] and

(3) the Commission has failed to consider that the Authorising Equivalent Ads Clause only applied to individual websites displaying search ads that Direct Partners chose to include in their GSAs.[740]

(581) As to (1), it is irrelevant whether during the period between 2009 and 2015 [redacted], [redacted] or [redacted] sourced search ads from providers of online search advertising intermediation services:

(1) [redacted] never entered into a GSA containing the Authorising Equivalent Ads Clause; and

(2) because of the Authorising Equivalent Ads Clause, [redacted] and [redacted] had to seek Google's approval before making any change to the display of the competing search ads that they sourced from competing providers of online search advertising intermediation services.

(582) As to (2), the probative value of the letter from [redacted] is limited. On the one hand, [redacted] confirmed in its letter that the Authorising Equivalent Ads Clause imposed an obligation to seek Google's approval "[redacted]"[741] On the other hand, the context in which Google obtained the letter is unknown, [redacted] having not submitted it in response to a request for information but having provided it to Google, which subsequently annexed it to its SO Response.

(583) As to (3), it is irrelevant that the Authorising Equivalent Ads Clause only applied to individual websites displaying search ads that Direct Partners chose to include in their GSAs. While a Direct Partner could initially choose not to include a given website displaying search ads in its GSA containing the Authorising Equivalent Ads Clause, once it chose to include a website, the Authorising Equivalent Ads Clause required it to seek Google's approval before making changes to the display of competing search ads.

8.5.4.2. The Authorising Equivalent Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation

(584) The Authorising Equivalent Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation. This is for the following reasons.

(585) First, the Authorising Equivalent Ads Clause afforded Google the right to control "*changes to their* [search ads] *number, colour, font, size or placement or the extent to*

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737 Google's submission of 11 October 2017, paragraph 72.

738 SO Response, paragraphs 305-307.

739 SO Response, paragraph 306.

740 Google submission of 11 October 2017, paragraphs 62-65; Second LoF Response, paragraphs 23-24 of Part One.

741 SO Response, Annex 2A.

which they [search ads] *are clickable*", elements that Google considers to be key determinants of CTR, and therefore of the profitability of search ads. This is confirmed by an internal Google document highlighting the following elements as key determinants of CTR:

(1) "*wide format ads perform better than narrow format ads*";

(2) "*bigger font size*";

(3) "*sufficient spacing between ads*";

(4) "*bolding of the character increases CTRs by up to [30-40%] on Google*";

(5) "*the entire ad area should be clickable, which leads to an increase of up to [10-20%] (CTR)*";

(6) "*the number of ads*".[742]

(586) Second, Google gradually included the Authorising Equivalent Ads Clause in the overwhelming majority of GSAs with Direct Partners. Between 2011 and 2015, Direct Partners that were party to GSAs containing the Authorising Equivalent Ads Clause accounted for approximately [20-30%] to [30-40%] of the gross revenues generated by Google in the EEA from all Direct Partners. Table 28 illustrates this.

Table 28: Gross revenues generated by Google in the EEA between 2011 and 2015 from GSAs with Direct Partners containing the Authorising Equivalent Ads Clause as a percentage of gross revenues generated by Google in the EEA from all Direct Partners[743]

Direct Partner (Signatory/ies)	2009	2010	2011	2012	2013	2014	2015
[redacted]	**	**	**	**	**	**	**
[redacted]	***	***	0-1%*	1-5%	1-5%	1-5%	**
[redacted]	***	**	1-5%	5-10%	1-5%	1-5%	1-5%
[redacted]	***	**	**	**	**	**	**

742 See Internal Google document Googmaye-000019099, slide 3.

743 *Adjusted amount to reflect the duration of the GSA that included the Authorising Equivalent Ads Clause. The Commission has adopted a conservative approach that is favourable to Google by applying a downward adjustment whenever the duration of the GSA that included the Authorising Equivalent Ads Clause was less than 12 months in a given year. ** Annual EEA AFS revenue omitted from calculations on the basis that- when rounded to the nearest percent per Google's Reply to Question 4 of the request for information of 28 April 2017, Annex 4 - it constituted <1% of total. *** Annual EEA AFS revenue omitted from calculations on the basis that the GSA of a Direct Partner did not contain the Authorising Equivalent Ads Clause in that year.

Direct Partner (Signatory/ies)	2009	2010	2011	2012	2013	2014	2015
[redacted]	***	**	**	**	**	**	**
[redacted]	**	**	**	**	***	***	***
[redacted]	***	**	**	**	***	***	***
[redacted]	***	1-5%	1-5%	1-5%	1-5%	1-5%	1-5%
[redacted]	***	**	**	**	**	**	**
[redacted]	***	0-1%*	1-5%	1-5%	1-5%	1-5%	**
[redacted]	***	**	**	**	**	**	**
[redacted]	***	**	**	**	**	**	**
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	***	***	1-5%	5-10%	1-5%	***	***
[redacted]	***	***	1-5%	1-5%	1-5%	1-5%	1-5%

744 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 75.1 and Annex 102.1.

745 The Commission's calculations regarding [redacted] are conservative and favourable to Google. While [redacted] has submitted the relevant GSA with an effective date of 1 April 2014 the Commission cannot verify the end date of the GSA because [redacted] has not submitted any accompanying Order Form. The Commission therefore only includes revenue for the years for which it can verify the end date from the GSA.

746 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 75.1.

747 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

Direct Partner (Signatory/ies)	2009	2010	2011	2012	2013	2014	2015
[redacted]							
[redacted]	***	***	1-5%	1-5%	**	**	**
[redacted]	***	***	1-5%	1-5%	1-5%	1-5%	1-5%
[redacted]	***	***	**	**	**	**	**
[redacted]	***	***	1-5%	1-5%	1-5%	1-5%	**
[redacted]	***	***	5-10%	1-5%	1-5%	1-5%	1-5%
[redacted]	***	***	1-5%	1-5%	**	**	**
[redacted]	***	***	0-1%*[748]	1-5%	1-5%	1-5%	0-1%*
[redacted]	***	***	1-5%	1-5%	1-5%	1-5%	5-10%
[redacted]	***	***	***	0-1%*	1-5%	1-5%	1-5%
[redacted]	***	***	***	1-5%	1-5%	1-5%	5-10%
[redacted]	***	***	***	**	**	**	**
[redacted]	***	***	***	0-1%*	1-5%	0-1%*	***
[redacted]	***	***	***	**	**	**	**

[748] While Table 9 of Annex 1 of the Second Letter of Facts contained a clerical error relating to [redacted]'s 2011 revenue, that error does not materially affect the Commission's calculations of the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Authorising Equivalent Ads Clause as a percentage of gross revenues generated by Google in the EEA from all Direct Partners. Moreover, the Commission has corrected that error in this Decision.

Direct Partner (Signatory/ies)	2009	2010	2011	2012	2013	2014	2015
[redacted]							
[redacted]	***	***	***	0-1%*	1-5%	1-5%	1-5%
[redacted]	***	***	***	1-5%	1-5%	1-5%	1-5%
[redacted]	***	***	***	0-1%*	1-5%	5-10%	5-10%
[redacted]	***	***	***	0-1%*	1-5%	0-1%*	0-1%*
[redacted]	***	***	***	***	**	**	**
[redacted]	***	***	***	***	**	**	**
[redacted]	***	***	***	***	***	**	**
[redacted]	***	***	***	***	***	**	**
[redacted]	***	***	***	***	***	**	**
[redacted]	***	**	**	**	**	**	**
[redacted]	***	**	**	**	1-5%	1-5%	1-5%
[redacted]	***	**	**	**	**	**	**

749 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1 and Google's Reply to Question 1 of the request for information of 27 April 2017, Annex 1.

Direct Partner (Signatory/ies)	2009	2010	2011	2012	2013	2014	2015
[redacted]							
[redacted]	***	**	**	**	**	**	**
Total	*<0-1%*	*1-5%*	*20-30%*	*30-40%*	*30-40%*	*30-40%*	*20-30%*

Source: Google[752]

(587) Third, the gross revenues generated by Google in the EEA from Direct Partners that were party to GSAs containing the Authorising Equivalent Ads Clause represented a significant percentage of the total value of the EEA-wide market for online search advertising intermediation. Between 2011 and 2015, those gross revenues ranged between [10-20%] and [20-30%] of the total value of the EEA-wide market for online search advertising intermediation, depending on the year (see Table 29).

Table 29: Gross revenues generated by Google in the EEA between 2009 and 2015 from GSAs with Direct Partners containing the Authorising Equivalent Ads Clause as a percentage of the total value of the EEA-wide market for online search advertising intermediation[753]

Direct Partner (Signatory/ies)	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)	2013 (million EUR)	2014 (million EUR)	2015 (million EUR)
[redacted]	***	0-5*	20-30	60-70	50-60	10-20	5-15
[redacted]	***	***	30-40	90-100	40-50	***	***
[redacted]	***	***	20-30	50-60	30-40	5-15	0-5

750 The Commission has included [redacted] based on Google's Reply to Question 1 of the request for information of 27 April 2017, Annex 1.

751 The Commission has included [redacted] based on Google's Reply to Question 1 of the request for information of 27 April 2017, Annex 1.

752 The Commission has based: (i) the numerator and denominator on Google's reply to the request for information of 28 March 2017, Annex 4, as updated and (ii) downward adjustments ("*") on GSA documentation; Direct Partner request for information responses and associated correspondence.

753 Data converted to EUR currency. *Adjusted amount to reflect the duration of the GSA that included the Authorising Equivalent Ads Clause. The Commission has adopted a conservative approach that is favourable to Google by applying a downward adjustment whenever the duration of the GSA that included the Authorising Equivalent Ads Clause was less than 12 months in a given year. ** No annual EEA AFS revenue. *** Annual EEA AFS revenue omitted from calculations on the basis that the GSA of a Direct Partner did not contain the Authorising Equivalent Ads Clause in that year.

