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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1589/5/7/23(T),
1424/5/7/21(T), 1596/5/7/23

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

22nd June-31st July 2026

Before:

The Honourable Mr Justice Roth
Dinah Rose KC
Alasdair Smith

(Sitting as a Tribunal in England and Wales)

BETWEEN:

**INFEDERATION LIMITED (“Foundem”)
KELKOO.COM (UK) LTD & OTHERS (“Kelkoo”)
WHITEWATER CAPITAL LIMITED (“Ciao”)**

Claimants

- and -

GOOGLE LLC & OTHERS

Defendants

A P P E A R A N C E S

Colin West KC (instructed by Hausfeld & Co LLP) on behalf of Foundem

Daniel Jowell KC, Sarah Love KC, Hugh Whelan & Gianna Seglias (Instructed by Linklaters LLP)
on behalf of Kelkoo and Ciao

Meredith Pickford KC, Brendan McGurk KC, Julianne Kerr-Morrison, David Gregory & Alistair Holder Ross (Instructed by Herbert Smith Freehills Kramer LLP and Bristows LLP) on behalf of
Google LLC & Others

1 Monday, 13 July 2026
 2 (11.03 am)
 3 THE CHAIRMAN: Good morning.
 4 As this is a fresh week, I shall just repeat, in
 5 case there are any new observers, the warning issued at
 6 the beginning of the trial that these proceedings are
 7 live streamed, except and unless the court has to go
 8 into camera, an official recording of the proceedings is
 9 being made, but it is strictly forbidden for anyone to
 10 make any unofficial recording or take any unofficial
 11 image of the proceedings. That is punishable as
 12 a contempt of court.
 13 Also, I just record that we have received
 14 a certified copy of the translation of the judgment of
 15 the Swedish Patent and Market Court in the *PriceRunner*
 16 case and we are grateful for that.
 17 On that basis, if the respective parties would like
 18 to call their expert to be sworn.
 19 Mr Pickford —
 20 Perhaps the claimants first, probably Mr Jowell, it
 21 will be you.
 22 MR JOWELL: I call Mr Hunt.
 23 THE CHAIRMAN: Mr Hunt, you can have with you, if you wish,
 24 copies of your reports. Do you want to do that?
 25 A. Do I have access to a bundle or no?

1

1 THE CHAIRMAN: I think there is only an electronic screen
 2 there. So would it assist you to bring with you copies
 3 of your reports, if that — it does not matter if they
 4 are annotated. That is — under our practice direction,
 5 that is allowed, I think.
 6 A. I have copies (inaudible) in the room, so if that is
 7 okay, I will have them, yes.
 8 THE CHAIRMAN: The same, of course, applies to Mr Noble.
 9 MR JOWELL: Perhaps Mr Hunt could be sworn in the meantime.
 10 MR MATTHEW HUNT (affirmed)
 11 Examination—in—chief by MR JOWELL
 12 THE CHAIRMAN: Do sit down, Mr Hunt.
 13 A. I will do.
 14 THE CHAIRMAN: If you would like to introduce the reports —
 15 MR JOWELL: I can certainly do that.
 16 THE CHAIRMAN: — do that on the basis of the screen of the
 17 electronic copies.
 18 MR JOWELL: Could we please pull up I2, please, {I2/1}.
 19 Is this a copy of your expert report, Mr Hunt?
 20 A. It is.
 21 Q. If we could go, please, to page {I2/1/264}.
 22 You see an expert declaration and statement of
 23 truth.
 24 If we go over the page to {I2/1/265}, please.
 25 Is that your signature?

2

1 A. It is.
 2 Q. If we could go, please, to {I4/1}.
 3 Is this your second expert report?
 4 A. Yes, it is.
 5 Q. Again, if we can go, please, to {I4/1/131}, we see an
 6 expert declaration and statement of truth.
 7 If we go over the page to {I4/1/132}, is that your
 8 signature?
 9 A. It is.
 10 Q. Can we have the reference also for the joint expert —
 11 THE CHAIRMAN: {I1/4}.
 12 MR JOWELL: I1/4, please.
 13 If we can go over the page {I1/4/2}.
 14 Is this the joint expert statement —
 15 A. It is.
 16 Q. — to which you've contributed?
 17 If we could go, please, to {I1/4/4}.
 18 Is that your signature?
 19 A. It is.
 20 Q. Are those reports and the opinions that you state in the
 21 joint expert statement true to the best of your
 22 knowledge and belief?
 23 A. Yes, they are.
 24 Q. Thank you.
 25 THE CHAIRMAN: Thank you.

3

1 MR PICKFORD: I call Mr Robin Noble for Google.
 2 MR ROBIN NOBLE (affirmed)
 3 Examination—in—chief by MR PICKFORD
 4 MR NOBLE: I have an annotated copy of my report and joint
 5 statement here, if that's ...
 6 THE CHAIRMAN: Yes, that is fine.
 7 MR PICKFORD: Could I ask you to open up a copy of your
 8 first report, please. It is to be found also in the
 9 bundle at {I3/1}.
 10 Is this your expert report?
 11 A. Yes, it is.
 12 Q. Could you go, please, to the last page in your report?
 13 Now, in the bundle it is {I3/1/178}.
 14 I have just realised that the version that found its
 15 way into the electronic bundle does not have
 16 a signature, but I understand that the version that
 17 Mr Noble has does have his signature.
 18 (Off microphone discussion)
 19 I apologise for that. We will obviously ensure that
 20 a version with his signature is put into the bundle.
 21 The version that you have, does it have your
 22 signature on it?
 23 A. Yes, it does.
 24 Q. Thank you.
 25 Could you go, please, to the joint expert statement,

4

1 which is found at {11/4}.

2 Is this the joint statement to which you have

3 contributed?

4 A. Yes, it is.

5 Q. Could we go to page {11/4/4} of that, please.

6 Is that your signature that we see on that page?

7 A. Yes, it is.

8 Q. Is it the same as the signature on the document that

9 you have?

10 A. Yes, it is.

11 Q. Thank you.

12 Is — the report that we saw before and this joint

13 expert report, is that the evidence that you wish to

14 give for this trial?

15 A. Yes, it is.

16 Q. Are the reports and opinions contained therein true to

17 the best of your knowledge and belief?

18 A. Yes, they are.

19 MR PICKFORD: Thank you.

20 We do now have the hard copies.

21 THE CHAIRMAN: Mr Hunt can be given copies.

22 (Handed)

23 Well, first of all, thank you both for your very

24 full reports and for the effort that you have put in and

25 also in the joint statement, which we have of course

5

1 read.

2 As you know, there are certain points which you have

3 marked or have been marked for you as confidential and

4 I think you know the practice we follow. We try to be

5 very careful not to refer to any confidential matter

6 expressly, but one can point to the passage as

7 necessary. If we really have to, we can go into camera,

8 but we try and avoid that if it is not necessary.

9 You recall, I know, you have both, I think, given

10 concurrent evidence before, that you will have questions

11 from me and other members of the Tribunal and you will,

12 of course, bear in mind your overriding duty is to the

13 Tribunal and to assist us in the Decision we have to

14 take, and that is overriding because it overrides any

15 obligations that you have to the party which has

16 instructed you and which is paying you for your

17 services.

18 What we will do is, we have had a slightly later

19 start, we always take a break during the proceedings,

20 but we will, I think, continue without a break and take

21 a slightly earlier lunch at 12.45 and come back a bit

22 earlier rather than interrupting this morning.

23 MR MATTHEW HUNT & MR ROBIN NOBLE

24 Questions from THE TRIBUNAL

25 So I wanted to just start with some very sort of

6

1 general questions about general search, which,

2 of course, Google does very successfully, and there are

3 some others, Bing, Yahoo, of the main general search

4 engines, and just to sort of put some points to you and

5 you tell me if you agree with them or disagree and then

6 you can expand.

7 A general search seeks to respond with relevant

8 response to user queries of any kind or category,

9 that is why it is general. Is that a fair statement?

10 MR NOBLE: Yes. I would say.

11 THE CHAIRMAN: Mr Hunt?

12 MR HUNT: Yes, I think that is fine.

13 THE CHAIRMAN: Yes, you always have to say "yes", because

14 a nod is not picked up on the transcript, you see.

15 It presents to the user a series of results,

16 sometimes called the blue links, which are ranked in

17 an order that the search engine assesses is most

18 relevant and useful for the particular query. Is that

19 fair?

20 MR NOBLE: Yes. Yes, I think that is fair.

21 MR HUNT: Yes, I agree.

22 THE CHAIRMAN: The competition between general search

23 engines, how they differentiate one from another, there

24 are various aspects to that. Tell me if this is fair as

25 a summary. One will be the speed of response, what is

7

1 sometimes called latency. That is one means of

2 competition. Is that fair?

3 MR NOBLE: Yes.

4 MR HUNT: Yes, I agree.

5 THE CHAIRMAN: Another is the presentation on the search

6 results page, the attractiveness of the user interface.

7 For example, images or highlighting or whatever. That

8 is another way they compete?

9 MR NOBLE: Yes.

10 MR HUNT: I agree as well.

11 THE CHAIRMAN: Thirdly is the quality and reliability of the

12 results, the organic results, so how good they are at

13 selecting relevant responses, how good at ranking,

14 putting the most relevant at the top. That is a major

15 means on which they compete?

