

31 May, 2013

Subject: Case AT 39.740 — Google
Comment on Market Test Notice under Article 27(4) of
Regulation No 1/2003

Dear Mr Banasevic

Hot Maps and Euro-Cities are both providers of maps and map related vertical search services in the European Economic Area EEA. We provide our joint views on Google's proposed commitments ('Google's Proposals') below.

We find Google's Proposals to be completely inadequate to restore competition, deal with Google's abuse of its dominance or remedy the wrongful conduct that Google has now undertaken for many years. Google's favouring of its own services, such as Google Maps, distorts the competitive process and prevents users from deciding whether they wish to receive a Google Map image at the top of the results or a picture from a competing online mapping service *based on the merits of online mapping services*.

Rather, Google's Proposals appear to be designed to entrench Google's dominant market position and enhance the network effect of its products, services and partnerships. The defects in its proposed commitments are so numerous that it must be a concern that Google's Proposals are designed to mislead and confuse.

While we will elaborate on many of the individual components of Google's Proposals below, we must stress that improving some or all of them will not restore effective

competition.¹ In the circumstances Google's Proposals fail to meet the standard required to be described as commitments designed to remedy the competition concerns that the Commission has identified.

Going forward, a simple and effective remedy would be for Google to treat its own and rival services on an equivalent basis. As eleven Complainants wrote in an open letter² to Commissioner Almunia in March 2013, and has also been endorsed by BEUC, the European consumer organisation³:

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

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

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

All “Google Specialised Results Links” (i.e. in our case map panes, any style and response to a user query) must be available to rivals on an equivalent basis, enabling each to compete on the merits and empowering consumers with the ability to make choices.

It is easily possible to achieve richer display formats for all vertical search and mapping services within organic search results. For example, this might be achieved through the use of mark-up based meta-tags⁴ and sitemaps⁵, which Google and others have already adopted. Another way to achieve an equivalent outcome would be to use other simple standards to return maps for geolocation-related queries, city- or street names, and postal addresses. This approach would require a form of rotation through a non-discriminatory, transparent procedure or fair algorithmic ranking. While these approaches are technically possible, Google has not proposed them, and what has been proposed appears to be ineffective.

From recent disclosures in UK Parliamentary Proceedings, Google's trading structure has recently become clearer. What is not clear is whether Google's Proposals are addressed to all Google entities, which will be important for effective enforcement in the EU. For example, in Google's Proposals a “Google” is defined as “Google Inc.”.

¹ Commission Antitrust Manual of procedures March 2012 1 Section 16.2 (6) “Similar to decisions under Article 7 of Regulation 1/2003, commitment decisions are an enforcement instrument primarily designed to restore effective competition. They should be used only in cases in which the commitments meet the competition concerns identified by the Commission. Unlike “informal settlements” (such as practiced before Regulation 1/2003 came into force), commitment decisions render commitments offered by companies legally binding.”

² <http://www.searchneutrality.org/google/open-letter-to-almunia>

³ <http://www.beuc.org/custom/2013-00211-01-E.pdf>

⁴ <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=146750>

⁵ <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=183668>

In the event that Google Inc. were to be in breach, it is not clear how the Commission would be able to enforce the 'legally binding' nature of the obligations that are intended to be contained in the Proposals. The identity of the entities in the Google corporate structure which are trading in the European Union, and which hold assets here that cannot easily be shifted elsewhere in the world is also unclear.

The identity of the entities within the Google corporate structure to which the proposals are addressed is also important for the purposes of facilitating follow on claims in national proceedings. Accordingly, any commitments should also cover Google's subsidiaries that are trading in the EU and which, for example, make sales in various countries and run Google's relevant search domains, and receive payment for inclusion or ranking and conduct advertising businesses in the EU⁶. The entities that are defined as providing such services and trading in the EU should be specified by the Commission in its decision.

We are dismayed by the approach adopted by Google and the effect of its approach on European users and consumers of Internet services. We see the continuing actions of Google in proposing ineffective effective remedies as allowing its practices to go unchecked, with continuing effects on competition within the EU, especially for smaller and medium sized businesses that are dependent on Google for access to the market. The effects on the wider European economy will inevitably have been and continue to be significant.

We again suggest that the Commission swiftly resume its Article 7 process and issue its Statement of Objections and insist on truly effective remedies.

Yours sincerely

Dr. h.c. Hans Biermann

Michael Weber

⁶ The Google.com domain appears not to be covered by the proposals.