Direct Partner (Signatory/ies)	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)	2013 (million EUR)	2014 (million EUR)	2015 (million EUR)
[redacted]							
[redacted]	***	***	50-60	30-40	20-30	10-20	10-20
[redacted]	***	***	10-20	30-40	30-40	30-40	30-40
[redacted]	***	***	***	40-50	30-40	30-40	30-40
[redacted]	***	***	***	0-5*	30-40	40-50	40-50
Top 7 aggregate as % of market	0-1%	0-1%	10-20%	10-20%	10-20%	10-20%	10-20%
[redacted]	0-5	0-5	0-5	0-5	0-5	0-5	0-5
[redacted]	***	***	0-5*	10-20	5-15	5-15	0-5
[redacted]	***	0-5*	0-5	0-5	0-5	0-5	0-5
[redacted]	***	0-5*	0-5	0-5	0-5	0-5	0-5
[redacted]	***	0-5*	0-5	0-5*	***	***	***
[redacted]	***	0-5*	0-5	0-5*	***	***	***
[redacted]	***	0-5	0-5	0-5	0-5	0-5	10-20
[redacted]	***	0-5*	0-5	0-5	0-5	0-5	0-5

754 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 75.1 and Annex 102.1.

Direct Partner (Signatory/ies)	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)	2013 (million EUR)	2014 (million EUR)	2015 (million EUR)
[redacted]							
[redacted]	***	5-15*	10-20	5-15	5-15	5-15	0-5
[redacted]	***	0-5	0-5	0-5	0-5	0-5*	0-5*
[redacted]	***	0-5*	0-5	0-5*	***	***	***
[redacted]	***	0-5*	5-15	5-15	5-15	5-15	5-15
[redacted]	***	***	10-20*	20-30	10-20	10-20	10-20
[redacted]	***	***	0-5*	10-20	0-5*	0-5	0-5
[redacted]	***	***	5-15*	5-15	10-20	20-30	10-20
[redacted]	***	***	0-5	0-5	0-5	0-5	0-5*
[redacted]	***	***	5-15	5-15	0-5*	0-5	0-5
[redacted]	***	***	0-5*	5-15	5-15	5-15	5-15*

755 The Commission's calculations regarding [redacted] are conservative and favourable to Google. While [redacted] has submitted the relevant GSA with an effective date of 1 April 2014, the Commission cannot verify the end date of the GSA because [redacted] has not submitted any accompanying Order Form. The Commission therefore only includes revenue for the years for which it can verify the end date from the GSA

756 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 75.1.

757 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1.

Direct Partner (Signatory/ies)	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)	2013 (million EUR)	2014 (million EUR)	2015 (million EUR)
[redacted]							
[redacted]	***	***	***	10-20*	5-15	5-15	0-5
[redacted]	***	***	***	0-5*	0-5	0-5	0-5*
[redacted]	***	***	***	5-15*	10-20	0-5*	***
[redacted]	***	***	***	0-5*	0-5	0-5	0-5
[redacted]	***	***	***	10-20*	10-20	10-20	10-20
[redacted]	***	***	***	20-30	20-30	10-20	10-20
[redacted]	***	***	***	5-15*	5-15	5-15*	0-5*
[redacted]	***	***	***	***	0-5*	0-5	0-5*
[redacted]	***	***	***	***	0-5	0-5	0-5
[redacted]	***	***	***	***	***	0-5*	0-5
[redacted]	***	***	***	***	***	0-5*	0-5
[redacted]	***	***	***	***	***	0-5*	0-5
[redacted]	***	***	***	***	***	0-5*	0-5
[redacted]	**	0-5	0-5	***	***	***	***

Direct Partner (Signatory/ies)	2009 (million EUR)	2010 (million EUR)	2011 (million EUR)	2012 (million EUR)	2013 (million EUR)	2014 (million EUR)	2015 (million EUR)
[redacted]							
[redacted]	***	0-5*	0-5	0-5	5-15	10-20	5-15
[redacted]	***	0-5*	0-5	0-5	0-5	0-5	0-5*
[redacted]	***	0-5*	0-5	0-5	0-5	0-5*	0-5
Total generated by Direct Partners above	0-5	10-20	250-300	450-500	400-450	300-350	250-300
EEA-wide market for online search advertising intermediation	1.000-1.050	1.200-1.250	1.300-1.350	1.750-1.800	1.600-1.650	1.250-1.300	1.100-1.150
Total as a percentage of the EEA-wide market for online search advertising intermediation	0-1%	1-5%	10-20%	20-30%	20-30%	20-30%	20-30%

Source: Google[761]

758 The Commission has included [redacted] based on Google's reply to Question 102 of the Commission's request for information of 13 July 2010, Annex 102.1, and Google's Reply to Question 1 of the request for information of 27 April 2017, Annex 1.

759 The Commission has included [redacted] based on Google's Reply to Question 1 of the request for information of 27 April 2017, Annex 1.

760 The Commission has included [redacted] based on Google's Reply to Question 1 of the request for information of 27 April 2017, Annex 1.

761 The Commission has based: (i) the numerator on Google's reply to the request for information of 28 March 2017, Annex 4, as updated; (ii) the denominator on Google's reply to the request for information of 16 March 2016, Annex 2 and (iii) the downward adjustments ("*") on: GSA documentation; Direct Partner request for information responses and associated correspondence.

(588) Fourth, GSAs with Direct Partners containing the Authorising Equivalent Ads Clause covered some of the most visited websites in the EEA (see recital (515)).

(589) Fifth, Direct Partners generated high query volumes constituting a large part of all queries in the EEA (see recital (518)).

(590) Sixth, the average duration of the GSAs with Direct Partners containing the Authorising Equivalent Ads Clause was long (see recital (519)).

(591) Seventh, the fact that Authorising Equivalent Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertising intermediation is consistent with the evolution of shares in that market (see recital (276)).

(592) The Commission's conclusion that the Authorising Equivalent Ads Clause prevented access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market for online search advertisement intermediation is not affected by Google's claims that:

(1) the Commission's calculations in Table 29 based on the gross revenues generated by Google in the EEA from Direct Partners whose GSAs contained the Authorising Equivalent Ads Clause are flawed by not narrowing, like for the Exclusivity Clause, the set of included Direct Partners for the Authorising Equivalent Ads Clause to All Sites Direct Partners;[762]

(2) competing providers of online search advertising intermediation services had frequent opportunities to bid for the search ads requirements of Direct Partners, whose GSAs contained the Authorising Equivalent Ads Clause given that the duration of GSAs with Direct Partners containing the Authorising Equivalent Ads Clause was short;[763]

(3) it is because of the dynamic nature of competition in the online search advertising intermediation market, not the Authorising Equivalent Ads Clause, that competing providers of online search advertising intermediation services failed to win more business[764] and

(4) it is because of Yahoo's insufficient investments in search advertising technology, not the Authorising Equivalent Ads Clause, that Yahoo failed to access a significant part of the EEA-wide market for online search advertising intermediation.[765]

(593) As to (1), the Commission has narrowed the set of included Direct Partners to All Sites Direct Partners, despite 69 other Direct Partners' having included at least some of their websites in their GSAs containing the Exclusivity Clause (see recital (391)).

(594) As to (2), the period during which Direct Partners were required to seek Google's approval before making any change to the display of competing search ads was

762 Second Letter of Facts Response, section 4 of Annex 3.

763 Second Letter of Facts Response, paragraphs 25-27; Google's submission of 11 October 2017, paragraph 66.

764 Second LoF Response, paragraph 20; Google submission of 11 October 2017, paragraphs 59 - 61.

765 SO response, paragraph 286 to 288; Google submission of 11 October 2017, paragraph 59.

long.[766] Google and Direct Partners also extended a number of GSAs that contained the Authorising Equivalent Ads Clause several times, without substantial modifications.[767]

(595) As to (3), the stability of Google's share of the EEA-wide market for online search advertising intermediation (see Section 7.3.1) and the average duration of the GSAs with Direct Partners containing the Authorising Equivalent Ads Clause (see recital (594)) contradict Google's claim that competition was dynamic.

(596) As to (4), Yahoo reported substantial yearly capital investments in its general search services between 2006 and 2015 and the level of those investments was similar to that of Google (see recitals (401) to (402)).

8.5.4.3. The Authorising Equivalent Ads Clause may have deterred innovation

(597) The Commission concludes that the Authorising Equivalent Ads Clause may have deterred innovation.

(598) First, the Authorising Equivalent Ads Clause deterred Direct Partners from establishing parallel partnerships and sourcing search ads from multiple providers, which in turn could serve or develop different types of search ads, at least for certain queries.

(599) Second, the Authorising Equivalent Ads Clause deterred competing providers of online search advertising intermediation services from investing in the development of innovative services, the improvement of the relevance of their existing services and the creation of new types of services. Due to their high query volumes (see recital (518)), access to Direct Partners is of particular importance for competing

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766 See for example: (i) GSA signed by [redacted] with effective date 1 October 2010, running from 1 October 2010 to 30 November 2014 (duration of four years, two months); (ii) GSA signed by [redacted] with effective date 1 August 2010, running from 1 August 2010 to 31 December 2013 (duration of three years, five months); (iii) GSA signed by [redacted] with effective date 1 October 2008, running from 1 October 2008 to 30 September 2012 (duration of four years); (iv) GSA signed by [redacted] with effective date 1 February 2011, running from 1 February 2011 to 30 November 2014 (duration of three years, ten months); (v) GSA signed by [redacted] with effective date 1 May 2010, running from 1 May 2010 to 30 April 2014 (duration of four years); (vi) GSA signed by [redacted] with effective date 1 January 2010, running from 1 January 2010 to 31 January 2014 (duration of four years, one month); (vii) GSA signed by [redacted] with effective date 1 December 2010, running from 1 December 2010 to 31 January 2015 (duration of four years, two months); (viii) GSA signed by [redacted] with effective date 1 September 2010, running from 1 September 2010 to 31 December 2013 (duration of three years, four months); (ix) GSA signed by [redacted] with effective date 1 July 2012, running from 1 July 2012 to 30 June 2015 (duration of three years); (x) GSA signed by [redacted] with effective date 1 December 2012, running from 1 December 2012 to 30 November 2016 (duration of four years); and (xi) GSA signed by [redacted] with effective date 1 January 2011, running from 1 January 2011 to 30 June 2014 (duration of three years, six months).