16 MR NOBLE: Yes, I would agree.

17 MR HUNT: I agree as well.

18 THE CHAIRMAN: There is no one right way of ranking; it

19 involves judgment and different search engines may do it

20 a slightly different way.

21 MR NOBLE: Yes, yes, and you can see that by putting

22 a similar query into different search engines and you

23 get sometimes the same result, sometimes different.

24 MR HUNT: Yes, I agree.

25 THE CHAIRMAN: If the selection or the ranking of results

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1 was done on the basis of payment by the supplier of the
 2 information, so say I search for "petrol stations near
 3 Fleet Street", because I have driven here and now
 4 I realise I am running out of petrol, and if the only
 5 results that come up are for petrol stations that have
 6 paid the search engine for inclusion in its results in
 7 response to a general search query or by how much they
 8 paid, that would not really be consistent with the way
 9 general search is expected to operate. Is that fair?
 10 MR NOBLE: Not necessarily, because it depends what — how
 11 the pricing mechanism features. So there are two things
 12 that I think matter in that. One is how it is the
 13 general search engine uses the pricing information
 14 together or not with other signals about the quality.
 15 So in your petrol station example, a general search
 16 engine may take into account not just the bid or the
 17 price that the petrol station is willing to pay to
 18 appear, but also the relevance of it. So it might be
 19 there is a petrol station in Oxford that is willing to
 20 pay a lot to appear but it may not present it because
 21 it is not near Fleet Street and therefore it is not
 22 a very good quality response despite that bid.
 23 I think the second point is also related to why
 24 it is that the person is willing to pay, because in your
 25 petrol station example, I would presume the reason that

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1 the petrol retailer wants to pay is because they want to
 2 generate business to them and in that example, you know,
 3 it is a geographically bounded market, they are likely
 4 to be trying to only bid for things that are relevant,
 5 you know, in Central London, presumably the closer to
 6 Fleet Street, the more that they would be willing to pay
 7 because they are more likely to entice someone to come
 8 to their retail outlet.
 9 So I think — and it is hard, the reason to
 10 an economist why that makes sense is because prices
 11 contain information within it as well.
 12 THE CHAIRMAN: Yes, I can see why a petrol station might
 13 want to pay, I am trying to distinguish, perhaps I did
 14 not make it — between advertisements that may appear on
 15 the search results page and the organic — what are
 16 called the organic results.
 17 MR NOBLE: Yes.
 18 THE CHAIRMAN: Just to be clear, are you saying that
 19 a search engine could be — and the way they do operate
 20 and compete — could be taking payment for the organic
 21 results?
 22 MR NOBLE: No. No, I think the way I understand that Google
 23 and other search engines operate is that they do draw
 24 a sharp distinction between the organic part and then
 25 whatever it is, you know, whether it is text ads or

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1 image based ads, that they are — so what I was
 2 describing was the fact that because somebody is paying
 3 for the advert, there is still an incentive on the
 4 search engine and on the party doing the paying to make
 5 sure that what it is that they are paying for is
 6 essentially still relevant to the user.
 7 THE CHAIRMAN: Yes. Yes, I understand. So we distinguish
 8 between the two, for the organic results, as they are
 9 called, generally; perhaps universally, there is no
 10 payment, that is right?
 11 MR HUNT: That is my understanding. I think —
 12 THE CHAIRMAN: Then separately, there are advertisements
 13 of course because the search engines have to monetise
 14 what they are doing, otherwise they have no business.
 15 MR HUNT: I mean, if I may, may I just — in terms of just
 16 thinking about it as an economist's perspective.
 17 I think from a user perspective, it is important that
 18 users feel that a search engine provides them with
 19 useful results. I think that is likely to have
 20 a relationship why payment is not part of the organic
 21 search results, because if payment leads to certain
 22 responses to the organic search results coming higher
 23 than might be appropriate for their usefulness to
 24 a user, that might lead to users actually not wanting to
 25 use that search engine.

11

1 So I know that if you look at the record, Google was
 2 very clear about having what they called a church and
 3 state approach, which means that they clearly separate
 4 ads from organic search results. My understanding is
 5 it is because of that to try to keep the organic
 6 results, if you like, pure from the ads.
 7 THE CHAIRMAN: Anything you want to add to that, Mr Noble?
 8 MR NOBLE: No, I would agree. Certainly, factually, it
 9 appears that that is the way in which Google and,
 10 I believe, although we do not have a huge amount of
 11 evidence, that other search engines also operate
 12 equivalent policies that there is a line drawn between
 13 things that you can pay for and things that are purely
 14 done on organic search. So I infer from that that this
 15 is what search engines regard as an important part of
 16 participating effectively in the general search market.
 17 THE CHAIRMAN: For users, consumers like us, the general
 18 search is always free?
 19 MR HUNT: Yes. To the best of my knowledge, that's correct.
 20 MR NOBLE: Yes.
 21 THE CHAIRMAN: If we then move on to comparison, shopping
 22 sites. They are specialised services focused on
 23 a particular area as opposed to general search?
 24 MR HUNT: Yes. Yes, that's correct. I think there is
 25 a whole host of facts as they go along with that in

12

1 terms of technologically how the information is put
 2 together.
 3 THE CHAIRMAN: Some are in a particular field, like car
 4 rental or airline flights or insurance, and, here,
 5 we are concerned with CSSs about products, shopping
 6 products.
 7 MR NOBLE: Yes.
 8 MR HUNT: Yes, I agree.
 9 THE CHAIRMAN: The user query in a shopping — to a shopping
 10 CSS may be broad, you might be looking for cameras,
 11 albeit narrower, digital cameras, or it might be rather
 12 specific, saying I am looking for the Nikon XP5, for
 13 example, that range of possible queries that users can
 14 make. Is that —
 15 MR NOBLE: Yes, that is certainly my understanding that you
 16 see examples of all of those.
 17 MR HUNT: Yes, I agree.
 18 THE CHAIRMAN: The CSS will respond with a series of
 19 products available online from multiple merchants, so
 20 that the user can compare those products, those
 21 different offers; is that a fair summary of what is
 22 going on?
 23 MR HUNT: Yes, I think, broadly, a CSS needs to understand
 24 the query and, given the particular query, needs to make
 25 decisions about which products to show to the consumer

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1 in which order and potentially whether there are other
 2 relevant information they might wish to provide.
 3 MR NOBLE: Yes, agreed.
 4 THE CHAIRMAN: Each product will be with a price and a link
 5 to the online merchant or merchant platform from which
 6 that product can be purchased?
 7 MR NOBLE: Yes. Yes, and — yes, I think that's correct.
 8 MR HUNT: Yes, that's right.
 9 THE CHAIRMAN: I think, Mr Noble, in your report, at
 10 paragraph 2.39, that is {13/1/43}, you indeed set that
 11 out essentially by reference to the definition of a CSS
 12 in the Decision.
 13 MR NOBLE: Yes, correct. The reason I hesitated in giving
 14 my answer was because I was recalling that point in the
 15 parentheses, which is that one can click directly or
 16 potentially via further interstitial pages to get to the
 17 merchant.
 18 THE CHAIRMAN: Yes. So it could be through a platform like
 19 Amazon, you are saying?
 20 MR NOBLE: Yes, precisely, or it might be that you click on
 21 the Nikon camera and then it offers you yet further
 22 refinement that you might get, but I am not sure a lot
 23 turns on that specific point.
 24 THE CHAIRMAN: The decision, the Commission Decision, as you
 25 know, held that, having gone through a lot of analysis,

14

1 that comparison shopping sites or product comparison
 2 shopping sites are a distinct market, distinct product
 3 market; is that right?
 4 MR NOBLE: Yes, that is the Decision it made.
 5 THE CHAIRMAN: I want you to just think a bit, just as we
 6 did with general search engines, specifically about
 7 comparative shopping sites. The competition, how
 8 competition takes place between them and how they
 9 differentiate themselves one from another, and again to
 10 put a series of points and you tell me if you agree with
 11 that.
 12 One, again, is speed of response, latency. That
 13 would be one aspect of —
 14 MR HUNT: Yes, I agree.
 15 MR NOBLE: Yes.
 16 THE CHAIRMAN: Another one would be the relevance of the
 17 response, how good the site is at matching the query,
 18 the user query, to relevant merchant offers.
 19 MR HUNT: Yes.
 20 MR NOBLE: Yes.
 21 THE CHAIRMAN: A third, again like general search, will be
 22 the presentation of the user interface, the quality of
 23 the images, how they are organised, how they are
 24 displayed. That would be an aspect on which they will
 25 differentiate from each other?