Response to Proposed Commitments

Case COMP/C 3/39.740 Google

Presented by Euro-Cities AG and Hot Maps Medien GmbH

31 May, 2013

The Commission has made findings of dominance and abuse

The Commission's preliminary assessment and its press release appear to have established that Google's conduct constitutes an abuse by an undertaking of its dominant position by way of discrimination resulting in severe harm to competition, consumers and innovation. In seeking comments on Google's proposed remedies, the Commission made several findings including that Google is dominant in web search and search advertising in the European Economic Area, that the relevant markets are characterised by significant barriers to entry and network effects⁷

In the circumstances Google is subject to the special responsibility that applies to dominant companies. We do not see how Google's proposals address the issue of self-preference and discrimination that the Commission has identified.

Google's Proposals permit and entrench the very same conduct that the Commission is investigating and has identified as problematic

The commitments address only few aspects of Google's wrongful conduct, failing to address the full scope of a multi-product and -market company, given the unavoidable interplay between specialised vertical search, paid ads and organic search. The omission of simple and straightforward remedies around organic search ensures that the commitments will fail to restore competition and that competitors will receive virtually no benefit from them.

Indeed, if accepted, Google's Proposals will provide it with a legally sanctioned mechanism for Google to continue to abuse its dominant position by discriminating in favour of its own services in a number of ways. In principle Google's Proposals cleverly identify aspects of the wider strategy of self preference and discrimination and, by addressing only particular parts, those that are not specifically identified may be argued by Google at a later stage to have been legally sanctioned. To be

⁷ Antitrust: Commission seeks feedback on commitments offered by Google to address competition concerns (IP/13/371), European Commission, 25 April 2013, available at: http://europa.eu/rapid/press-release_IP-13-371_en.htm; Commission seeks feedback on commitments offered by Google to address competition concerns – questions and answers (MEMO/13/383), European Commission, 25 April 2013, available at: http://europa.eu/rapid/press-release_MEMO-13-383_en.htm

effective, commitments would need to define the anti competitive self preference and self promotion in more general terms and provide examples in a non exhaustive list of the types of abusive practice that the Commission has investigated and found to be illegal. To be effective, commitments would then need to provide extensive anti avoidance provisions to prohibit similar practices with equivalent effects and outcomes, or to prohibit different practices and technological means through which similar anti competitive outcomes could be achieved. Google's Proposals should then explicitly cover as examples of the types of abuse that are prohibited: demotion of competitors in organic search results, preferred placement of its own products, and transparent treatment of rivals when bidding for paid advertising, through instruments such as "Quality Score".

By identifying abuse as discriminatory self preference but omitting the unbundling of search with online mapping, or insufficiently clearly addressing self preference of its own online mapping products, Google's Proposals fail to achieve an effective remedy.

Google insists on denying any wrongdoing

The commitments paper, even as the reaction to the Commission's four preliminary competition concerns it is, starts with Google denying any violation of EU competition rules, any wrongdoing, any liability and any statement of the Commission. Denying abuse of dominant position and this attitude is no basis on which to restore competition.

Such disclaimers are designed to provide a basis for Google to try to undermine third party rights. They are unnecessary as part of a remedy by way of commitments. They are not part of the offer to resolve the serious anti competitive concerns that the Commission has identified and have no place in a Commission decision. Accordingly, should; the Commission decide to proceed by way of commitments at any stage any such decision should omit Google's disclaimers.

The proposal fails to address the architecture of the Search Engine Results Page ('SERP')

Consumers are looking for natural "organic" search results from across the whole web when they visit Google, yet are seeing less and less of them. The optimal on-page positioning and enhanced graphics (with map images, photos etc.) Google has been using for its own services on the SERPs, are obviously far superior to the diminutive text links it now proposes for its rivals.

The commitments' concept on making users "aware of ... alternatives" is wholly inadequate for correcting Google's wrongful conduct identified by the Commission. Merely adding labels and small rival links, while the page layout optimised to Google's own interests and enhanced presentation of own specialised services stay fully at the control of Google, will do nothing to heal or restore effective competition.

Significant damage to competition and consumer choice results from the placement of the Google services in the visual hot spots of the SERPs, attracting around 80% of user clicks in a study⁸. Google's Proposals do not remedy this.