767 See for example: (i) GSA signed by [redacted] with effective date 1 October 2010, running from 1 October 2010 to 30 November 2014 (duration of four years, two months – including three extensions); (ii) GSA signed by [redacted] with effective date 1 September 2010, running from 1 September 2010 to 31 December 2013 (duration of three years, four months - including three extensions); (iii) GSA signed by [redacted] with effective date 1 July 2012 , running from 1 July 2012 to 30 June 2015 (duration of three years – including two extensions); and (iv) GSA signed by [redacted] with effective date 1 December 2012, running from 1 December 2012 to 30 November 2016 (duration of four years - including three extensions).

providers of online search advertising intermediation services to grow, attract advertisers and ultimately challenge Google's position.[768]

(600) Third, the Authorising Equivalent Ads Clause deprived competing providers of online search advertising intermediation services – and their investors – of a return on investment that would be proportionate to the success of their online search advertising intermediation services.

8.5.4.4. The Authorising Equivalent Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising except Portugal

(601) The Commission concludes that the Authorising Equivalent Ads Clause helped Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA, except Portugal.

(602) First, the Authorising Equivalent Ads Clause deprived competing online search advertising providers of data and revenues from Direct Partners that they could have used to improve their online search advertising services. As recitals (407) to (409) explain, data and revenues from Direct Partners are particularly important for competing online search advertising providers.

(603) Second, as recitals (409) to (410) explain, the attractiveness of the online search advertising side of a general search engine platform also influences the general search service side of that platform.

8.5.4.5. The Authorising Equivalent Ads Clause may have harmed consumers

(604) The Commission concludes that the Authorising Equivalent Ads Clause may have harmed consumers.

(605) First, the Authorising Equivalent Ads Clause contributed to weakening the constraints on Google’s pricing ability and contributed to keeping bidder density on Google's search advertising platform at a higher level (see recital (269)). This is likely to have led to higher prices for search ads paid by advertisers that, at least in part, were passed on to consumers by increasing the cost of the advertised goods or services.

(606) Second, in the absence of the Authorising Equivalent Ads Clause, users may have had a wider choice of search ads as competing providers of online search advertising intermediation services could have served or developed different search ads, at least for certain queries. Moreover, competing providers of online search advertising intermediation services could have developed a wider choice of search ads in terms of quality or range.

8.5.4.6. Google's arguments regarding the Commission's alleged failure to consider all the circumstances relevant to the assessment of the capability of the Authorising Equivalent Ads Clause to restrict competition

(607) Google claims that the Commission has failed to consider the following circumstances relevant to the assessment of the capability of the Authorising Equivalent Ads Clause to restrict competition:[769]

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[768] See footnote 575.

(1) the Commission has failed to adduce evidence that the Authorising Equivalent Ads Clause had actual anticompetitive effects, despite the clause having been in place "*for several years in the past*"; [770]

(2) the Commission has failed to consider the "counterfactual" i.e. whether absent the Authorising Equivalent Ads Clause, Direct Partners would still have either sourced search ads only from Google or placed Google's search ads in the same position on their search results pages; [771]

(3) the Commission has ignored the fact that the Authorising Equivalent Ads Clause did not foreclose as-efficient competing providers of online search advertising intermediation services; [772]

(4) the Commission has failed to adduce evidence of the existence of a strategy by Google aiming to exclude such as-efficient competitors; [773] and

(5) the Commission has failed to prove that there is a causal link between the Authorising Equivalent Ads Clause and any alleged effects on competition. Google has demonstrated that the Microsoft/Yahoo! JV was unable to compete successfully with Google because it failed to upgrade its ad-serving technology and had a poor quality product compared to Google.[774]

(608) Google's claims are unfounded.

(609) As to (1), the Commission is required to demonstrate the capability of the Authorising Equivalent Ads Clause to restrict competition, not that it had actual effects.[775]

(610) As to (2), this Decision demonstrates that, absent the Authorising Equivalent Ads Clause, Direct Partners could have sourced search ads from competing providers of online search advertising intermediation services (see recital (579)) and could have had the possibility to position the ads differently (see recitals (570) and (571)).

(611) As to (3), the Authorising Equivalent Ads Clause was capable of foreclosing a hypothetical as-efficient competing provider of online search advertising intermediation services. This is because:

(1) between 2011 and 2015, the Authorising Equivalent Ads Clause represented [10-20%] to [20-30%] of the total value of the EEA-wide market for online search advertising intermediation (see Table 29);

(2) between 2009 and 2015, the Authorising Equivalent Ads Clause, together with the Premium Placement and Minimum Google Ads Clause and the Exclusivity Clause in GSAs with All Sites Direct Partners, together represented between [50-60%] and [60-70%] of the total value of the EEA-wide market for online search advertising intermediation (see Table 25 and Table 26);

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769 SO Response, paragraph 302; Google's submission of 11 October 2017, paragraph 58; Second Letter of Facts Response, paragraph 12.

770 Google's submission of 11 October 2017, paragraph 31.

771 Second Letter of Facts Response, paragraphs 28-29; Google's submission of 11 October 2017, paragraphs 68-69.

772 Google's submission of 11 October 2017, paragraphs 71-72.

773 Second Letter of Facts Response, paragraph 30.

774 Google's submission of 11 October 2017, paragraphs 73-74.

775 Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 272.

(3) between 2006 and 2016, Google held a very large share of that market (see Section 7.3.1): and

(4) that market is prone to network effects (see Section 7.3.2).

(612) Moreover, in light of the above-mentioned features of the EEA-wide market for online search advertising intermediation, it is doubtful whether a hypothetical as-efficient competing provider of online search advertising intermediation services could have emerged at any point during the period of application of the Authorising Equivalent Ads Clause.[776]

(613) As to (4), it is irrelevant whether Google pursued a strategy aiming to exclude hypothetical as-efficient competitors. While the Commission may take into account the possible existence of such a strategy when determining the existence of an abuse of a dominant position, the absence of such a strategy cannot exonerate an undertaking from liability for conduct that is objectively an infringement.[777]

(614) As to (5), the Commission is not required to demonstrate that the Authorising Equivalent Ads Clause was the sole cause of the failure of the Microsoft/Yahoo! JV to compete. Moreover, as recitals (401) and (402) explain, Yahoo! made substantial investments in an attempt to compete with Google in the EEA-wide market for online search advertisement intermediation.

8.5.5. Objective justification and efficiency claims

(615) Google has essentially put forward two justifications for the Authorising Equivalent Ads Clause.

(616) First, the Authorising Equivalent Ads Clause provided a mechanism for Direct Partners to ensure that their display of competing search ads complied with Google's quality standards.[778]

(617) Second, the Authorising Equivalent Ads Clause helped to avoid deceptive practices on sites that also displayed Google search ads, which had negative implications for Google's brand and users.[779]

(618) For the reasons set out in recitals (619) to (622), the Commission concludes that Google has not demonstrated that the Authorising Equivalent Ads Clause was objectively justified or that the exclusionary effect produced by that clause was counterbalanced or outweighed by advantages in terms of efficiency gains that also benefit consumers.

(619) First, Google has not demonstrated why Direct Partners should have to ensure that their display of competing search ads complied with Google's quality standards.

(620) Second, Google has not substantiated how the Authorising Equivalent Ads clause helped to avoid deceptive practices on sites that also displayed Google search ads.

(621) Third, Google could have achieved compliance with its quality standards and the protection of its brand and users in a less restrictive manner, such as the clear labelling of Google search ads.

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776 Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, EU:C:2015:651, paragraph 59.

777 Case C-549/10 P *Tomra Systems v Commission*, EU:C:2012:221, paragraph 21.

778 SO Response, paragraph 340; Google's submission of 11 October 2017, paragraph 76.

779 SO Response, paragraph 340.

(622) Fourth, the fact that in 2016, Google sent waiver letters to Direct Partners removing the Authorising Equivalent Ads Clause from any agreement based on the new template GSA (see recital (104)) confirms that Google could have implemented less restrictive measures than the Authorising Equivalent Ads Clause.

8.5.6. Duration of the infringement

(623) The start date of the infringement was 31 March 2009. This is because as of this date: (i) Google held a dominant position in the EEA-wide market for online search advertising intermediation (Section 7.3); and (ii) the Authorising Equivalent Ads Clause required Direct Partners to seek Google's approval before making any change to the display of competing search ads (Section 8.5.3).

(624) The end date of the infringement was 6 September 2016. This is because, on that date, Google sent the last letter to a Direct Partner waiving the application of the Authorising Equivalent Ads Clause (see recitals (99) to (106)).

9. SINGLE AND CONTINUOUS INFRINGEMENT

9.1. Principles

(625) The concept of a single and continuous infringement relates to a series of actions which form part of an overall plan because their identical objective distorts competition within the internal market.

(626) For the purposes of characterising various instances of conduct as a single and continuous infringement, it is necessary to establish whether they complement each other inasmuch as each of them is intended to deal with one or more consequences of the normal pattern of competition and, by interacting, contribute to the realisation of the objectives intended within the framework of that overall plan. In that regard, it will be necessary to take into account any circumstance capable of establishing or casting doubt on that complementary link, such as the period of application, the content (including the methods used) and, correlatively, the objective of the various actions in question.[780]

9.2. Application to this case

(627) For the reasons set out above, the Commission concludes that the three forms of conduct described in Sections 8.3 to 8.4.6 constituted separate infringements of Article 102 of the Treaty and Article 54 of the EEA Agreement:

(1) the Exclusivity Clause in GSAs with All Sites Direct Partners;

(2) the Premium Placement and Minimum Google Ads Clause in GSAs with Direct Partners; and

(3) the Authorising Equivalent Ads Clause in GSAs with Direct Partners.

(628) For the reasons set out below, the Commission also concludes that the three forms of conduct described in Sections 8.3 to 8.5 constituted a single and continuous infringement of Articles 102 of the Treaty and Articles 54 of the EEA Agreement.