15

1 MR NOBLE: Yes, I would ...
 2 MR HUNT: Yes, I agree.
 3 THE CHAIRMAN: So one might have a grid, one might have
 4 a carousel, one might have — there are various ways of
 5 doing it. Is that fair?
 6 MR HUNT: Yes, fair.
 7 THE CHAIRMAN: Another will be the number of products or
 8 merchants that they include in their source.
 9 MR HUNT: Yes, I think that is an important dimension in
 10 competition.
 11 MR NOBLE: Yes.
 12 THE CHAIRMAN: Another will be the quality and accuracy of
 13 the information provided, specifically that the prices
 14 are up-to-date, that would be important; is that right?
 15 MR NOBLE: Yes. Yes, and I would think also whether the
 16 product is in fact in stock as well, because it is not
 17 useful to have a price that, in a sense, doesn't exist.
 18 THE CHAIRMAN: Yes, absolutely, so whether it is in stock
 19 and delivery details?
 20 MR HUNT: (Off microphone) Yes. Yes, all of those
 21 factors —
 22 THE CHAIRMAN: It might be a star or quality rating?
 23 MR HUNT: (Off microphone) Yes. Potentially, if —
 24 MR NOBLE: Yes.
 25 THE CHAIRMAN: Then the extent of product information that

16

1 they provide?
 2 MR HUNT: Yes, and that can vary by product.
 3 THE CHAIRMAN: Yes.
 4 MR NOBLE: Yes. Yes, and actually, just going back to the
 5 previous point about stars, one might also have reviews
 6 or, you know —
 7 THE CHAIRMAN: Yes, that was actually the next thing.
 8 MR NOBLE: Oh, okay, was it? Okay, forgive me.
 9 THE CHAIRMAN: Reviews or buying guides, having viewed it.
 10 MR HUNT: Yes, correct.
 11 THE CHAIRMAN: There might be other useful information. We
 12 heard one site gives a price history, for example, so
 13 additional pricing information.
 14 MR HUNT: Yes, I mean, sites can potentially differentiate
 15 in various ways.
 16 THE CHAIRMAN: Yes, I am talking about exactly that. The
 17 way they differentiate. The way they compete.
 18 MR NOBLE: Yes.
 19 THE CHAIRMAN: Then there is the functionality that they
 20 offer to users. So the user can refine their search by
 21 manufacturer or by price or by the product character,
 22 say the size, or, if it is clothing, maybe the colour —
 23 well, not just clothing, the colour or weight. You can
 24 refine your search.
 25 MR NOBLE: Yes.

17

1 MR HUNT: Yes. I think that varies by — can vary by
 2 product and it will vary between CSS, so, yes.
 3 THE CHAIRMAN: Different functionalities?
 4 MR HUNT: Yes.
 5 THE CHAIRMAN: All of that — you referred, I think, in an
 6 earlier answer to technology. All of that requires, to
 7 do these things, development and investment in
 8 a technology infrastructure for the CSS?
 9 MR NOBLE: Yes, to host and present those things on your own
 10 website, you will require technology. You know, you
 11 will need a technology stack of some sort in order to
 12 provide that, yes.
 13 MR HUNT: Yes.
 14 THE CHAIRMAN: Yes.
 15 Again, like general search, they are always free to
 16 use?
 17 MR NOBLE: Yes, that is my understanding is that I am not
 18 aware of any that charge a membership fee or something
 19 along those lines.
 20 MR HUNT: Yes, that is also my understanding.
 21 THE CHAIRMAN: They earn their revenue from merchants who
 22 pay for the users that they receive through the CSS?
 23 That is how they get their revenue generally?
 24 MR NOBLE: Yes, that is my understanding.
 25 MR HUNT: Yes. Yes, that's right, and there's different

18

1 payment methods in terms of payments per click and per
 2 acquisition.
 3 THE CHAIRMAN: You can pay per click — you can pay per
 4 acquisition. There are different models — you can
 5 have — I think some have a sort of combination of sorts
 6 and that is how they do it.
 7 Do they otherwise charge merchants for inclusion in
 8 the site other than a payment for use by ...?
 9 MR NOBLE: I think I have seen some reference to fixed fees
 10 in the record, but — in the sense so it is not per
 11 click, it is a, you know, pay to be included model.
 12 THE CHAIRMAN: Yes.
 13 MR HUNT: I think I have only seen that in respect of entry
 14 into Google's sort of shopping box, or what I have
 15 called in my reports compliance mechanism shopping unit.
 16 I don't think I have seen that in reference to
 17 stand-alone comparison shopping sites. But it is
 18 entirely plausible they could be.
 19 THE CHAIRMAN: Yes, they could have that — introduce that
 20 model.
 21 I think you both make the point that CSSs, the
 22 market is a two-sided market, they need users and they
 23 need merchants.
 24 MR NOBLE: Yes, correct.
 25 MR HUNT: Yes, I agree.

19

1 THE CHAIRMAN: There is a network effect because the more
 2 user traffic a CSS generates, the more merchants are
 3 interested in that site, particularly if it is high
 4 quality traffic that converts into purchases, and
 5 therefore the higher per click rate they are willing to
 6 pay. Is that —
 7 MR HUNT: Yes. I agree, there are indirect network effects
 8 and you mentioned one of them, which is from users,
 9 merchants care about the number of users. There is
 10 another indirect network effect on the other side where
 11 users care about the number of merchants. So there's
 12 sort of two indirect network effects.
 13 MR NOBLE: Yes, I would agree, yes, there are those two
 14 indirect network effects.
 15 THE CHAIRMAN: I think, Mr Noble, you refer also in your
 16 report to a direct network effect, that the more users
 17 a site has, the more user generated content it can get
 18 in terms of reviews or ratings and so on?
 19 MR NOBLE: Yes, which then feeds into your dimensions of
 20 competition. That might be the star ratings are driven
 21 by users clicking on five stars or not, as it were, or
 22 feeding in text reviews, whatever. It might also be
 23 that you are able to use behavioural information from
 24 the users about what it is they in fact click on when
 25 they type in "Nikon camera". You may then further

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1 refine your results to better present them.
 2 THE CHAIRMAN: Yes.
 3 MR HUNT: Yes, so I agree with that, and I think that is
 4 potentially relevant, a really important factor because
 5 the more users that are using your service as a CSS, the
 6 more you are learning about queries and which queries
 7 users are putting in and you are learning to match those
 8 with products and seeing how users react to what is
 9 presented to them, and that allows you to improve the
 10 quality of your service over time. So I think that
 11 network effect is important.
 12 THE CHAIRMAN: Rather like general search, the CSS can
 13 analyse the behaviour of users, is I think what you are
 14 saying, to improve its algorithms, whereby they match
 15 users to relevant products and suggest potentially other
 16 search terms?
 17 MR HUNT: Yes.
 18 THE CHAIRMAN: I think that indeed, if one turns up —
 19 I think this is reflecting what you have just agreed to
 20 in the Decision. There is a reference to that at
 21 paragraph, or recital, we call them, 449. It just
 22 says — it may be coming up on screen. It is
 23 {BA/2/135}, but I can read it out:
 24 "... in addition to providing specialised search
 25 results for given queries, comparison shopping services

21

1 can also suggest other search terms that may be of
 2 interest for users. The ability of comparison shopping
 3 services to offer such suggestions is linked to the
 4 volume of traffic that they receive."
 5 Do you see that?
 6 MR HUNT: Yes.
 7 THE CHAIRMAN: I think that relates to the point you have
 8 just been making.
 9 MR HUNT: It does, yes, it is one aspect.
 10 MR NOBLE: Yes.
 11 THE CHAIRMAN: So the — to do that, obviously the CSS needs
 12 access to the user data to do that?
 13 MR NOBLE: Yes, you would need the data to analyse it, yes.
 14 THE CHAIRMAN: Then I just wanted to ask you a little bit
 15 about Google's move to what they call their monetised
 16 model of CSS in 2012/2013, which is really when they
 17 moved from Product Universal, which was a selection from
 18 the product property as they call it, their product
 19 comparison site, they moved to shopping units with the
 20 PLAs in the unit and also the Google Shopping site
 21 itself also was a move to an auction for inclusion
 22 model. Indeed, the shopping unit I think was shown as
 23 a sponsored result.
 24 So that was — then became a sort of form of
 25 advertising in a way. Is that fair?