The illustrations Google provides in the annex of the commitments show the map with local search results in top middle of the page with Google's listing taking up the vast majority of the SERP, and only one organic result above and below it. In our observation of map query SERPs, the Google map frequently is placed topmost with no organic result above it, in a size so large it fills most of the view.

The annex illustrations (pages 43-53) do not state which illustration refers to which case I. A. 2; 3 or 4.

None of the annex illustrations show a sufficient separation. The Google specialised services are still in the centre of the page, and those "separated", are actually highlighted with a box and will likely receive more consumer attention.

Google's Proposal for mobile search is especially insufficient

Vice President Almunia has expressed the need for a solution covering all devices. From his July 2012 press conference:

What we are looking into in this investigation is and with our objections is the way the search engine provided by Google functions, if you go to look for some information through the Google search engine, through your desktop, laptop, notebook, tablet or a smartphone. If you go to a search engine the problems are the same or similar.

On Google's annex illustrations depicting a mobile screen (I. A. 5.), we believe the other sites links should be integrated with their names into the first SERP, rather than requiring a tap to reach, and the Google label to be smaller or deleted. It does not require an empirical study to know with certainty that placing Rival Links an additional click away will reduce their click rate substantially. In these examples the big link "Google Places Search" will receive a high click rate, again due to its position and larger font size, compared to the "Other sites" link.

Google needs to remedy the damage done and not be paid for doing so

Google has anti-competitively and illegally harmed rivals by demotion and self-preferencing of its own services. Consumers come to Google for good, real search results from all over the web, not for Google cross-promotion of own services, paid links or advertising. It is cynical to now develop a further profitable stream of Google income, by auctioning "rival links" to Google's victims.

The lack of transparency, shortcomings and possibly deceptions in the bidding "auction" system, which Google uses to optimise its AdWords advertising prices towards the highest possible result for its own revenue, are an exploitative abuse of its dominant position that the Commission should also address. It is to be feared that

⁸ Eye-Tracking Study "Attention and selection behavior on "universal search" result pages" available at http://www.hot-map.com/corporate/Bericht_final_ENG.pdf

much of Google's methods from AdWords will be applied to the auction process for rival links.

If the paid rival link proposal of Google's commitments were adopted, Google would continue to profit from the traffic it illegally diverts from rivals, but now it would also profit from the traffic it sends to rivals. Since Google's auction system drives prices up to the maximum that advertisers can afford to pay, Google is likely to become the main beneficiary of any rival Internet activity, leaving European companies even less profit from their creative efforts than today.

Finally, the cost of the Google advertising, funnelled by Google into its tax-optimised global corporate structure, is factored into pricing of the advertised products and services and ultimately paid for by higher European prices.

The proposed remedy lacks any fact-based evidence of its effect

Undoubtedly Google will have assessed and evaluated the economic effects and impacts and will have tested the remedies it proposes. We expect that Google will have measured the potential effect on traffic and competition. We respectfully suggest that the Commission should request access to such assessments.

We also respectfully request the Commission to assess and evaluate the effects of all the abuses that the Commission is aware Google has committed, if the Commission has not yet done so, in its assessment of the severity of Google's abuses on competition in the EU. This may have been conducted in either its preliminary assessment or in its decision about whether to proceed under article 7 or article 9.

The proposed remedy is not forward looking

Vice President Almunia has expressed the need for a future-proof solution. However, anti-competitive features and new practices that Google has committed after the beginning of the investigation do not appear to be addressed by Google's Proposals. Google's Proposals do not address some of the most important and potentially disruptive technologies, platforms and strategies: mobile is only barely touched upon, missing are: predatory pricing, voice, glasses, maps, use of maps as search result page (search results and content now delivered within Google Maps⁹), YouTube video, landgrab of gTLD domains (e.g. ".maps"), new display forms such as "Knowledge Graph"¹⁰, etc.

Most notably the "Knowledge Graph" result area, which is an important, advanced display form for Google since 2012, that features rich Google content (and, depending on query, has been found to include map panes) for a vast diversity of non-commercial and commercial topics, is shown on the right of some Annex illustrations ("obama"; "frogs" examples), with no labelling, competitor links or any other remedial alteration whatsoever.

⁹ <http://maps.google.com/help/maps/helloworld/desktop/preview/>

¹⁰ <http://www.google.com/insidesearch/features/search/knowledge.html>

Even forward looking remedies cannot alone restore competition

Effective remedies to restore competition must establish a system that allows competitors harmed in the past years to regrow their businesses. We believe that any effective remedy must be based on a fundamental principle of equal or neutral treatment of competitors. With this fundamental principle in place, the technical defects of the commitments would be avoided.