(629) First, the three forms of conduct described in Sections 8.3 to 8.5 pursued an identical objective, namely to foreclose competing providers of online search advertising

[780] Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 892.

intermediation services in order to protect and strengthen Google's position in online search advertising intermediation and online search advertising, which in turn maintained and strengthened Google's position in general search services.[781]

(630) Second, the three forms of conduct described in Sections 8.3 to 8.5 were complementary in that they all sought to deter Direct Partners from sourcing competing search ads and to prevent access by competing providers of online search advertising intermediation services to a significant part of the EEA-wide market:

(1) As described in Section 8.3 the Exclusivity Clause required All Sites Direct Partners to source all or most of their search ads requirements from Google.

(2) As described in Section 8.4, the Premium Placement and Minimum Google Ads Clause required Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads. Google even referred to the Premium Placement and Minimum Google Ads Clause as "*our* [Google's] *relaxed exclusivity*".[782]

(3) As described in Section 8.5, the Authorising Equivalent Ads Clause required Direct Partners to seek Google's approval before making changes to the display of competing search ads on websites covered by the relevant GSA; and

(4) All GSAs that included the Authorising Equivalent Ads Clause also included the Premium Placement and Minimum Google Ads Clause (see footnote 422).

10. DURATION OF THE SINGLE AND CONTINUOUS INFRINGEMENT

(631) The Commission concludes that the duration of the single and continuous infringement was 10 years and eight months and six days.

(632) The start date of the single and continuous infringement was 1 January 2006. This is because as of this date: (i) Google held a dominant position in the EEA-wide market for online search advertising intermediation (Section 7.3); and (ii) the Exclusivity Clause required All Sites Direct Partners to source all or most of their search ads requirements from Google (Section 8.3.3).

(633) The end date of the single and continuous infringement was 6 September 2016.[783] This is because, on that date, Google sent the last letter to a Direct Partner waiving the application of the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause (see recitals (99) to (106))[784].

11. JURISDICTION

11.1. Principles

(634) Article 102 of the Treaty is intended to prevent unilateral conduct of undertakings limiting competition within the internal market. In particular, Article 102 of the

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781 See also Sections 8.3.4.4, 8.4.4.4 and 8.5.4.4.

782 Reply of [redacted] to the Commission's request for information of 30 October 2015, Annex to "[redacted]", redline version of the GSA contract.

783 Google waiver letter addressed to [redacted], dated 6 September 2016 (submitted as part of an Annex to Google's letter of 9 September 2016).

784 Annex 1 to Google's letter of 17 May 2017.

Treaty prohibits the abuse of a dominant position "*within the internal market or in a substantial part of it*".[785]

(635) In order to justify the Commission's jurisdiction, it is sufficient that a conduct is either implemented in the EEA (the "implementation test") or is liable to have immediate, substantial and foreseeable effects in the EEA (the "qualified effects test").[786] These two approaches for establishing the Commission's jurisdiction are alternative.[787]

(636) The implementation test is satisfied by mere sale within the EEA, irrespective of the location of sources of supply or of production plants.[788]

(637) The qualified effects test allows the application of Article 102 of the Treaty to be justified under public international law when it is foreseeable that the conduct in question will have an immediate and substantial effect in the European Union.[789] In this regard, it is sufficient to take account of the probable effects of conduct on competition in order for the foreseeability criterion to be satisfied.[790]

11.2. Application to this case

(638) The Commission concludes that it has jurisdiction individually and collectively over the three forms of conduct described in Sections 8.3 to 8.5. Each form of conduct saw Google enter into agreements with undertakings that are active in the EEA. The three forms of conduct were therefore both implemented in the EEA and capable of having substantial, immediate and foreseeable effects in the EEA.

(639) The Commission's conclusion is not affected by Google's claims that: (i) implementation of an agreement within the EEA does not occur simply because a Direct Partner has a presence in the EEA[791]; and (ii) the Commission has not shown that Google had a strategy to prevent other search advertising intermediaries from competing against it.[792]

(640) In the first place, the implementation test is satisfied in this case not because Direct Partners have a presence in the EEA but because they are active within the EEA. Direct Partners target audience in the EEA and receive revenue from clicks on search ads made by users located in the EEA.

(641) In the second place, for the purpose of establishing jurisdiction the Commission is not required to show a strategy aimed at preventing competitors of a given undertaking from competing against it.

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785 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 42.

786 Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others* v *Commission*, EU:C:1988:447, paragraphs 11 to 18; Case T-102/96 *Gencor* v *Commission* EU:T:1999:65, paragraphs 89 to 101.

787 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraphs 40-46.

788 Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others (Wood Pulp)* v *Commission*, EU:C:1988:447, paragraph 17; Case T-102/96 *Gencor* v *Commission* EU:T:1999:65, paragraph 87.

789 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 42.

790 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 51.

791 Google's submission of 11 October 2017, para. 85.

792 Google's submission of 11 October 2017, para. 87.

12. EFFECT ON TRADE BETWEEN MEMBER STATES

12.1. Principles

(642) Article 102 of the Treaty prohibits as incompatible with the internal market an abuse of a dominant position "*in so far as it may affect trade between Member States*". Article 54 of the EEA Agreement contains a similar prohibition.

(643) The effect on trade criterion consists of three elements.

(644) First, "*trade*" must be affected. The concept of trade is not limited to traditional exchanges of goods and services across borders, but covers all cross-border economic activity. It also encompasses practices affecting the competitive structure of the internal market by eliminating or threatening to eliminate a competitor operating within the territory of the European Union.[793]

(645) Second, a practice must be capable of having an effect on trade between Member States.[794] In other words, it must be foreseeable with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the practice in question has an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.[795] Where a dominant undertaking engages in exclusionary conduct in more than one Member State, such conduct is normally, by its very nature, capable of affecting trade between Member States.[796]

(646) Third, the effect on trade between Member States must be "*appreciable*". This is assessed primarily with reference to the position of an undertaking on a relevant product market.[797] The stronger the position of an undertaking, the more likely it is that the effect on trade between Member States of a practice will be appreciable.[798]

12.2. Application to this case

(647) The Commission concludes that the three forms of conduct described in Sections 8.3 to 8.5 individually and collectively were capable of having an appreciable effect on trade.

(648) First, Google's online search advertising intermediation services are, by their very nature, cross-border in scope.

(649) Second, the three forms of conduct described in Sections 8.3 to 8.5 were capable of affecting the competitive structure of the internal market by eliminating or threatening to eliminate competing providers of online search advertising intermediation services operating within the EEA.

(650) Third, Google has implemented the three forms of conduct throughout the EEA.

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793 Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraphs 32-33; Joined Cases T-24/93 and others *Compagnie Maritime Belge v Commission*, EU:T:1996:139, paragraph 203.

794 Case 322/81 *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 104; Case C-41/90 *Höfner and Elsner v Macrotron*, EU:C:1991:161, paragraph 32; and Case T-228/97 *Irish Sugar v Commission*, EU:T:1999:246, paragraph 170.

795 Case 5/69 *Franz Völk v Établissement J. Vervaecke* EU:C:1969:35, paragraph 5/7.

796 Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.4.2004, p. 81, paragraph 75.

797 Case 5/69 *Franz Völk v Établissement J. Vervaecke*, EU:C:1969:35, paragraph 5/7.

798 Case T-65/89 *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 138.

(651) Fourth, between 2006 and 2016, Google held a dominant position in the EEA-wide market for online search advertising intermediation.

13. ADDRESSEES

13.1. Principles

(652) Article 102 of the Treaty and Article 54 of the EEA Agreement are addressed to undertakings. The concept of an undertaking refers to any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.[799] The term "undertaking" must also be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.[800]

(653) When such an economic entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.[801] However, the infringement of competition law must be imputed unequivocally to a legal person on whom fines may be imposed and the statement of objections must be addressed to that person. It is also necessary that the statement of objections indicates in which capacity a legal person is called on to answer the allegations.[802]

(654) The conduct of a subsidiary may be imputed to the parent company even if the parent company does not participate directly in the infringement when the parent company and the subsidiary form a 'single economic entity', that is to say a single 'undertaking' within the meaning of Articles 101 and 102 of the Treaty, because, in such a case, the parent company exercises a decisive influence over the subsidiary which has participated in it.[803] A parent company that owns 100% (or almost 100%) of a subsidiary has the ability to exercise decisive influence over that subsidiary. In such a case, there exists a rebuttable presumption that the parent company also in fact exercises that influence without the need for the Commission to adduce further evidence on the actual exercise of influence (the parental liability presumption).[804] In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly-owned by the parent company in order to assume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The parent company can then be held jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.[805] The same principles hold true for the purposes of the application of Article 54 of the EEA Agreement.

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799 Case T-132/07 *Fuji Electric Co. Ltd v. Commission*, EU:T:2011:344, paragraph 184.

800 Case C-90/09 P *General Química and Others* v *Commission*, EU:C:2011:21, paragraph 35 and the case-law cited.

801 Case C-90/09 P *General Química and Others* v *Commission*, EU:C:2011:21, paragraph 35 and the case-law cited.

802 Case C-97/08 P *Akzo Nobel and Others v Commission*, EU:C:2009:536, paragraph 57.

803 Case C-90/09 P, *General Química and Others v Commission*, EU:C:2011:21, paragraphs 37-38.

804 Case C-90/09 P, *General Química and Others v Commission*, EU:C:2011:21, paragraph 39.

805 Case C-90/09 P, *General Química and Others v Commission*, EU:C:2011:21, paragraph 40.

13.2. Application to this case

(655) Google has committed the single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement because it directly engaged in the three forms of conduct described in Sections 8.3 to 8.5.

(656) As of 2 October 2015 Alphabet is jointly and severally liable for the single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement. This is because it holds 100% of Google since 2 October 2015 and because Alphabet has not provided any evidence to rebut the presumption that it has exercised decisive influence over Google since that date.