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1 MR NOBLE: Sir, which part are you —
 2 THE CHAIRMAN: Well, once they moved to a monetised shopping
 3 property and monetised shopping unit, which the
 4 merchants would bid for through an auction process, that
 5 becomes something slightly different from the previous
 6 Product Universal where there were no payments and it
 7 was just selected on the basis of relevance.
 8 MR NOBLE: Are we talking here about the presentation on the
 9 SERP? So you have conducted a general search query and
 10 you are then presented with a shopping unit result?
 11 Is that —
 12 THE CHAIRMAN: Yes. So before 2013, in the UK, you do
 13 a general search query, you will have, at the top
 14 usually of the general results page, the
 15 Product Universal showing that product is linked to
 16 a merchant and those were selected on relevance. There
 17 was no payment.
 18 MR NOBLE: Yes.
 19 THE CHAIRMAN: They were drawn from the Google Shopping
 20 property, for which, again, there was no payment for
 21 inclusion. But then Google moved in 2012/2013, it
 22 started in the US, I think, then it came into Europe in
 23 2013, to what they called the monetised version, whereby
 24 they had on the box at the top of the general page,
 25 which was then renamed the shopping unit, what they

23

1 called PLAs, which were chosen for relevance but also
 2 merchants would bid for slots there.
 3 MR NOBLE: Yes.
 4 THE CHAIRMAN: Equally, at about the same time, the separate
 5 shopping site, comparison site, Google Shopping site,
 6 which then changed its name to Google Shopping, also
 7 merchants would bid for inclusion and indeed you had to,
 8 I think, be included in Google Shopping to get into the
 9 shopping unit.
 10 So that then becomes something that — it has
 11 monetised the process, so there is a sort of element of
 12 advertising in that. Is that fair or would you not
 13 characterise it that way?
 14 MR NOBLE: Yes. No, I would agree that it is fair to
 15 characterise it as something akin to advertising. It is
 16 subject to the qualification I gave earlier that it is
 17 not pure advertising in the sense that one simply pays
 18 for the slot, one — it is more nuanced than that in the
 19 quality factors and the rate to the specific query, you
 20 know, go into deciding what comes first and how much do
 21 people pay.
 22 THE CHAIRMAN: Yes.
 23 Anything you want to add?
 24 MR HUNT: No, I mean, I agree with — my understanding of
 25 the facts is as you have set out and I agree with that

24

1 statement.
 2 THE CHAIRMAN: So it is quite a — it is, in a way, quite
 3 an important change in the model there from the way it
 4 operated before?
 5 MR NOBLE: In terms of how Google monetises, yes.
 6 MR HUNT: I think it is important because it certainly will
 7 change what is presented to consumers. The fact that
 8 payment becomes a key factor, it will logically have an
 9 impact on what is presented to consumers. It is
 10 a question of logic.
 11 THE CHAIRMAN: Anything you want to add?
 12 MR NOBLE: Yes, I mean, it certainly does — you would
 13 anticipate that the introduction of payment there will
 14 have an impact on the relevance, or rather the, what
 15 it is that gets —
 16 THE CHAIRMAN: The results —
 17 MR NOBLE: Yes, precisely which results get shown, and
 18 I think it is the purpose of the general second price
 19 auction is to try and make sure that you are presenting
 20 highly relevant results but that you also gather some
 21 revenue from that.
 22 MS ROSE: Is the way that Google monetises, from 2013
 23 onwards, for its shopping site different from the way
 24 that CSSs monetise merchants for their shopping sites,
 25 for their CSSs?

25

1 MR NOBLE: In the stand-alone shopping website?
 2 MS ROSE: Yes.
 3 MR NOBLE: I think it's very similar. I couldn't tell you
 4 if it's identical, but it's, you know, conceptually
 5 quite similar.
 6 MS ROSE: So the auction is actually for price per click;
 7 is that right?
 8 MR NOBLE: Yes, that's my understanding.
 9 MR HUNT: Yes, that's also my understanding. I also do not
 10 know precisely how CSSs determine exactly how to present
 11 individual slots, but, yes, there is payment as well, so
 12 payment is a factor that CSSs take into account.
 13 MS ROSE: But before 2013, one difference between Google's
 14 shopping website and other CSSs is that the merchants
 15 who were included in Google's website haven't paid for
 16 that at all?
 17 MR NOBLE: Yes, that's my understanding. They ran a free
 18 model for several years.
 19 MS ROSE: So it is a bit like a sort of vertical search
 20 version of general search, if you like? It is a sort of
 21 sub-category? Anyone can be in.
 22 MR NOBLE: Yes, I mean, I guess in terms of which product
 23 market is it operating in, I think it would be the
 24 specialised search, the vertical.
 25 MS ROSE: Yes, but it is not monetised.

26

1 MR NOBLE: But the monetisation model is therefore different
 2 because they are not charging anybody.
 3 MS ROSE: Obviously, this distinction between the two
 4 markets, general search and CSS market, is pretty
 5 fundamental. How — where do you draw the boundary?
 6 Because obviously, some features of CSSs are shared with
 7 general search, like the fact that a user puts in
 8 a query and is looking to have relevant results and the
 9 search engine is looking to provide relevant results,
 10 which may be free or may be monetised. But what
 11 do you see as the essential features of the CSS market
 12 that differentiate it from general search?
 13 MR NOBLE: I mean, my — well, I should say what I have not
 14 done, I don't think Mr Hunt has done either, is we have
 15 not conducted a formal market definition of size —
 16 MS ROSE: No, I understand that.
 17 MR NOBLE: — and so — and we have looked very carefully,
 18 I think both of us, at what the Commission has said
 19 about how it conducted its market definition exercise.
 20 So the — and stepping back a little bit, the concept
 21 that I think the Commission is appealing to is
 22 demand-side substitutability because in market
 23 definition that is the primary thing that draws
 24 a distinction between what is and is not something.
 25 It is then using features like, you know, various of the

27

1 ones that we talked about earlier in terms of the
 2 ability to filter, for example, which is typically
 3 available on a vertical stand-alone website but
 4 typically was not available on the shopping box in its
 5 various iterations, and it is testing to evaluate
 6 whether or not differences like that are sufficient to
 7 lead it to a conclusion that there is insufficient
 8 demand-side substitution.
 9 The other word that it uses, which is very important
 10 in market definition, is complementarity, because
 11 things, in a sense, compete against each other when they
 12 are substitutes for one another and things almost sit
 13 side by side, a bit like a gin and tonic, when they are
 14 complements to one another. It does talk about in —
 15 and I think we refer to it in the joint statement — the
 16 complementarity between the presentation on the SERP and
 17 the presentation on a CSS website, stand-alone CSS
 18 website.
 19 I interpret what it is appealing to is the notion
 20 that the presentation on the SERP in a sense is
 21 co-linear with demand for the services of CSSs. So, in
 22 a sense, by presenting it on the SERP, it is increasing
 23 demand for CSS services rather than substituting the
 24 demand, which is why those two terms are so critical.
 25 I think I quote some of them in the joint statement.

28

1 MS ROSE: So, I mean, you have given the example of
 2 filtering .
 3 MR NOBLE: Yes.
 4 MS ROSE: Do you consider filtering to be an essential
 5 differentiating feature between general search and a CSS
 6 or is it just something a good CSS has?
 7 MR NOBLE: Well, as an economist, I think that what tells
 8 you the difference between the relevant markets is what
 9 consumers regard as being important features, and I am
 10 quite wary in this case of trespassing on the Commission
 11 in a sense of trying to insert what I think the relevant
 12 market is —
 13 MS ROSE: Yes, yes. Yes.
 14 MR NOBLE: — with what I think the Commission thought the
 15 relevant market is.
 16 So let me just — maybe if we just find the relevant
 17 paragraph where we talk about that. It's 2.5, I think,
 18 of the joint statement.
 19 (Pause)
 20 MS ROSE: Is that at {11/4/32}?
 21 MR NOBLE: Yes, and it is on — well, {11/4/34} is the part
 22 that I am particularly interested in. It is at the
 23 bottom of the page. I have mentioned filtering.
 24 I mean, I think that is the example that I highlighted
 25 here as one of the critical distinctions between what

29

1 one sees on a general search results page versus what
 2 one typically finds on a CSS, that does appear to be
 3 a strong difference between the two, that you can engage
 4 in filtering in a CSS website whereas you typically, or
 5 I do not think you ever can on the general results page.
 6 I think there are things that — and I think there
 7 was one mentioned in the claimant's skeleton argument,
 8 where they were speaking to this, about the role of
 9 chips, which I think they were implying from that that
 10 that was a general search engine results page offering
 11 a form of filtering function.
 12 So that is where you type in your Nikon camera
 13 example into a general search, you're then presented
 14 with a results page. At the top, you receive a box
 15 which has PLAs or shopping results in it, as it were,
 16 and then these little sort of ovals come up that offer,
 17 in a sense, what you might think of as potential
 18 refinements to the search that you have just conducted.
 19 So it might be you typed in "Nikon camera" and then
 20 it might be that one dimension of that is black or white
 21 or, you know, the colour, for example, and it might —
 22 the general search engine may have learned through user
 23 interaction that people often type in that query with
 24 the word "black" at the end or they type it in with the
 25 word "white" at the end, and then it offers those as, in

30

1 a sense, almost like a form of auto-complete.

2 Now, I would draw a distinction between that, which,
 3 in a sense, I think is more a form of further refining
 4 your general search query versus, in a sense, what one
 5 might think of as true filtering, which is that you
 6 have — you are presented with a series of Nikon cameras
 7 and there's a dropdown box that then says I want to
 8 filter by colour. The reason I would draw that
 9 distinction is because when you use things like the
 10 chips, or in fact you can just type in the word "black",
 11 because that is all it really does is it just adds the
 12 word "black" and then reruns a general search query —
 13 is that the — you don't always get a shopping result is
 14 one critical feature of that.

15 So it is possible you can almost overrefine it to
 16 the point that it no longer thinks that you are in fact
 17 searching for a shopping result and you are then just
 18 presented with other results. It might be text ads, it
 19 might be — you know, obviously it will be the generic
 20 search as well.

21 But perhaps I should stop, because Mr Hunt may wish
 22 to contribute on this.

23 MR HUNT: Yes. So I think the question essentially is: what
 24 essentially differentiates a comparison shopping service
 25 and a general search service in essence? So I think

31

1 it is worth sort of stepping back and then going back to
 2 what is a comparison shopping service. Let me just do
 3 that in a second.