Google's proposal is convoluted, unworkable and unfair

Highly complex and ambiguous language creates too many legal and technical ways for Google to circumvent the remedies; the loopholes are extensive.

Google's proposal does not address manipulation of "organic" natural search results, penalties, and demotion

As the Commission is aware, Google's anti competitive practices extend beyond self-preference to a variety of methods through which rivals' services are made more difficult to find. All such practices need to be clearly prohibited. For example, Google indexes competitors' websites incompletely (less than intended by their owners) or infrequently, ranks all or part of their websites inappropriately, downgrades, penalises or deletes them from organic results. States BEUC:¹¹

"Google must not be allowed to deploy penalties which demote legitimate websites for illegitimate, anti-competitive reasons. Where there are legitimate reasons, penalty or demotion criteria must be applied equally across all websites and services, including Google's own, and any exemptions (manual or automatic) must be applied legitimately and pro-competitively.

In addition, Google needs to be considerably more transparent about the existence and rationale of its various penalties. Sites subject to any kind of penalty must be notified about the status and expected impact of the penalty as well as provided with an explanation of the rationale."

Google's proposal fails to explicitly address the position of online maps

Bundling of maps with natural search results appears to be central to Google's anti-competitive strategy. While the Commission considers the position further, several complainants and European consumer organisation BEUC, representing the views of 39 national consumer organisations from across 30 European countries, clearly see the self-promotion of Google Maps as a core problem to be remedied:

"Our assessment of the four concerns is that the first is the most important, where Google should not display its own "vertical" content (e.g. Google Maps) in more elaborate or outstanding ways than competitors' products. This is the potential

¹¹ <http://www.beuc.org/custom/2013-00211-01-E.pdf>

*stumbling block for an early resolution and the issue which could prevent a complete settlement of the case.*¹²

Google's Proposals do not contain the word "Map" and Google's "*II. Criteria For Inclusion In "Vertical Sites Pools"*" may later be argued by Google to omit typical map websites, in order to avoid the application of its non-discrimination and unbundling obligations to various map products and platforms.

Google's Proposals contain descriptions of various services in terms that are obscure and appear on at least one interpretation to mostly deal with vertical search. It is unclear whether online mapping is included in the main search result or part of it. We are referring for example to searches with geographic, map, map-related or point of interest / landmark queries (for example "map", "map Europe", "map Belgium", "map Brussels", "1000 Bruxelles", "200 Rue de la Loi" "Wetstraat", "50° 50' 37" N, 4° 22' 58" E", "Berlaymont").

Map websites may not offer algorithmic search if their content is structured logically and geographically, and may more easily be searched without complex algorithms. They may not refer to third-party providers, but refer to maps or geodata hosted within their sites, rather than "enable users to connect with websites of multiple third-party providers" as Google describes eligible rivals in its proposals.

Google's quality criteria are impractical and are not applied to itself

Exclusion criteria for rival links from Google's commitments April 3, 2013¹³
(**boldened** emphasis by undersigners):

- (ii) *Violation of any applicable law, including **copyright infringement**, sale or promotion of **counterfeit goods**, display of **unlawful content**, or sale of unlawful goods;*
- (iii) ***Deception of consumers, including deceptive or frustrating navigation, bait and switch advertising, deceptive or unclear claims or billing practices, or other practices that mislead consumers;***
- (iv) ***Security violations, including the dissemination of malicious code (such as software that is not transparent about its purpose, changes user settings without informed consent, or is not easily deinstalled), the use of pup-ups or fake system warnings, phishing, user privacy violation, or other practices designed to harm users, computers, or software;***
- (v) ***Display or promotion of adult content,***

Google's quality criteria are discriminatory. Google seeks to use such criteria to exclude a competitor's website in the rival links, *where Google, or its subsidiary YouTube, would not itself meet the criteria*. Google does not refrain from showing websites with pirated material (software, films photography, music), illegal websites, uses misleading placement and labelling (potentially deceptive to users as European consumer organisation BEUC and others have criticised), its own software and services have been accused of lacking transparency about their purpose, to set

¹² Fair Internet Search - Remedies in Google case - BEUC position paper
<http://www.beuc.org/custom/2013-00211-01-E.pdf>

¹³ http://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_8608_5.pdf

user's browsers and devices to Google services by default¹⁴, and to massively violate consumer privacy¹⁵.