14. REMEDIES

14.1. Principles

(657) In order to ensure that a decision is effective,[806] the Commission may require a dominant undertaking to refrain from adopting any measures having an equivalent object or effect as the conduct established as abusive.[807] Any remedy must also apply in relation to the infringement that has been established[808] and be proportionate to the objective sought, namely re-establishment of compliance with the rules infringed.[809]

14.2. Application to this case

(658) To the extent that the single and continuous infringement or any of the three separate infringements that constitute the single and continuous infringement (together referred to hereinafter as the "Infringement") are ongoing, the Commission concludes that Google and Alphabet should be required to bring them immediately to an end and refrain from any measure having an equivalent object or effect.[810] This shall include at least the following:

(1) Google and Alphabet cannot make the sourcing of Google search ads conditional on written or unwritten requirements that require Direct Partners to reserve the most prominent space on their search results pages covered by the relevant GSA for Google search ads;

(2) Google and Alphabet cannot make the sourcing of Google search ads conditional on written or unwritten requirements that require Direct Partners to fill the most prominent space on their search results pages covered by the relevant GSA with a minimum number of Google search ads;

(3) Google and Alphabet cannot make the signing of a GSA conditional on a Direct Partner’s acceptance of written or unwritten conditions that require Direct Partners to seek Google's approval before making any change to the display of competing search ads; and

(4) Google and Alphabet cannot punish or threaten Direct Partners that decide to source competing search ads.

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806 Joined Cases 6/73 and 7/73 *Commercial Solvents*, EU:C:1974:18, paragraph 46.

807 Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246 paragraphs 220-21.

808 Joined Cases 6/73 and 7/73 *Commercial Solvents*, EU:C:1974:18, paragraph 45.

809 Joined Cases C-241/91 P and C-242/91 P, *RTE and ITP v Commission*, EU:C:1995:98, paragraph 93; Case C-119/97 P *Ufex and Others v Commission*, EU:C:1999:116, paragraph 94.

810 Case T-83/91 *Tetra Pak*, EU:T:1994:226, paragraphs 217-222.

(659) To the extent that the Infringement is ongoing and Google and Alphabet were not to bring it effectively to an end or were to adopt a practice or measure having an equivalent object or effect, the Commission may by decision impose any remedies which are proportionate and necessary to bring the Infringement or that practice or measure effectively to an end.

(660) The Commission's conclusion that to, the extent that the Infringement is ongoing, Google and Alphabet should be required to bring it immediately to an end and refrain from any measure having an equivalent object or effect is not affected by Google's claim that no remedy is required because Google has already ceased the Infringement.[811]

(661) First, the requirement that Google immediately bring the Infringement to an end merely indicates the consequences, regarding Google's future conduct, of the Decision's finding of infringement.[812] Moreover, to the extent that Google has already brought the Infringement to an end, the requirement that it immediately do so is of no concern to it.[813]

(662) Second, the requirement that Google refrain from any measure having an equivalent object or effect is by nature preventive and does not depend on the ongoing nature of the Infringement at the time of adoption of this Decision.[814]

15. FINES

15.1. Principles

(663) Pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 and Article 5 of Council Regulation (EC) No 2894/94, the Commission may by decision impose fines on undertakings, where, either intentionally or negligently, they infringe Article 102 of the Treaty or Article 54 of the EEA Agreement.

(664) An infringement of Article 102 of the Treaty or Article 54 of the EEA Agreement is committed intentionally or negligently where the undertaking concerned cannot be unaware of the anticompetitive nature of its conduct, whether or not it was aware that it was infringing the competition rules of the Treaty.[815] Regarding an undertaking in

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811 SO Response, paragraphs 344-348.

812 Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others v Commission*, EU:C:1993:120, paragraph 184; Joined Cases T-45/98 and T-47/98 *Krupp Thyssen Stainless and Acciai speciali Terni v Commission*, EU:T:2001:288, paragraph 311; Joined Cases T-217/03 and T-245/03 *FNCBV and FNSEA and Others v Commission*, EU:T:2006:391, paragraph 102; Case T-161/05 *Hoechst v Commission*, EU:T:2009:366, paragraph 193; Case T-587/08 *Fresh Del Monte v Commission*, EU:T:2013:129, paragraph 291.

813 Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij (LVM) and Others v Commission*, EU:C:2002:582, paragraph 108; Case T-410/03 *Hoechst v Commission*, EU:T:2008:211, paragraph 196; Joined Cases T-456/05 and T-457/05 *Gütermann and Zwicky v Commission*, EU:T:2010:168, paragraph 61; Case T-92/13 *Philips v Commission*, EU:T:2015:605, paragraph 133.

814 Case T 34/92 *Fiatagri and New Holland Ford v Commission*, EU:T:1994:258, paragraph 39; Case T-136/94 *Eurofer v Commission*, EU:T:1999:45, paragraph 114; Case T-311/94 *BPB de Eendracht (anciennement Kartonfabriek de Eendracht) v Commission*, EU:T:1998:93, paragraph 275; Case T-410/03 *Hoechst v Commission*, EU:T:2008:211, paragraph 200; Joined Cases T-456/05 and T-457/05 *Gütermann and Zwicky v Commission*, EU:T:2010:168, paragraph 66.

815 Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246, paragraph 239, upheld on appeal in Case C-333/94 P, EU:C:1996:246, paragraph 48; Case T-229/94 *Deutsche Bahn v Commission*,

a dominant position, the undertaking is aware of the anti-competitive nature of its conduct where it is aware of the essential facts justifying both the finding of a dominant position on the relevant market and the finding by the Commission of an abuse of that dominant position.[816]

(665) Where the Commission establishes the existence of a single and continuous infringement consisting of several separate infringements, it may impose a single fine and is not required to break down the amount of the fine between the separate infringements or to state specifically how it took into account each of the separate infringements.[817]

(666) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, in fixing the amount of the fines, the Commission must have regard to all relevant circumstances and particularly to the gravity and to the duration of the infringement. In doing so, the Commission will set the fines at a level sufficient to ensure deterrence. The Commission will reflect any aggravating or mitigating circumstances in the fines imposed.

(667) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (the "Guidelines on Fines").[818]

(668) First, the Commission defines the basic amount of the fine.[819] That amount is to be set by reference to the value of sales,[820] that is, the value of the undertaking's sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area in the EEA. The value of sales will be assessed before VAT and other taxes directly related to the sales.[821]

(669) In determining the basic amount of the fine to be imposed, the Commission takes the value of the undertaking's sales to which the infringement directly or indirectly relates in the relevant geographic area within the EEA.

EU:T:1997:155, paragraph 130; Case T-271/03, *Deutsche Telekom v Commission*, EU:T:2008:101, paragraph 295 upheld on appeal in Case C-280/08 P, EU:C:2010:603, paragraph 124; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 319, upheld on appeal in Case C-295/12 P, EU:C:2014:2062, paragraph 156; Case C-681/11 *Schenker & Co. and Others*, EU:C:2013:404, paragraph 37; Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 762.

816 Case 322/81, *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 107; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 320; Case T-286/09.

817 Joined Cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission*, EU:C:1983:29, paragraph 127; Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246, paragraph 236; Joined Cases T 25/95 etc *Cimenteries CBR and Others v Commission*, EU:T:2000:77, paragraph 4761; Case T-203/01 *Michelin v Commission*, EU:T:2003:250, paragraph 265; Case T-73/04 *Carbone-Lorraine v Commission*, EU:T:2008:416, paragraphs 47-48; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 906; Case T-446/05 *Amann & Söhne and Cousin Filterie v Commission*, EU:T:2010:165, paragraphs 154-155.

818 OJ C 210, 1.9.2006, p. 2.

819 Point 10 of the Guidelines on Fines.

820 Point 13 of the Guidelines on Fines.

821 Point 17 of the Guidelines on Fines.

(670) The amount of the value of sales taken into account corresponds to a percentage which may be set at a level of up to 30% of the value of sales.[822] The choice of a given percentage will depend on the degree of gravity of the infringement.

(671) The proportion of the value of sales resulting from that percentage will then be multiplied by the duration of the infringement.[823]

(672) The Commission may also include in the basic amount an additional amount of 15% to 25% of the value of sales, irrespective of duration.[824]

(673) Second, where applicable, the Commission will adjust the basic amount upwards or downwards to take into account aggravating or mitigating circumstances.[825] Those circumstances are listed non-exhaustively in paragraphs 28 and 29 of the Guidelines on Fines.[826]

(674) Third, the Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fine to be imposed on an undertaking which has a particularly large turnover beyond the sales of goods or services to which the infringement relates.[827]

(675) Fourth, pursuant to Article 23(2) of Regulation (EC) No 1/2003, the fine for an infringement shall not exceed 10% of the undertaking's total turnover in the preceding business year.

15.2. Intention or negligence

(676) The Commission concludes that, contrary to what Google claims,[828] Google and Alphabet committed the Infringement intentionally or at least negligently.

(677) First, Google and Alphabet could or should not have been unaware of the fact that Google held a dominant position in the EEA-wide market for online search advertising intermediation (see Section 7.3).

(678) In the first place, Google and Alphabet ought to have been familiar with the principles governing market definition in competition cases and, where necessary, taken appropriate legal advice regarding the definition of the market for online search advertising intermediation.[829]

(679) In the second place, Google and Alphabet ought to have been familiar with the significance of Google's strong and stable market shares in the EEA-wide market for online search advertising intermediation (see Section 7.3.1).[830]

(680) In the third place, as recital (158) explains, in the *Google/DoubleClick* decision the Commission merely stated that online search and non-search ads may be substitutable to a certain extent for advertisers.

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822 Point 21 of the Guidelines on Fines.

823 Point 19 of the Guidelines on Fines.

824 Point 25 of the Guidelines on Fines.

825 Point 27 of the Guidelines on Fines.

826 Point 11 of the Guidelines on Fines.

827 Point 30 of the Guidelines on Fines.

828 SO Response, paragraphs 350, 355-365.

829 Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 323.

830 Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraphs 324-325.

(681) Second, Google and Alphabet could or should not have been unaware of the fact that their conduct constituted an abuse of Google's dominant position on the EEA-wide market for online search advertising intermediation.