4 So, as we said, essentially users are being provided
 5 with the ability to compare different kind of products
 6 with different product dimensions and at the same time
 7 the comparison shopping service, as we said, is getting
 8 all of this up-to-date information from merchants and
 9 it is — so it needs to have a deep database of that
 10 information, and then when a user goes into the
 11 comparison shopping service, puts in a query, it is
 12 essentially matching those products to the user's query
 13 and then presenting a set of results. Okay?

14 So, as far as I can see, it is essentially that sort
 15 of, if you like, matching between merchants — when
 16 we say "merchants", we are meaning online retailers or
 17 merchant platforms — and users, and the comparison
 18 shopping service is providing that functionality.
 19 I think that that differs from general search, where
 20 general search is not providing that specific
 21 comparability between sort of different products in the
 22 way that a comparison shopping service is.

23 I think, in addition, comparison shopping services
 24 can provide the sort of functionality that Mr Noble is
 25 referring to.

32

1 MS ROSE: So you would not regard filtering as an essential
2 differentiator ?
3 MR HUNT: I don't think it is essential. I think that what
4 you would see if you went into stand-alone comparison
5 shopping services, I think, in practice, they do offer
6 that sort of functionality, apart from I think some of
7 the — what I would think of as intermediaries that
8 engage with Google's remedy box, that, at times, they
9 haven't had that sort of functionality. But apart from
10 that, I think, generally, the stand-alone websites,
11 I would say that they — you know, when look at them,
12 you see that they do have that sort of functionality.
13 But it does not seem to me to be absolutely
14 determinative, because at the end of the day, what
15 the comparison shopping service is doing is matching
16 users to merchant product results and doing that through
17 the specific databases of product offers.
18 MS ROSE: We have heard something about what I think some
19 people would call fake CSSs —
20 MR HUNT: Yes.
21 MS ROSE: — engaging with the remedy, but you would not
22 regard those as fake? You would just — if they did not
23 have that kind of functionality, is that what you are
24 saying?
25 MR HUNT: So what I am saying is that the act of essentially

33

1 engaging with users and providing —
2 MS ROSE: It is just enabling people to compare products?
3 MR HUNT: Yes. I mean, I think that is right. Then there
4 is a question of essentially how much you are able to
5 engage with users. So I think there's a what you
6 present and how you actually get access to users as
7 well.
8 THE CHAIRMAN: You will always be comparing with up-to-date
9 price, I think?
10 MR HUNT: I mean, I think that is an important dimension,
11 yes.
12 THE CHAIRMAN: There is always the ability to click through
13 and buy?
14 MR HUNT: Yes.
15 THE CHAIRMAN: Possibly, as Mr Noble said, through another
16 medium, like Amazon, a separate stage, but there is
17 always a link through to actually make the purchase.
18 MR HUNT: That is correct.
19 THE CHAIRMAN: Yes —
20 MS ROSE: Can I just ask one more question?
21 THE CHAIRMAN: Yes.
22 MS ROSE: So we know from the Commission Decision that
23 Amazon is treated as being in a different market.
24 MR NOBLE: Yes.
25 MS ROSE: Now, clearly, Amazon does allow comparison between

34

1 products, including by price, and it also has very
2 sophisticated filtering functionality.
3 MR NOBLE: Yes.
4 MS ROSE: But the differentiation is that you buy on the
5 Amazon website?
6 MR NOBLE: Yes. Yes, and I think — I mean, if one is
7 a purist about this, what determines what a relevant
8 market is and then, you know, the entities that operate
9 in it is ultimately demand-side substitutability. It is
10 strictly whatever it is that users care about. What
11 the Commission, I think, is attempting to do when it is
12 doing its relevant market evaluation is — and you can
13 see the way the Commission's decision is structured. It
14 says: this is essentially the focal product, it gives
15 a description, it then goes through in a sense stress
16 testing that, saying: well, let us now evaluate in this
17 direction, because we've started here with what in
18 a sense everybody agrees is a CSS, Kelkoo for example,
19 and then we look to see is Amazon or — well,
20 merchant — could be a website —
21 MS ROSE: Merchant hub.
22 MR NOBLE: Merchant hub websites, are they a sufficient
23 demand-side substitute for CSSs? Yes or no. It
24 concludes, no, they are not. Then it goes through —
25 I mean, there are often many reasons why it draws those

35

1 conclusions and they are often — and I think that
2 reflects the fact that market definition is
3 multi-dimensional.
4 I mean, to take almost a very — and I guess the —
5 again, this is being a purist. The reason one has to be
6 a little bit careful about focusing on this function or
7 that function is because — I mean, take trains from
8 Oxford to London. You might say, in the peak time in
9 the morning, there are two things that look identical to
10 each other, one is a green train and one is a blue
11 train, one goes to Marylebone and one goes to
12 Paddington. But the fundamental distinction in the peak
13 time generally in travel markets is how long it takes to
14 get there. You might say that the Marylebone train is
15 not a good substitute for the Paddington train because
16 it takes half an hour longer to go to Marylebone. So
17 you have observed the characteristics that this thing is
18 a train, it has got wheels on it, but that is not enough
19 to tell you whether or not they are in the same relevant
20 market as one another.
21 Now, that sounds like I am trying to make this
22 problem more difficult, but I think it is just
23 highlighting that the — I think the approach
24 the Commission took is to try and cut through that
25 complexity by saying, well, in a sense, as one always

36

1 does in market definition, let us start from the focal
 2 product and try and work outwards and stress test
 3 whether, either empirically or qualitatively, it is
 4 a plausible argument that this is a strong demand—side
 5 substitute for the thing that we are starting out
 6 looking at. It concludes, as we said, for CSSs that
 7 merchant hubs are not a good substitute for that and
 8 therefore they are not in the same relevant market as
 9 CSSs.

10 THE CHAIRMAN: Mr Hunt, do you want to add anything?
 11 MR HUNT: I think it is important to think about what Amazon
 12 does and how that differs from CSSs, because I think
 13 actually the way it is presented by the Commission
 14 relates to that. So Amazon, in particular, essentially
 15 matches consumers/users to what it calls third—party
 16 sellers. Those third—party sellers are typically
 17 merchants or brand owners and they can be retailers, but
 18 they are typically small or medium, you know, size
 19 enterprise retailers, you know, smaller retailers.
 20 That is somewhat different from, I think, comparison
 21 shopping services that match users or consumers to
 22 online retailers.

23 So if you look at the — 191 of the Commission's
 24 decision {BA/2/35}, it specifically says online
 25 retailers and merchant marketplaces. Yes?

37

1 So there is a little bit of a difference there,
 2 I think, between what Amazon does, because then actually
 3 it is customers on one site that, although one might use
 4 the term "merchants", they are actually somewhat
 5 different from the customers on, if you like, the other
 6 side of the comparison shopping services on the two
 7 sides of their platform.

8 MS ROSE: You mean they are just a different group of
 9 merchants?

10 MR HUNT: Yes. So, for example, brands such as John Lewis
 11 or Marks & Spencers may not be on Amazon, but they are
 12 large, well—known, branded retailers who have an
 13 interest in getting consumers/users to their websites
 14 where they want to manage the customer relationship. So
 15 you would go, say, onto the John Lewis website, you
 16 would purchase a product there, and John Lewis has that
 17 interaction with you, John Lewis then fulfils the
 18 product, sends that product to you, and if there are
 19 returns, you engage with that with John Lewis.

20 That is different from Amazon, where, when I go to
 21 Amazon, I'm purchasing from Amazon, I have
 22 a relationship with Amazon, Amazon fulfils that product
 23 for me. Okay? If I have any returns, they get returned
 24 to Amazon. So Amazon is a particularly interesting and
 25 attractive platform for, as I said, manufacturers,

38

1 branded goods owners and kind of typically smaller
 2 retailers that don't essentially want to manage that
 3 customer relationship.

4 So I think that the role of Amazon is quite
 5 different from the role of a comparison shopping
 6 service. So actually if you look at — and that has
 7 some implications, and if you look at the Commission's
 8 decision, the implications, if you like, come from that
 9 because comparison shopping services, I think it
 10 mentions in the Commission's decision, they are more, if
 11 you like, a window onto the wider web, okay? Merchants,
 12 we use the term "merchants", but essentially online
 13 retailers, that includes merchant platforms I should
 14 say, and that is somewhat different to the sorts of
 15 products that users may be able to get are different,
 16 and then the user ultimately has a purchase relationship
 17 with the online retailer at the end of the day or the
 18 merchant platform.

19 So that is a bit different from Amazon, so it has
 20 some impacts on both how users interact with them and
 21 also how kind of merchants, using that sort of wider
 22 term, frankly looser term, interact with either Amazon
 23 or with comparison shopping services.

24 THE CHAIRMAN: Of course they explain in the Decision how
 25 they reach that conclusion, as Mr Noble said, why

39

1 merchant platforms, because I think Google argued they
 2 were in the same market and the Commission explains how
 3 it reaches its conclusion at that point.