Last but not least, Google is the largest search platform promoting, containing or referring to adult content of all degrees from recognised erotic art down to hard-core pornography. However, a legitimate European product search site will more often than not contain some type of goods or fashions that can be classified as "Adult". A mapping website with business listings might include "adult" establishments, as in many countries a pub serving alcohol technically is classified as such¹⁶, let alone a knowingly or accidentally included "gentlemen's" bar in a rival site's business listings.

A vertical search site covering European culture, fashion, photography or advertisement professional websites, an image search site showing German general interest magazine covers, as well as a vertical search travel website depicting the common European (topless or nudist) family beaches will disqualify because of "full or partial nudity".

The process of selecting and ranking rival links as outlined by Google in annex 1 is cynical and ineffective in restoring competition

The traffic threshold and popularity required to qualify by Google for inclusion in its vertical search pool is cynical, as many of its rivals have been diminished in their popularity and visitor numbers by Google's anti-competitive abusive actions. Now, as a direct result, do not qualify as popular enough to be included in the proposed rival links any more. The Service Google names – Alexa – on May 13th 2012 ranks hot-map.com # 271,082 in Alexa popularity global, and # 16,806 in Germany. Google sets the threshold to qualify for rival links at 100,000 worldwide and 5,000 nationally.

Before Google demoted hot-map.com by search penalties and anti-competitive preferencing of Google Maps in universal search, Hot Maps' website (then under the domain hot-maps.de) was strongly above the threshold, with its then much higher Alexa rankings.

The same is true for Euro-Cities AG's and other complainants' websites, with stadtplandienst.de at # 158,385 in Alexa popularity global rank and # 6,302 in Germany today.

Traffic statistics from US-based Alexa.com are suitable to some webmaster purposes, but certainly are inappropriate as an objective benchmark against which to evaluate and qualify a broad spectrum of European websites for inclusion in Google's rival links. In addition, the proposed sample size in European countries and certain demographics is too low to provide significant, accurate data¹⁷. In addition we draw to the Commission's attention the following¹⁸

¹⁴ <http://www.i-comp.org/blog/2013/icompl-files-article-101-complaint/>

¹⁵ <http://ftc.gov/opa/2012/08/google.shtm>

¹⁶ http://en.wikipedia.org/wiki/Legal_drinking_age#Europe

¹⁷ <http://commetrics.com/articles/a-usage-varies-enormously-and-alexacom-may-not-be-right/>

¹⁸ http://en.wikipedia.org/wiki/Alexa_Internet#Accuracy_of_ranking_by_the_Alexa_Toolbar

“Alexa ranks sites based primarily on tracking information of users of its toolbar for the Internet Explorer, Firefox and Google Chrome web browsers. Therefore, the webpages viewed are only ranked amongst users who have these sidebars installed, and may be biased if a specific audience subgroup is reluctant to do this. Also, the ranking is based on three-month data, and thus takes time to reflect changes in content that may happen after a domain has been sold or undergone a major redesign. Furthermore, low rankings cannot be accurate, not merely due to the paucity of data but also because of statistical laws related to the long tail distribution.

There is some controversy over how representative Alexa's user base is of typical Internet behavior, especially for less-visited sites. In 2007, Michael Arrington provided examples of Alexa rankings known to contradict data from comScore, including ranking YouTube ahead of Google.”

Our formerly popular, much-linked mapping websites, still rank well in Google's own “PageRank” (PR)¹⁹ link analysis algorithm, where the successor of penalised hot-maps.de (ex PR 7), hot-map.com still ranks a very favourable PR 6 (out of 10), Stadtplandienst.de PR 7 (ex PR 8), as do a number of other mapping websites e.g. stadtplan.net or streetmap.co.uk, both at PR 7. Yet this sign of popularity (and presumably quality) does not reflect in the Google indexing and ranking of most local pages of these websites competing with Google Maps, and their traffic is further diminished by the various types of large interactive map image panes Google automatically superimposes above them on a large number of SERPs for vastly diverse queries.

Limiting rival links to three is insufficient for competitive markets

The limitation to three rival links, which are static over a period of time, is insufficient in most markets and niches, where there are more than three rivals and also prevents newcomers from rising in popularity as a potential competitor to Google. This approach seeks to entrench and protect Google's position as a dominant player.