(682) The Commission and the Court of Justice of the European Union have repeatedly condemned practices by undertakings in a dominant position that tie purchasers – even if they do so at their request – by an obligation or promise on their part to obtain all or most of their requirements exclusively from these undertakings.[831]

15.3. Imposition of a fine notwithstanding commitment discussions

(683) The Commission concludes that, contrary to what Google claims[832], it can, and indeed should, impose a fine, notwithstanding the fact that it had considered adopting a decision under Article 9 of Regulation (EC) No 1/2003[833] and that Google cooperated with the Commission to resolve this case through a commitments procedure.[834]

(684) First, the Commission can impose a fine, irrespective of whether it has previously resolved cases regarding exclusivity clauses by undertakings in a dominant position by a decision under Article 9 of Regulation (EC) No 1/2003. The Commission has a margin of discretion in the choice between adopting a decision under Article 7 or Article 9 of Regulation (EC) No 1/2003.[835]

(685) Second, there are several reasons why, in this case, the Commission decided to revert to the procedure under Article 7 of that Regulation (see recitals (72) to (75)).

(686) Third, having reverted to the procedure under Article 7 of Regulation (EC) No 1/2003, the Commission is entitled to make use of the full range of its powers under that Regulation, including the power to order that an infringement be brought to an end and the power to impose fines for that infringement.[836]

(687) Fourth, it is only in strictly exceptional situations, such as where an undertaking's cooperation has been decisive in establishing an infringement, that a fine may not be imposed.[837] In this case, however, Google's cooperation in no way assisted the Commission in establishing the infringement.

(688) Fifth, to the extent that the previous Commissioner responsible for competition matters may have indicated that no fine should be imposed, this would constitute a

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831 Case 86/76 *Hoffmann-La Roche* v *Commission*, EU:C:1979:36, paragraph 89; Case C-62/86 AKZO v Commission, EU:C:1991:286, paragraph 149; Case T-65/89 *BPB Industries Plc and British Gypsum Ltd v Commission*, EU:T:1993:31, paragraph 68; Case T-128/98 *Aéroports de Paris v Commission*, EU:T:2000:290, paragraph 170; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraph 315; Case T-155/06 *Tomra v Commission*, EU:T:2010:370, paragraphs 208-209.

832 SO Response, paragraphs 370 - 377.

833 SO Response, paragraphs 372, 374-375

834 SO Response, paragraphs 373, 376.

835 Case C-441/07 P, *Commission v Alrosa*, EU:C:2010:377, paragraph 40; Case T-491/07 RENV *CB v Commission*, EU:T:2016:379, paragraph 470.

836 Case T-491/07 RENV *CB v Commission*, EU:T:2016:379, paragraph 461.

837 Case C-681/11 *Schenker & Co. and Others*, EU:C:2013:404, paragraph 49; Case C-499/11 P *Dow Chemical and Others v Commission*, EU:C:2013:482, paragraph 47.

non-binding personal view that could not, and indeed did not, predetermine the position subsequently adopted by the Commission in this Decision.[838]

15.4. Calculation of the fine

15.4.1. Joint and several liability

(689) The Commission concludes that Alphabet was jointly and severally liable for the Infringement as of 2 October 2015 (see Section 13.2).

(690) The Commission therefore concludes that Google and Alphabet should be held jointly and severally liable to pay the fine insofar as it relates to the period from that date.

15.4.2. Single fine

(691) Given that the different forms of conduct constituting the Infringement pursued an identical objective, namely foreclosing competing online search advertising intermediaries in order to protect and strengthen Google's position in online search advertising intermediation and online search advertising, which in turn maintained and strengthened Google's position in general search services (see recital (629)), the Commission concludes that a single fine should be imposed on Google and Alphabet.

15.4.3. Determination of the basic amount of the fine

15.4.3.1. The value of sales

(692) The Commission concludes that the Infringement directly or indirectly related to the revenues generated by Google's online search advertising intermediation activity because the Infringement was capable of having anti-competitive effects in the EEA-wide market for online search advertising intermediation (see Sections 8.3.2, 8.4.2 and 8.5.2).

(693) For the purpose of the value of sales, the Commission therefore uses revenues generated by Google's online search advertising intermediation services at the EEA level. This does not include revenues derived from services such as AdSense for Shopping, AdSense for Content or Ad Exchange.

(694) The Commission uses the revenue figures provided by Google in reply to the Commission's request for information of 8 October 2018.[839]

(695) The Commission's conclusion that the Infringement directly or indirectly related to the EEA revenues generated by Google's online search advertising intermediation activity is not affected by Google's claims that the Commission ought to exclude from the value of sales:

(1) revenues from Online Contracts[840] and revenues from Direct Partner contracts that did not contain the Exclusivity Clause; the Premium Placement and Minimum Google Ads Clause or the Authorising Equivalent Ads Clause;[841]

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838 Case T-266/97 *Vlaamse Televisie Maatschappij v Commission*, EU:T:1999:144, paragraph 49; Case T-404/12 *Toshiba v. Commission*, EU:T:2016:18, paragraph 60.

839 Google's reply to Question 1(i) of the Commission's request for information of 8 October 2018, Annex 1. As the revenue figures are provided in US dollars, they are converted into euros on the basis of the average annual reference exchange rate published by the European Central Bank for the year 2015: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-usd.en.html

(2) revenues from Direct Partners which, during the relevant period, requested more than the minimum of three Google ads required by the Premium Placement and Minimum Google Ads Clause;[842]

(3) revenues from countries and years where no other provider of online search advertising intermediation services entered or was attempting to enter the EEA-wide market for online search advertising intermediation;[843]

(4) revenues from GSAs concluded between Google and non-EEA Direct Partners;[844] and

(5) the TAC that Google pays to Direct Partners (see recital (23)).[845]

(696) First, the Commission is entitled to include in the value of sales the revenues mentioned in recitals (695)(1) to (695)(4) because those revenues directly or indirectly relate, within the meaning of point 13 of the Guidelines on Fines, to the Infringement.

(697) In the first place, Google generated those revenues on the EEA-wide market for online search advertising intermediation and the Infringement concerns that market.[846]

(698) In the second place, the Infringement prevented access by competitors to a significant part of the EEA-wide market for online search advertisement intermediation and enabled Google to maintain and strengthen its dominant position in each national market for online search advertising in the EEA except Portugal.

(699) Second, the Commission is entitled to include in the value of sales Google's gross revenues including TAC and not only the revenue share to which Google is ultimately entitled.

(700) In the first place, the wording of the second subparagraph of Article 23(2) of Regulation No 1/2003 refers to the total turnover of the undertaking concerned, without any deduction.[847]

(701) In the second place TAC is an integral part of Google's search revenues and a component of the price charged to advertisers for Google's services.[848] Consequently, traffic acquisition costs are a component of the overall sales price.[849]

(702) In the third place, it is irrelevant whether traffic acquisition costs constitute a significant part of Google's gross revenues[850] or that such costs are predetermined as a specific portion of Google's gross revenues and thus readily identifiable.[851]

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840 SO Response, paragraph 385.

841 SO Response, paragraphs 380, 385.

842 SO Response, paragraph 386.

843 SO Response, paragraph 387-388.

844 SO Response, paragraph 389.

845 SO Response, paragraphs 391-396.

846 Case C-261/16 P *Kühne + Nagel International and Others v Commission*, EU:C:2018:56, paragraphs 65-66; Case C-263/16 P *Schenker v Commission*, EU:C:2018:58, paragraphs 60-61; Case C-264/16 P *Deutsche Bahn and Others v Commission*, EU:C:2018:60, paragraphs 50-51; Case C-271/16 P *Panalpina Welttransport and Others v Commission*, EU:C:2018:59, paragraphs 30-31.

847 Case T-410/09 *Almamet v Commission*, EU:T:2012:676, paragraph 225.

848 Joined Cases T 25/95 etc *Cimenteries CBR and Others v Commission*, EU:T:2000:77, paragraph 5030.

849 Case T-406/08 *ICF v Commission*, EU:T:2013:322, paragraphs 175-176; Case T-410/09 *Almamet v Commission*, EU:T:2012:676, paragraph 225.

(703) In the fourth place, to take gross turnover into account only in some cases would require a threshold to be established, in the form of a ratio between net and gross turnover, which would be difficult to apply and would give scope for endless and insoluble disputes.[852]

15.4.3.2. The last business year

(704) In this case, contrary to what Google claims,[853] in determining the basic amount of the fine to be imposed, the Commission rightly took as a basis the value of the Google's sales during the last full year of the participation in the Infringement.

(705) In the first place, pursuant to point 13 of the 2006 Guidelines, the Commission normally uses the sales made by the undertaking during the last full business year of its participation in the infringement.

(706) In the second place, the last full business year of Google's participation in the Infringement reflects the economic reality as it appeared at the time when Google committed the Infringement because it takes account of the size and economic power of Google and the scope of the Infringement.[854]

(707) In the third place, Google has not demonstrated that the use of the turnover in 2015 does not reflect their true size and economic power or the scale of the Infringement which it committed.[855]

(708) In the fourth place, the mere fact that had the Commission used a different method such as Google's average annual value of sales during the entire Infringement period would have led to a lower fine does not demonstrate that the fine imposed on them is disproportionate either to the gravity of the Infringement or its economic situation at the time of the adoption of the Decision.[856]

15.4.3.3. Gravity

(709) The Commission concludes that the proportion of the value of sales to be used to establish the basic amount of the fine should be 11%.

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850 Case T-254/12 *Kühne + Nagel International and Others v Commission*, EU:T:2016:113, paragraph 247, confirmed on appeal in Case C-261/16 P, EU:C:2018:56, paragraphs 80-85; Case T-265/12 *Schenker v Commission*, EU:T:2016:111, paragraph 263; Case T-267/12 *Deutsche Bahn and Others v Commission*, EU:T:2016:110, paragraph 207; Case T-270/12 *Panalpina World Transport (Holding) and Others v Commission*, EU:T:2016:109, paragraph 131; Case T-475/14 *Prysmian and Prysmian cavi e sistemi v Commission*, EU:T:2018:448, paragraph 237.