4 MR HUNT: Yes.

5 THE CHAIRMAN: An analysis that Mr Noble summarised.

6 MR NOBLE: Yes, yes, and I think the essence of it is,
 7 I think the Commission is concluding, that it is because
 8 it does not regard there to be — there to be
 9 a sufficient degree of demand—side substitutability.
 10 I think it accepts there is some, and there is often
 11 some demand—side substitutability between lots of
 12 things, but in order to be in the relevant market, it
 13 has to be sufficient in order to constrain the focal
 14 product and I think it concludes that it's not.

15 One rationalisation of why, just to build on what
 16 Mr Hunt explained, which I thought was a very clear
 17 explanation of almost the way those platforms work, is
 18 that implicit in that is the notion that it is because
 19 consumers care. You know, they see a difference: either
 20 it is because they can buy different things or they can
 21 buy them from different brands or they can be delivered
 22 in a different way. To some degree, it doesn't matter
 23 why they (inaudible), the fact is that the Commission
 24 decided that they did, and that is why it then draws
 25 a line between the two.

40

1 MS ROSE: Of course, here, consumers also is merchants
 2 because this is a two-sided market, so merchants may see
 3 CSSs and Amazon in a very different way, I think as
 4 Mr Hunt was saying.
 5 MR NOBLE: Yes, in a sense that what is happening is that
 6 you have — the other side of the network is the
 7 merchants and merchants like John Lewis, etc, typically,
 8 are not interested in having their products sold on
 9 Amazon.
 10 THE CHAIRMAN: Amazon is particularly complex because,
 11 I know from another case in this Tribunal, it is also
 12 a retailer itself.
 13 MR NOBLE: Yes, it's a first party seller itself, yes.
 14 PROFESSOR SMITH: The Commission, if I remember right, also
 15 decided that Google's AdWords were not in the CSS
 16 market, that they were not, for consumers, a substitute
 17 for a CSS service.
 18 MR NOBLE: I think if I — I would have to turn up the
 19 Decision. My recollection is that what it decided
 20 was that the AdWords were not a good substitute for CSSs
 21 to acquire inbound traffic to their website, and hence
 22 it did not regard those as a sufficiently good
 23 alternative available to them that they could then
 24 access traffic from the SERP. I think that was the —
 25 PROFESSOR SMITH: But also, as I recall it, they made no

41

1 statement about product listing ads.
 2 MR NOBLE: No, I don't think so.
 3 PROFESSOR SMITH: Since we have got so deep into market
 4 definition issues, we may as well continue with it.
 5 You, Mr Noble, have helpfully emphasised that consumer
 6 substitution is an important or indeed I think you said
 7 the most important part of establishing the boundaries
 8 of market definition.
 9 MR NOBLE: Yes, demand-side substitution is generally seen
 10 as the primary determinant of markets.
 11 PROFESSOR SMITH: So when we are looking at whether the
 12 shopping unit is in the same market as Google's CSS,
 13 that might be helpful in illuminating the question of
 14 what the relationship is between Google's CSS and the
 15 rest of Google's operation, including the shopping box
 16 and rival CSSs?
 17 MR NOBLE: Yes. That is what I am alluding to in that
 18 passage on {11/4/34} of the joint statement, is that the
 19 demand-side substitution is the most important bit of
 20 market definition and that if one wants to appeal to
 21 market definition to help draw a distinction between
 22 these two, then that is where I would start. But as
 23 I said, I emphasise the point that I personally have not
 24 conducted a full market definition exercise in this
 25 case.

42

1 MR HUNT: May I just add that because these are two-sided
 2 platforms, they need to think about demand on both
 3 sides. It depends on — you don't just need to think
 4 about users, but you also need to think about it, as
 5 I said, from the looser term of "merchants" that
 6 actually includes a number of different types of firms.
 7 PROFESSOR SMITH: I agree, I understand that. But sticking
 8 for a moment with the consumer substitution side, if
 9 a consumer contemplating making a purchase goes on to
 10 Google and Google recognises the search as a product
 11 oriented search and serves up the shopping unit with
 12 entries in the shopping unit and also the various
 13 buttons offering CSSs, and the consumer chooses to go
 14 ahead with a purchase on the basis of the information in
 15 the shopping unit, is it not fair to say that that
 16 consumer is signalling that the shopping unit has
 17 provided an adequate amount of information to them to
 18 enable them to make an informed purchase?
 19 MR NOBLE: Yes, yes, I think that is a reasonable inference.
 20 I mean, one could also draw a similar inference from the
 21 fact that somebody might type in that same search query,
 22 they might be presented with the same information, but
 23 instead of clicking on, say, a PLA, they click on
 24 a review site and look at the review site and then
 25 proceed to purchase. It might be that on the results

43

1 page they are also presented with a merchant that has
 2 a — you know, on a blue link that has a product,
 3 perhaps John Lewis sells the Nikon camera that we have
 4 talked about and that is a blue link, perhaps they click
 5 on that and proceed to purchase at that stage.
 6 So I think the fact that — in a sense, I think the
 7 inference that we are drawing is: the user has typed in
 8 a query; they have been presented with a series of
 9 results; they have then proceeded directly, essentially,
 10 to sort of pass through the SERP page, and then,
 11 relatively quickly after that, can make a purchase that
 12 I think the inference applies to all of those routes
 13 that they are potentially taking there.
 14 PROFESSOR SMITH: But you are not persuaded that the fact
 15 that the evidence is the majority — the strong majority
 16 of consumers presented with a shopping box will regard
 17 that as the end of their search for information and
 18 proceed to make a purchasing decision and therefore, as
 19 we talked about earlier, that would indicate they have
 20 got enough information on their shopping box to record
 21 their decision, does that not suggest that the shopping
 22 box is, for these consumers, providing them with
 23 an adequate shopping search, advice service?
 24 MR NOBLE: I'm not — I would have to check exactly.
 25 I think there is an important point in the way you asked

44

1 the question, which is that a large share of people do
 2 that. I would have to check it precisely because my
 3 recollection is that actually it is not — it depends
 4 what you mean, the share of what, I think, is really
 5 important. I think the — because the click-through
 6 rates, I think, on a PLA, are actually a handful of
 7 percent. So in a sense of, if the logical flow is that
 8 you have typed in a query, it is then recognised by
 9 Google as being a product query, if we take that as the
 10 denominator of what we are looking at, so that is the
 11 world of consumers that we think are engaging in product
 12 search, my understanding is that the percentage of
 13 those, once they are presented with the SERP results
 14 screen, that click on a PLA is something, you know, 5 or
 15 10% or less. I think it varies over time and quite(?)
 16 with the presentation, but ...
 17 So in that sense, I think — I don't think — my
 18 understanding is factually, and I would have to check
 19 precisely which statistics I would refer you to, but
 20 I don't think it is a large percentage.
 21 PROFESSOR SMITH: But it is a larger percentage than those
 22 who would then click on the tab for Google Shopping and
 23 say: oh, having seen these offers, then I see this one
 24 is from Google, let me click on the "By Google" link or
 25 click on the Google Shopping tab; the proportionate

45

1 click on the PLA is much higher than the proportion who
 2 click on a CSS —
 3 MR NOBLE: Yes, I think if you take the universe as we are
 4 now, in a sense, restricting ourselves to things that
 5 are in the box, then I think the percentage of — which
 6 is obviously a subset of people that viewed the SERP for
 7 a product query, then I think that's correct, and
 8 I think Mr Hunt has provided some numbers on that.
 9 MR HUNT: I did. So I think it is important to think about
 10 the broader point of you put in a query into Google and
 11 get, as we've said, the shopping box, using the term
 12 generically, at the top, and then there is a number of
 13 other links that are provided to consumers.
 14 So, I mean, it's certainly a fact that quite
 15 a number of consumers will click on other links and go
 16 direct to merchants, so organic links, they might click
 17 on the AdWords links and go to merchants as well. But
 18 many consumers, I believe it's around 15%, click
 19 directly on the shopping unit and engage with that unit.
 20 By far the largest proportion of consumers that are
 21 essentially engaging in product comparison do so through
 22 the unit and so if you look at Google Shopping Europe's
 23 account, you will see that essentially only 3% of their
 24 revenues come from the stand-alone kind of
 25 Google Shopping site, which conversely means that 96/97%

46

1 of their revenues are coming from the shopping unit. So
 2 it is principally the shopping unit where comparison
 3 shopping is taking place.
 4 THE CHAIRMAN: Is this the point that you make in
 5 issue 2.14, which is on {11/4/45} of the joint
 6 statement? Is that this point? Is that related to this
 7 point?
 8 MR HUNT: It is related to this point. It is a very
 9 slightly different point, and the slightly different
 10 point is there is about 1% of clicks that go direct to
 11 comparison shopping sites. So if you take the 97% and
 12 then there is an extra 1% difference —
 13 THE CHAIRMAN: Because this is —
 14 MR HUNT: — that explains why you've got 96 —
 15 THE CHAIRMAN: — because this is post-Decision; is that
 16 why?
 17 MR HUNT: No, it's the 97%, I was saying, is true for
 18 Google, right?
 19 THE CHAIRMAN: Yes.
 20 MR HUNT: But you've also got 1% of traffic that goes direct
 21 to comparison shopping sites, and then, in total, say,
 22 it's 96% of traffic. This is a very specific figure,
 23 which is about traffic that actually routes via the
 24 shopping unit, how much of that goes direct to merchants
 25 versus goes to kind of elsewhere.