Limiting rivals to “Vertical site pools” entrenches Google's power as the universal go-to site for all types of information

A site covering several “Vertical site pools” topics must be allowed to be part of each one, even if they are not or not closely related. (e.g. a site with both maps and videos, travel and culture or history, business and point of interest landmark listings and other information references)

¹⁹ http://en.wikipedia.org/wiki/Page_rank

The commitments' proposed differentiation between various types of monetisation leaves wide loopholes

It can make no difference in remedying the issues at hand and preventing future abuses, if Google monetises a service or not, as some of Google's worst anticompetitive practices involve dumping of free online services and developer tools, which have deadly impact on competition and consumer's right to choice, yet due to their nature are not monetised, or are loss leaders monetised only to a minor degree e.g. by ads and small license fees. With the loopholes in this proposal, Google can easily slightly modify its services and none of them will fall under the commitments any more.

The distinction, that rival links are shown only if the corresponding Google Specialised Search Page has shown a certain percentage of paid results or advertisement during a given period of time is un-monitorable, and renders Google's Proposals ineffective in restoring competition.,

Google has a history of offering specialised services listings without paid results and/or ad-free. Regardless if paid, free of charge or ad-free these services are an abuse of dominant position, as they push competitors' relevant websites out of consumers' sight, and the competitors have no other source of traffic than Google.

The proposal aims to give Google more control and information about its rivals

The nature of a website, or the jurisdiction within it is operated, may not require an incorporation or business registration. E.g. an individual photographer's, artist's, cartographer's, blogger's, university scientist's or journalist's web portal, or an initiative, school, club or non-profit. Thus the nature or existence of a website operator's business registration, shareholders, investors, corporate structure etc. cannot be the basis for any criteria that would qualify it for search or rival links.

The information required by Google should be sufficiently covered through established industry standards such as sitemaps.org, and not require any confidential data or such which could be considered a trade secret, from rivals about their websites.

The omission of Google.com from the commitments, leaves many Europeans outside of their effect

The limitation of the commitments to what Google refers to as "Google EEA Search Domains" and lists in the proposal (Google.de, .be, .co.uk. etc.) is unacceptable, as:

Many Europeans access the Internet within Europe through Google.com, and they account for at least 10% of Google.com's visitors and it is among the most popular websites in most EEA countries.²⁰

Vice-President Almunia has clearly expressed the need for a global solution, and that an EU solution could be easily circumvented. From his July 2012 press conference:

20 <http://www.alexa.com/siteinfo/google.com>

Alex Barker, Financial Times:

“On the Google case I was wondering about the scope of the agreement, with the changes they make, would it be worldwide or would it be specific to their European services?”

Vice-President Almunia’s response:

“In the case of Google we will look for worldwide solutions. It will not be very useful to get Europe-wide solutions and to click into Google and to have access to information that is given from California or from other parts of the world. We need worldwide solutions.”

The European digital economy aims to compete globally, so Google.com and any other Google domain worldwide (e.g. Google.co.in, Google.com.au) must be accessible for European websites under the same conditions as EEA domains.

It fails to allow publishers to specify content Google can and cannot use

The remedy needs to permit mark-up language similar to schema.org, which allows some pieces of information within a page to be opted out while others are opted in. A broad opt-out across a whole domain or large parts of it is not a solution.

The US DOJ and courts blocked Google’s proposed settlement in the books case on antitrust grounds for the very same reason.

Advertisers should be able to use their data as much as they want - and any way they choose - without fear of retribution

Google must eliminate all restrictions on how advertisers view, manage, export, re-use and analyse their data.

Publishers should be able to use as little or as much of Google’s search syndication as they want without fear of retribution

Using Google’s search technology and tools within one’s website may be desirable for some webmasters. This should come with no limitations to also use other search technology and other advertising networks than Google’s.

Labelling is standard consumer protection – has no effect on competition

Labelling at best provides users with information on which they can make better choices. In circumstances of monopolised markets or abuse that relates to bundling of one product or technology with another, the Commission has found on many previous occasions that unbundling is the appropriate remedy. Consumer welfare cannot be safeguarded through increased transparency in these circumstances.