851 Case T-254/12 *Kühne + Nagel International and Others v Commission*, EU:T:2016:113, paragraph 251; Case T-270/12 *Panalpina World Transport (Holding) and Others v Commission*, EU:T:2016:109, paragraph 132.

852 Case C-272/09 P *KME Germany and Others v Commission*, EU:C:2011:810, paragraph 53; Case C-389/10 P *KME Germany and Others v Commission*, EU:C:2011:816, paragraph 62.

853 SO Response, paragraph 415 and Annex 1 Part II p. 7.

854 Case T-540/08 *Esso and Others v Commission*, EU:T:2014:630, paragraph 95; Case T-543/08 *RWE and RWE Dea v Commission*, EU:T:2014:627, paragraph 218; Case T-72/09 *Pilkington Group and Others v Commission*, EU:T:2014:1094, paragraph 204; Case C-447/11 P *Caffaro v Commission*, EU:C:2013:797, paragraph 51.

855 Case T-540/08 *Esso and Others v Commission*, EU:T:2014:630, paragraph 96; Case T-541/08 *Sasol and Others v Commission*, EU:T:2014:628, paragraph 334; Case T-543/08 *RWE and RWE Dea v Commission*, EU:T:2014:627, paragraph 219; Case T-566/08 *Total Raffinage Marketing v Commission*, EU:T:2013:423, paragraph 414; Case T-91/13 *Philips v Commission*, EU:T:2015:605, paragraph 211.

856 Case T-412/10 *Roca v Commission*, EU:T:2013:444, paragraph 157.

(710) In reaching this conclusion, the Commission takes into account the factors set out in recitals (711) to (714).

(711) First, the national markets for online search advertising and the EEA-wide market for online search advertising intermediation are of significant economic importance. This means that any anti-competitive behaviour on these markets is likely to have a considerable impact.

(712) Second, the Commission and the Court of Justice of the European Union have already repeatedly condemned practices by undertakings in a dominant position that tie purchasers – even if they do so at their request – by an obligation or promise on their part to obtain all or most of their requirements exclusively from the dominant undertaking.[857] Moreover the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause have both kept competitors out of the market and Google itself referred to the Premium Placement and Minimum Google Ads Clause as "*our relaxed exclusivity*" (see recital (467)).

(713) Third, throughout the duration of the Infringement, Google not only held a dominant position in the national markets for online search advertising in the EEA except Portugal and the EEA-wide market for online search advertising intermediation in which the Infringement takes place, but its market shares were very high.

(714) Fourth, the whole EEA was covered by the Infringement.

(715) Fifth, the Commission's conclusion that the proportion of the value of sales to be used to establish the basic amount of the fine should be 11% is not affected by Google's claims[858] that

(1) the online search advertising intermediation market has grown due to Google's investment;

(2) treating the Exclusivity Clause in GSAs with All Sites Direct Partners, the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause as abusive is contrary to established law;

(3) market shares are unreliable and not indicative of dominance;

(4) the Infringement could not have affected competition in Member States in years where no other search advertising intermediaries had taken the basic steps to compete;

(5) the different forms of Google's conduct endured for a shorter period of time than the total Infringement duration and they were different in nature;

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857 Case 86/76 *Hoffmann-La Roche* v *Commission*, EU:C:1979:36, paragraph 89; Case C-62/86 *AKZO v Commission*, EU:C:1991:286, paragraph 149; Case T-61/89 *Dansk Pelsdyravlerforening*, EU:T:1992:79, paragraph 98; Case T-65/89 *BPB Industries Plc and British Gypsum Ltd v Commission*, EU:T:1993:31, paragraph 68, confirmed on appeal in Case C-310/93 P, EU:C:1995:101, paragraph 11; Case C-393/92 *Gemeente Almelo and Others v Energiebedrijf IJsselmij*, EU:C:1994:171, paragraph 44;Case T-65/98, *Van den Bergh Foods*, EU:T:2003:281, paragraph 160; Case T-128/98 *Aéroports de Paris v Commission*, EU:T:2000:290, paragraph 170; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraphs 305, 315, 328 and 413; Case T-155/06 *Tomra v Commission*, EU:T:2010:370, paragraph 208.

858 SO Response, paragraphs 397 – 408.

(6) the Exclusivity Clause in GSAs with All Sites Direct Partners, the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause had procompetitive objectives;

(7) the Exclusivity Clause in GSAs with All Sites Direct Partners, the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause had no anticompetitive effects;

(8) Google has cooperated with the Commission; and

(9) the Infringement was not covert.

(716) As to (1), it is irrelevant that the online search advertsing intermediation market might have grown as a result of Google's investment. The Commission does not generally object to Google's investments, only to Google's abusive conduct.

(717) As to (2), for the Exclusivity Clause in GSAs with All Sites Direct Partners, the Commission and the Court of Justice of the European Union have repeatedly condemned practices by undertakings in a dominant position that tie purchasers – even if they do so at their request – by an obligation or promise on their part to obtain all or most of their requirements exclusively from the dominant undertaking.[859]

(718) As for the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause, there is nothing novel about the abusive nature of conduct that keeps competitors away from the market,[860] in particular when Google itself referred to the Premium Placement and Minimum Google Ads Clause as "*our relaxed exclusivity*" (see recital (467)).

(719) As to (3), for the reasons set out in Section 7.3.1 Google's market shares in the EEA-wide market for online search advertising intermediation provide a good indication of Google's competitive strength. Furthermore, Google's shares in the EEA-wide market for online search advertising intermediation were above 70% throughout the duration of the Infringement.

(720) As to (4), Google's competitors made substantial investments in an attempt to compete with Google in the EEA-wide market for online search advertisement intermediation (see recitals (401) to (402)).

(721) As to (5), for the reasons set out in Section 9.2 the Commission concluded that Google's different forms of conduct pursued an identical objective and were complementary.

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859 Case 86/76 *Hoffmann-La Roche* v *Commission*, EU:C:1979:36, paragraph 89; Case C-62/86 *AKZO v Commission*, EU:C:1991:286, paragraph 149; Case T-61/89 *Dansk Pelsdyravlerforening*, EU:T:1992:79, paragraph 98; Case T-65/89 *BPB Industries Plc and British Gypsum Ltd v Commission*, EU:T:1993:31, paragraph 68, confirmed on appeal in Case C-310/93 P, EU:C:1995:101, paragraph 11; Case C-393/92 *Gemeente Almelo and Others v Energiebedrijf IJsselmij*, EU:C:1994:171, paragraph 44;Case T-65/98, *Van den Bergh Foods*, EU:T:2003:281, paragraph 160; Case T-128/98 *Aéroports de Paris v Commission*, EU:T:2000:290, paragraph 170; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraphs 305, 315, 328 and 413; Case T-155/06 *Tomra v Commission*, EU:T:2010:370, paragraph 208.

860 *See* to that effect Joined Cases T-24/93, T-25/93, T-26/93 and T-28/93 *Compagnie Maritime Belge and others v Commission*, EU:T:1996:139, paragraph 248; Case C-457/10 P *AstraZeneca v Commission*., EU:C:2012:770, paragraph 164.

(722) As to (6), for the reasons set out in Sections 8.3.5, 8.4.5 and 8.5.5, the Commission concludes that Google has not demonstrated that the Exclusivity Clause in GSAs with All Sites Direct Partners, the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause were necessary to achieve any pro-competitive objective.

(723) As to (7), the Commission concludes, based on an analysis of all the relevant circumstances, that the Exclusivity Clause in GSAs with All Sites Direct Partners, the Premium Placement and Minimum Google Ads Clause and the Authorising Equivalent Ads Clause were capable of restricting competition. (see Sections 8.3.4, 8.4.4 and 8.5.4).

(724) As to (8), Google's alleged cooperation cannot be considered an effective cooperation beyond Google's legal obligations.[861] Moreover, it did not assist the Commission in establishing the existence of the Infringement with less difficulty.[862]

(725) As to (9), while the covert nature of an infringement may be a circumstance leading to the Commission setting the gravity percentage at the higher end of the scale referred to in point 21 of the Guidelines on Fines that can go up to 30%,[863] a gravity percentage of 11% is at the lower end of that scale.

15.4.3.4. Duration

(726) For the reasons set out in recitals (632) to (633) the Infringement started on 1 January 2006 and ended on 6 September 2016.

(727) The Commission therefore concludes that the duration of the single and continuous infringement is 3 902 days (approx. 10.69 years).

(728) Alphabet is jointly and severally liable with Google for the single and continuous infringement as of 2 October 2015 (see Section 13.2). Therefore, the duration of the single and continuous infringement for which Alphabet is jointly and severally liable is 323 days (approx. 0.88 years).

(729) The Commission's conclusion regarding the duration of the single and continuous infringement is not affected by Google's claims that it was not dominant and had no reason to believe it was dominant. [864]

(730) First, for the reasons set out in Section 7.3, the Commission concludes that Google held a dominant position in the EEA-wide market for online search advertising intermediation between at least 2006 and 2016

(731) Second, for the reasons set out in recitals (677) to (680), Google could or should not have been unaware of the fact that it held a dominant position in the EEA-wide market for online search advertising intermediation.

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861 Point 29 of the Guidelines on Fines; Case T-384/09 *SKW v Commission*, EU:T:2014:27, paragraph 186.

862 Case T-128/11 *LG Display and LG Display Taiwan v Commission*, EU:T:2014:88, paragraph 215; Case C-411/15 P *Timab Industries et Cie financière et de participations Roullier v Commission*, EU:C:2017:11, paragraph 85.

863 See, to that effect, Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2009:255, paragraphs 446-447.

864 SO Response, paragraphs 410-413.

15.4.3.5. Additional amount

(732) The Commission concludes that the basic amount should include an additional amount of 11% of the relevant value of sales.[865]

(733) In reaching this conclusion, the Commission takes into account the factors set out in recitals (709) to (713) and the need to ensure that the fine imposed has a sufficient deterrent effect on undertakings of a similar size and with similar resources.[866]

(734) This conclusion is not affected by Google's claim that an additional amount has not been applied in previous Article 102 cases. [867]

(735) First, the Commission has applied an additional amount in cases concerning Article 102 of the Treaty.[868]

(736) Second, paragraph 25 of the Guidelines on Fines provides that the Commission can impose an additional amount in the case of non-cartel infringements.[869]

15.4.4. Adjustments to the basic amount

15.4.4.1. Aggravating and mitigating circumstances

(737) The Commission concludes that there are no aggravating or mitigating circumstances that should result in an increase or decrease in the basic amount of the fine.