47

1 No, sorry —
 2 THE CHAIRMAN: I don't think that is right.
 3 MR HUNT: Let me correct myself. Just give me one second.
 4 Yes, sorry, so what this does say here is 96% of
 5 comparison shopping traffic goes through the unit. That
 6 means that there is a little bit of comparison shopping
 7 traffic that either goes through the tab or might go
 8 through organic search results. But that total
 9 comparison shopping traffic is around 4% and the
 10 remaining 96% is through the shopping box, to use the
 11 sort of generic term.
 12 PROFESSOR SMITH: Since we have waded so far into market
 13 definitions, we might as well carry on a little bit
 14 further.
 15 Mr Hunt, you, a few minutes ago, mentioned that
 16 substitution on the supplier side is also an important
 17 part of doing a market definition. What is the
 18 relevance of that to the issue of whether the shopping
 19 box is in the same market as Google's CSS?
 20 MR HUNT: So, for example — again, let's just take
 21 a logical extreme. If, for example, all of the
 22 merchants that engaged with, say, take Amazon, were
 23 completely different from all of the merchants that
 24 engaged with comparison shopping sites, then that is
 25 quite important because it would mean that the — what

48

1 is being presented to users differs, and that might have
 2 a material impact on how users engage on one side of the
 3 market and there is clearly then some very important
 4 differences on the other side of the market as well. So
 5 I think the two sides are related. So I think the
 6 nature of the competition on the merchant side has an
 7 impact on the competition on the user side.
 8 MR NOBLE: Yes, I would agree with that. The only — and at
 9 risk of being too much of a purist in this case, the
 10 only wording point that I would urge a little bit of
 11 caution with is that I think strictly, when one is
 12 talking about a two-sided platform or two-sided market,
 13 you are talking about two sides of demand, and "supply"
 14 is often a word tending to be used to describe the — in
 15 a sense, in this case, the CSS. But I am not sure
 16 anything turns on that point.
 17 PROFESSOR SMITH: Would either of you attach any
 18 significance to the fact that merchants, when they
 19 engage with Google through bidding for PLAs, are thereby
 20 engaging with Google CSS? The only route into Google
 21 CSS is through the PLA option and, if I remember right,
 22 merchants who sell a product through Google cannot
 23 always identify whether the Google click came through
 24 the shopping box or through Google's CSS. Is that of
 25 any significance?

49

1 MR HUNT: Sorry, can you just — let's be clear. So,
 2 factually, what you have described I think is my
 3 understanding of things, albeit I think there might be
 4 some differences post-Decision and during the Decision
 5 period. I am not quite sure what ...
 6 PROFESSOR SMITH: Does that have any bearing on market
 7 definition? I am perfectly happy if your answer is no.
 8 MR HUNT: I don't think it is a material factor.
 9 MR NOBLE: No, I would tend to agree.
 10 PROFESSOR SMITH: Thank you.
 11 THE CHAIRMAN: Can I then step back, just to be clear, as
 12 I think my understanding — on the question of
 13 competition on the merits, which, Mr Hunt, you set out
 14 in your first report, your understanding of what that
 15 means, at paragraph 2.84 — sorry, 284, which is
 16 {12/1/133}. It is page 132 of the document, internal
 17 paging.
 18 You say:
 19 " ... competition on the merits ... from [your]
 20 perspective as an economist ... a process of rivalry in
 21 which firms succeed in terms of increasing their market
 22 share and profits based on their superior efficiency,
 23 risk taking, quality, and the distinctiveness of their
 24 offerings. It is a dynamic process that rewards firms
 25 for identifying and responding to consumer preferences

50

1 ... which creates incentives ... "
 2 And so on.
 3 "In markets where competition on the merits
 4 prevails, firms gain commercial success — whether
 5 through higher sales and/or improved margins — because
 6 they deliver superior value to users, not because they
 7 exploit their customers ..."
 8 Equally, that firms, some firms, gain market share,
 9 gain commercial success and others correspondingly,
 10 presumably, lose market share on the same basis.
 11 MR HUNT: Yes.
 12 THE CHAIRMAN: Not thinking about any legal case law,
 13 Mr Noble, do you think that is a fair summary of what is
 14 encapsulated by the idea of competition on the merits?
 15 (Pause)
 16 MR NOBLE: Yes, I do.
 17 THE CHAIRMAN: Also, it is right to say, of course,
 18 competition on the merits does not mean it follows from
 19 that that all firms achieve the same outcomes?
 20 MR HUNT: Absolutely not.
 21 MR NOBLE: No. No, and I would say it's — usually
 22 experience tells you that it tends to mean the opposite,
 23 that in fact firms do not achieve the same outcomes
 24 because some are more efficient or meet consumers' needs
 25 better than others.

51

1 THE CHAIRMAN: Yes, thank you.
 2 I wanted to turn to a different topic, which is
 3 about the algorithmic ranking on the SERP in the general
 4 search page. I think we have agreed that is a key part
 5 of the operation of general searches, the ranking of
 6 results, and inevitably, as some products or services
 7 are ranked higher, others will be ranked lower. So
 8 it is, it has been put, a zero sum game. I think that
 9 is clear, is it not?
 10 MR HUNT: Yes.
 11 THE CHAIRMAN: Part of that ranking for Google in its
 12 algorithms, and no doubt other general search engines,
 13 is to denote what it regards as lower quality sites or
 14 sites that seek to game the system in some way?
 15 MR HUNT: Yes.
 16 MR NOBLE: Yes.
 17 THE CHAIRMAN: We have, I think, already accepted that there
 18 is no single objective way of ranking sites, it involves
 19 judgment and there will be different views?
 20 MR NOBLE: Yes.
 21 MR HUNT: I agree with that.
 22 THE CHAIRMAN: We are dealing in this case with two
 23 particular algorithms, one which we call "Algorithm A"
 24 and the other is the Panda algorithm. We have been told
 25 certain things by the Decision, and I know you have done

52

1 some work on this, but we have to accept what the
 2 Decision tells us is binding.
 3 If one just looks at the Decision for a moment, so
 4 we are told at recital 352, which is on page 86, that is
 5 {BA/2/86}, and it is recital 352:
 6 "Comparison shopping services are prone to being
 7 demoted by [Algorithm A] due to the characteristics of
 8 those services."
 9 Then there are some details given.
 10 Then, as regards Panda, on page 88 of this document,
 11 {BA/2/88}, recital 358:
 12 "Like in the case of [Algorithm A] ... comparison
 13 shopping services are prone to being demoted by the
 14 Panda algorithm due to the characteristics inherent to
 15 those services."
 16 Do you see that?
 17 MR NOBLE: Yes.
 18 MR HUNT: Yes.
 19 THE CHAIRMAN: So we are told that and we are bound by that.
 20 Then 359, further down that page, the Commission
 21 explains that it has not accepted Google's arguments on
 22 this, and says:
 23 "... the fact that competing comparison shopping
 24 services are prone to being demoted in Google's general
 25 search results by [Algorithm A] and Panda algorithms is

53

1 further supported by evidence ..."
 2 Then they set out various — summarise the evidence:
 3 "... (i) the number of comparison shopping services to
 4 which those algorithms have been applied; (ii) the
 5 impact of the application of the Panda algorithm on
 6 visibility of competing comparison shopping services;
 7 (iii) the impact of the application of the Panda
 8 algorithm on the trigger rates of competing comparison
 9 shopping services; and (iv) the impact of the
 10 application of the Panda algorithm on the average
 11 ranking of competing comparison shopping services."
 12 Then they go on, later on in the Decision, to say
 13 that this affected significant traffic. That is if we
 14 go on to {BA/2/172}. We have recital 513. We see what
 15 that says about Algorithm A. It has:
 16 "... contributed to a decrease in generic search
 17 traffic from Google's general search results pages to
 18 competing comparison shopping services."
 19 514, virtually the same words for the Panda
 20 algorithm.
 21 So those findings are binding on us. I do not think
 22 there is any suggestion that either Algorithm A or Panda
 23 was specifically targeted at comparison shopping
 24 services. They had this impact, but it is not that they
 25 were designed to strike comparison shopping services

54

1 specifically.
 2 Further, the Decision also found that for competing
 3 comparison shopping service traffic — for competing
 4 shopping services, the traffic from general search
 5 cannot effectively be replaced, and that is at
 6 recital 542, which is {BA/2/183}:
 7 "For the reasons set out below, none of the existing
 8 alternative sources of traffic currently available to
 9 competing comparison shopping services ..."
 10 Then they set them all out:
 11 "... can effectively replace generic search traffic
 12 from Google's general search results pages."
 13 Do you see that?
 14 MR NOBLE: Yes.
 15 THE CHAIRMAN: So that is the baseline from which we start.
 16 It might be different if this was a completely open case
 17 and one was looking at examining the evidence.
 18 We are also told by the Decision that before
 19 Product Universal was introduced within, I think, the
 20 start of 2008, late 2007, Google's comparison shopping
 21 site was not gaining traffic. That is at 490 on
 22 {BA/2/154} of this document:
 23 "... before the start of the Conduct ... October
 24 2007, Google's comparison shopping service had been
 25 unsuccessful in gaining traffic."