Google's self-preferencing and self-promotion are serious exclusionary abuses of a dominant position. Google's abusive conduct has severely affected competition for on-line mapping and damaged competitors such as Hot Maps and Euro-Cities. This appears to be part of a deliberate plan by Google to monopolise the online mapping market and integrate its own products to the detriment of users and competitors

Google's proposed labelling will not notably decrease the clicks on the preferentially placed Google specialised services. Actually, as Google is a top global brand, consumers might click the specialised services even more due to the proposed labelling. As has been noted²¹:

"Some labels would be likely to be ineffective or even affirmatively harmful," warned Ben Edelman, an associate professor at Harvard University who has been a long-time critic of Google's practices. Labelling a result as a "Google result" would suggest "that a given link is better or more official than the others".

To distinguish paid advertising and (own-) product placement from program and content is standard and best practice (or even a legal requirement) in print and TV advertising, especially when the ad format and style is easily confused with editorial content or entertainment programming.

Labelling Google Specialised Results Links when mixed with Generic Search Results is consumer protection, but it has nothing to do with restoring competition. (See also comments from BEUC²² on this issue).

The remedy must be clear and conform to the Commission's best practices. Google's proposal has too many exceptions and potential loopholes

The market needs to know what Google's Proposals mean in practice. Monitoring and compliance will primarily be addressed through competitors and market participants holding Google to account. This will not be possible if the commitments are unclear or imprecise. We find certain expressions and language in Google's current proposal incomprehensible and will hence be unenforceable.

The commitment proposal doesn't address previously acquired scale; doesn't restore competition as Commissioner Almunia mandated

While Google portrays itself as European users' web search service of choice, actually there is strong evidence that Google did not arrive in its market dominating position in many Internet and mobile service categories by competing on the merits alone, but rather by unlawful means and exclusionary deals with other service-, hard- and software providers²³ and by leveraging its dominant position in one area (i.e. search and advertising) and financial power, to dominate others (e.g. Internet maps) by means of self-promotion and cross-subsidised predatory pricing of web developer tools and services.

²¹ <http://www.ft.com/cms/s/0/9aed7a82-a51e-11e2-a94c-00144feabdc0.html#axzz2UrYSAKXa>

²² www.beuc.org/custom/2012-00691-01-E.pdf, www.beuc.org/custom/2013-00211-01-E.pdf

²³ <http://www.i-comp.org/blog/2013/icomf-files-article-101-complaint/>

The proposal does not address Google's anti-competitive illegal conduct of predatory pricing to build wide networks across millions of websites by licensing Google Maps (in API and other forms) free of charge to websites other than Google's.

Strong and comprehensive anti-circumvention provisions are essential

It is not clear how Google's proposals would allow the Commission to impose predefined losses of rights or predefined sanctions that could be triggered on infringement. Quick sanctions and corrective instruments are needed in fast moving technology markets and self correction mechanisms and incentives to comply need to be built into any effective remedy.

It is not clear how Google's proposals will be enforceable in the EU as they are offered by Google Inc. As has been revealed in recent UK Parliamentary Proceedings:

- In answer to Q16 Matt Brittin said, *"First, the rights to what we sell-the rights to what is sold-are owned by Google Ireland. We are not talking about products on a shelf; we are talking about buying advertising on a technology platform called AdWords, which is built in the US-17,000 of our global engineers are in the US, and AdWords was invented there. They buy advertising from a platform that is built outside the UK, and because 90% of the money they spend is on an auction basis, the prices are set by the platform."*
- In answer to Q140 Matt Brittin said, *"The leadership of the products that are being built is in California."*
- In answer to Q142 Matt Brittin said, *"In that context, I was describing how 17,000 engineers and all of the leadership of our product is in the US."*

Also of interest is the following Q and A:

Q147 Stephen Barclay: *So what you are saying is that the economic value for those engineers is created in the UK, but the IP is owned either in Ireland or in Bermuda.*

Matt Brittin: *Yes. For example, Android is led from California and they are contributing to that, so the IP is owned there.*

It appears from these exchanges that Google alleges that its worldwide trading system does not subject it to the local jurisdiction outside the US except in specific circumstances, and, most importantly for the purposes of enforcement, that its principle assets are outside the jurisdiction²⁴.

Which entity will be responsible and liable for compliance and non-compliance is an open question in Google's proposals. In the event of a follow on action or an action for non-compliance will the party seeking to ensure compliance have to seek to serve or take proceedings outside the EU? It is not at all clear how third parties or the Commission can secure effective and swift enforcement of Google's proposals in the event of breach.

²⁴ The link to the transcript is <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/uc112-i/uc11201.htm>