(738) That conclusion is not affected by Google's claims[870] that:

(1) it cooperated diligently with the Commission, including Google's voluntary decision to remove or amend the remaining clauses in GSAs with Direct Partners;

(2) it offered three rounds of commitments;

(3) the duration of the administrative period was excessive; and

(4) it did not act culpably.

(739) As to (1), Google did not terminate its anti-competitive conduct immediately after the Commission launched its investigation in January 2010.[871] Rather, it was only on

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865 This additional amount is split between Google, solely liable until 1 October 2015, and Google and Alphabet, jointly and severally liable as of 2 October 2015, in a pro-rata manner based on the corresponding duration of the Conduct.

866 Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 782.

867 SO Response, paragraph 420.

868 See AT.39740 – *Google Search (Shopping)*, recitals 749-750; AT.39813 – *Baltic Rail*, recitals 383-384.

869 Case T-587/08 *Del Monte v Commission*, EU:T:2013:129, paragraph 784; Case T-370/09 *GDF Suez v Commission*, EU:T:2012:333, paragraph 431; Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 824.

870 SO Response, paragraphs 416-418.

871 Case T-44/00 *Mannesmannröhren-Werke v Commission*, EU:T:2004:218, paragraph 280; Case T-50/00 *Dalmine v Commission*, EU:T:2004:220, paragraph 328; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2009:255, paragraph 426; Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others v Commission*, EU:T:2005:220, paragraph 291; Case C-551/03 P *General Motors v Commission*, EU:C:2006:229, paragraph 88; Case T-73/04 *Carbone-Lorraine v Commission*, EU:T:2008:416, paragraph 227; Case T-446/05 *Amann & Söhne and Cousin Filterie v Commission*, EU:T:2010:165, paragraph 260; Case T-138/07 *Schindler Holding and Others v Commission*, EU:T:2011:362, paragraph 274; Case T-486/11 *Orange Polska v Commission*, EU:T:2015:1002, paragraph 212.

28 May 2016 that Google informed the Commission that it intended to: (i) remove the Exclusivity Clause or any similar requirement that a Direct Partner obtains all or most of its search ads from Google; (ii) amend the Premium Placement and Minimum Google Ads Clause so as to remove the requirement that Direct Partners cannot display any competing search ads above or directly adjacent to Google search ads and reduce the minimum number of Google search ads that a Direct Partner must request; and (iii) remove the Authorising Equivalent Ads Clause from any agreement based on the new template GSA.

(740) As to (2), the fact that Google offered three rounds of commitments does not constitute a mitigating circumstance.[872] The Commission may take account of the assistance given to it by the undertaking concerned to establish the existence of the infringement with less difficulty.[873] The three rounds of commitments offered by Google did not, however, assist the Commission in establishing the existence of the Infringement. On the contrary, when offering each of the three sets of commitments, Google indicated that it *"expressly denies any wrongdoing or that it has any liability relating to the Commission's investigation under Article 102 TFEU."*

(741) As to (3), Google's claim regarding the allegedly excessive duration of the administrative procedure is unfounded.

(742) In the first place, the duration of administrative proceedings is justified by the particular circumstances of this case, including the need for the Commission to send numerous requests for information. Moreover, the duration of the proceedings was not extended due to an unjustified period of prolonged inactivity of the Commission.[874]

(743) In the second place, Google has put forward no evidence to demonstrate that the exercise of its rights of defence may have been affected for reasons related to the allegedly excessive duration of the administrative procedure.

(744) In the third place, the allegedly excessive duration of the administrative procedure is incapable of leading to a reduction of the amount of the fine imposed. Rather, the appropriate remedy is for an action for damages pursuant to Articles 268 and 340 of the Treaty.[875]

(745) As to (4), Google and Alphabet have committed the Infringement intentionally or at least negligently.

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872 Case T-486/11 *Orange Polska v Commission*, EU:T:2015:1002, paragraph 224.

873 Case T-406/09 *Donau Chemie v Commission*, EU:T:2014:254, paragraph 154; Case T-489/09 *Leali v Commission*, EU:T:2014:1039, paragraph 407; Case T-456/10 *Timab Industries et Cie financière et de participations Roullier v Commission*, EU:T:2015:296, paragraph 92, confirmed on appeal in Case C-411/15 P, EU:C:2017:11, paragraph 85.

874 Case T-460/13 *Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission*, EU:T:2016:453, paragraph 369; Case T-467/13 *Arrow Group and Arrow Generics v Commission*, EU:T:2016:450, paragraph 346; Case T-470/13 *Merck v Commission*, EU:T:2016:452, paragraph 484; Case T-471/13 *Xellia Pharmaceuticals and Alpharma v Commission*, EU:T:2016:460, paragraph 365.

875 Case C-414/12 P *Bolloré v Commission*, EU:C:2014:301, paragraphs 106-107; Case C-608/13 P *Compañía Española de Petróleos (CEPSA) v Commission*, EU:C:2016:414, paragraphs 61 and 71; Case C-616/13 P *Productos Asfálticos (Proas) v Commission*, EU:C:2016:415, paragraphs 74 and 79; Case T-460/13 *Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission*, EU:T:2016:453, paragraph 376; Case T-467/13 *Arrow Group and Arrow Generics v Commission*, EU:T:2016:450, paragraph *355;* Case T-470/13 *Merck v Commission*, EU:T:2016:452, paragraph 525; Case T-471/13 *Xellia Pharmaceuticals and Alpharma v Commission*, EU:T:2016:460, paragraph 376.

15.4.4.2. Specific increase for deterrence

(746) The Commission concludes that the basic amount of the fine imposed should be multiplied by 1.5.

(747) In reaching this conclusion, the Commission takes into account: (i) the need to ensure that the fine has a sufficiently deterrent effect not only on Google and Alphabet, but also on undertakings of a similar size and with similar resources,[876] and (ii) the fact that Alphabet had a particularly large turnover in 2018 (approximately EUR 115 968 million) beyond the revenues it generates from online search advertising intermediation services in the EEA.

(748) That conclusion is not affected by Google's claim that there is no need for any specific increase for deterrence because Google has already terminated the Infringement.[877]

(749) First, pursuant to point 30 of the Guidelines on Fines, it is sufficient, in order for the Commission to apply a specific increase for deterrence, that an undertaking has "*a particularly large turnover beyond the sales of goods or services to which the infringement relates*".[878]

(750) Second, the Commission applies a specific increase for deterrence in this case to ensure that the fine has a sufficiently deterrent effect not only on Google and Alphabet, but also on undertakings of a similar size and with similar resources.

15.4.5. Final amount of the fine

(751) The Commission concludes that the final amount of the fine to be imposed on Google amounts to EUR 1 494 459 000, of which EUR 130 135 475 jointly and severally with Alphabet.

(752) Alphabet's turnover in the business year ending 31 December 2018 was approximately EUR 115 968 million. As the final amount of the fine set is below 10% of that figure, no adaptation is necessary.

HAS ADOPTED THIS DECISION:

Article 1

1. Google LLC, and also, since 2 October 2015, Alphabet Inc. infringed Article 102 of the Treaty and Article 54 of the Agreement on the European Economic Area by participating in a single and continuous infringement consisting of three separate infringements:

(a) contractual clauses requiring certain publishers to source all or most of their search advertising requirements from Google;

(b) contractual clauses requiring certain publishers to reserve the most prominent space on their search results pages for a minimum number of search ads from Google; and

(c) contractual clauses requiring certain publishers to seek Google's approval

876 Case C-408/12 P *YKK v Commission*, EU:C:2014:2153, paragraph 93.
877 SO Response, paragraph 419 and Annex 1, Part II, p. 8.
878 Case T-299/08 *Elf Aquitaine v Commission*, EU:T:2011:217, paragraph 298.

before making changes to the display of competing search ads.

2. The single and continuous infringement took place since the following dates:

(a) 1 January 2006 as regards Google LLC;

(b) 2 October 2015 as regards Alphabet Inc.

The single and continuous infringement ended on 6 September 2016.

3. The three infringements that constitute the single and continuous infringement took place since the following dates:

– as regards Google LLC:

(c) 1 January 2006 for the contractual clauses requiring certain publishers to source all or most of their search advertising requirements from Google; and

(d) 31 March 2009 for the contractual clauses requiring certain publishers to reserve the most prominent space on their search results pages for a minimum number of search ads from Google and for the contractual clauses requiring certain publishers to seek Google's approval before making changes to the display of competing search ads.

– as regards Alphabet Inc., 2 October 2015.

The infringement regarding the contractual clauses requiring certain publishers to source all or most of their search advertising requirements from Google ended on 31 March 2016.

The infringements regarding the contractual clauses requiring certain publishers to reserve the most prominent space on their search results pages for a minimum number of search ads from Google and regarding the contractual clauses requiring certain publishers to seek Google's approval before making changes to the display of competing search ads ended on 6 September 2016.

Article 2

For the single and continuous infringement consisting of three separate infringements referred to in Article 1, the following fine is imposed:

Google LLC: EUR 1 494 459 000, of which EUR 130 135 475 jointly and severally with Alphabet Inc..

The fine shall be credited in euros, within three months from the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: European Commission – BUFI/AT.40411

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046.[879]

Article 3

The undertaking referred to in Article 1 shall immediately bring to an end the single and continuous infringement consisting of three separate infringements referred to in that Article insofar as it has not already done so.

The undertaking referred to in Article 1 shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or equivalent object or effect.

Article 4

This Decision is addressed to Google LLC and Alphabet Inc., both of 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 20.3.2019

For the Commission
Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

879 OJ L 193, 30.7.2018, p. 80.