55

1 Whereas after Product Universal, 492, the next page
 2 {BA/2/155}:
 3 "... the first month following the launch of Product
 4 Universal in the [US], traffic to Google's comparison
 5 shopping service at least doubled."
 6 So there was no — from Algorithm A, there was no
 7 diversion of traffic to Google's site. There was
 8 a reduction in traffic, but it did not go to Google's
 9 comparison shopping service.
 10 I think you did find that for 12.1%, if I have got
 11 it right, of product queries, the Google OneBox was not
 12 shown at all.
 13 Is that something you are agreed on?
 14 MR NOBLE: No, I think it was the other way round. It was
 15 87% of the time it wasn't shown and 12.1 it was.
 16 THE CHAIRMAN: Sorry, absolutely, only shown at 12.1, yes,
 17 I misstated, yes. So it was not even that significant.
 18 Well, given all those circumstances, if an algorithm
 19 is prone to and does demote comparison shopping services
 20 sites because of their nature as a comparison shopping
 21 service, does that potentially affect competition? I am
 22 not asking this as a question of law or case law or
 23 decisions of the Court of Justice but from an economic
 24 perspective.
 25 MR NOBLE: I think it affects competition. I think there is

56

1 perhaps a different question about whether it affects
 2 competition on the merits in the sense that the logical
 3 flow of that is that there is an important input that is
 4 not replaceable, as told to us by the Commission, that
 5 has been reduced significantly, again told to us by
 6 the Commission, and I think one would anticipate that in
 7 a sense the size of that market would be smaller because
 8 of that. There is less input, as it were, on one side
 9 of the two-sided network. That means the network is
 10 less effective, I think, than it otherwise would have
 11 been.

12 But there is a question about then almost the
 13 competitive dynamics between the players that are within
 14 that market, which competition on the merits is talking
 15 about — is that there may be less input, as it were,
 16 but if everybody is in the same situation then in
 17 a sense the playing field is level. It is almost that
 18 the playing field may have gone down, but it is a level
 19 playing field.

20 THE CHAIRMAN: Yes.

21 MR HUNT: I think it depends on the differential impact of
 22 that algorithm on different CSSs. So I can say that it
 23 necessarily has an impact on competition and so I think
 24 Mr Noble and I agree on that. So if, for example —
 25 let's just take an extreme example — a CSS does not

57

1 appear or is pushed so far down the rankings that it
 2 doesn't appear then it's not going to get organic search
 3 traffic, and that has an impact on that CSS because it
 4 loses that very important source of traffic.

5 So conversely, a CSS which is not sort of demoted in
 6 the same way won't have that same impact, right?
 7 I think that is clearly the case. Then you need to
 8 think about, I think — I think there is a valid
 9 question around why one comparison shopping site is
 10 getting demoted and one is not.

11 THE CHAIRMAN: Taking Mr Noble's point, if they are all
 12 being demoted in the same way, there is then a level
 13 playing field, albeit it is not — the value of the
 14 playing field is very much less.

15 MR HUNT: Yes.

16 THE CHAIRMAN: Possibly reduced to almost zero.

17 MR HUNT: If all comparison shopping sites are demoted
 18 equally, yes, I agree with that.

19 THE CHAIRMAN: If, because of the way the algorithm works,
 20 a comparison shopping site that is a new entrant in the
 21 market is, by reason of being a new entrant, affected
 22 more severely than established comparison shopping
 23 sites, would that potentially affect competition on the
 24 merits?

25 MR HUNT: It certainly has an impact on competition. I do

58

1 think there is a legal question about whether that is —
 2 but in a pure economist's perspective, it has an impact
 3 on competition, sure, because it makes entry hard, or
 4 possibly makes entry impossible, again depending how
 5 exactly how those businesses look like. So in
 6 principle, yes, it has an impact.

7 MR NOBLE: I think it really depends on the extent to which
 8 the entrant is able to in a sense substitute — you
 9 know, in a sense how surmountable is any particular
 10 barrier. All markets have some degree of barrier to
 11 entry, whether that is brand or capital investment or
 12 whatever it is. To me as an economist, the question
 13 is: how surmountable is it?

14 If it is the case that an algorithm has an effect on
 15 entrants that in a sense is insurmountable or extremely
 16 hard to surmount, then I think I would agree with
 17 Mr Hunt, that potentially you get a distortion caused by
 18 that. However, if that barrier is reasonably
 19 surmountable through whatever steps one needs to take,
 20 whether that is investment in advertising or
 21 partnerships or whatever, in a sense then I would say
 22 it is not obvious that it is going to cause a particular
 23 problem.

24 MR HUNT: I think that logically must be correct. It is
 25 a question of degree, yes.

59

1 THE CHAIRMAN: So it is how high a barrier it creates?

2 MR HUNT: Yes, I agree with that.

3 THE CHAIRMAN: Then quite a difficult judgment where it
 4 crosses the line (off microphone — inaudible) would be
 5 to decide. You say it is a question of degree (off
 6 microphone — inaudible) surmountable where one puts
 7 the —

8 MR HUNT: So, to be clear, I haven't addressed the question
 9 of abuse in the pre-Decision period, but just speaking
 10 as an economist then yes, essentially to understand how
 11 that impacts competition you need to understand what the
 12 comparison shopping business looks like, you need to
 13 understand how it derives revenues, how it derives
 14 traffic, and you need to understand how the — just
 15 logically how much that lack of availability of organic
 16 search traffic, to what extent that has an impact on
 17 that firm. In fact, to Mr Noble's point, their ability
 18 to source users from elsewhere.

19 THE CHAIRMAN: Yes.

20 MR NOBLE: Yes, and I would agree with what Mr Hunt said and
 21 I think what he is describing is essentially a method of
 22 almost directly measuring how high is that hurdle, how
 23 many centimetres, how powerful are the legs of the CSS
 24 to jump over it.

25 The other method that economists often use is

60

1 essentially an indirect measure of that, which is that
 2 you look to see: is there entry? Because, obviously, if
 3 there is a lot of entry then, well, however high that
 4 barrier is, people are getting over it.
 5 THE CHAIRMAN: (off microphone — inaudible)
 6 MR NOBLE: Exactly. So one can then, obviously, look at the
 7 factual record to see, well, do we see significant
 8 volume of entry or do we not.
 9 MS ROSE: Just examining this particular question of the
 10 operation of algorithms, assuming the algorithm applies
 11 to all CSSs in the same way, but some are demoted and
 12 some are not and some are more demoted than others, how
 13 do you address the question of effects on competition in
 14 a context where Google's entire business is about
 15 ranking? If you ask, "What does Google do?", actually
 16 what Google does is it discriminates, otherwise it has
 17 no business. That is why it is useful to consumers. So
 18 where do you as economists sort of put this test into
 19 that business model with a zero sum game?
 20 MR HUNT: I agree it is very difficult. For me, I presume
 21 that is why the Commission went down the line it did in
 22 looking at the sub-preferencing, because, inherently —
 23 and I would completely agree that within a general
 24 search business, Google needs to make decisions about
 25 ranking and does need, will need, to demote. There must

61

1 be — I have not looked into this, but I imagine there's
 2 a whole host of other demotions in here. I think
 3 that is consistent with the record. So I imagine
 4 that is why the Commission went down a line where they
 5 looked at differential impact on Google's own CSS
 6 vis-à-vis other CSSs to — if you take away that very
 7 difficult question.
 8 MR NOBLE: Yes. You can think of — the Webmaster
 9 Guidelines get talked about a lot and I think you can
 10 see the effect of the Webmaster Guidelines in lots of
 11 websites that Google has made various updates over the
 12 years to encourage people to design websites in
 13 particular ways to make sure they have mobile friendly
 14 sites and so on.
 15 Now, my understanding is it is motivated to do those
 16 things because it is interested in making sure that it
 17 sends people to useful websites and if people are
 18 searching on a mobile, obviously it wants mobile
 19 friendly sites to be on the end of the links that it is
 20 putting out to people.
 21 So in that sense you can think of this being one
 22 market, in which there is an entity such as Google, but
 23 also other general search engines, that they have ripple
 24 effects outside of their relevant market. They alter
 25 the nature of competition that exists in lots of markets

62

1 through their operation of that and I think — so from
 2 an economics perspective, I mean, again, kind of being
 3 a purist about this, you would say, well, if that is the
 4 outcome you get in a market in which there is
 5 competition then it is not obvious that on its own that
 6 singular effect, like the fact that the market for
 7 general search involves discrimination — if that is
 8 almost a truism then that implies that all markets, all
 9 other markets, CSSs or others, that interact with it, in
 10 a sense, can expect to feel the effect of that emanating
 11 from them.
 12 I think you might even take a further step back
 13 about why is it that general search engages in
 14 discrimination. I think it is — you know, the
 15 rationalisation as an economist is because consumers
 16 want to discriminate; they have scarce available
 17 attention; they do not want to look at 10 websites, they
 18 want to look at one. It's that that then encourages
 19 this. So in a sense, yes, there are ripple effects, but
 20 as an economist who believes in markets, you would
 21 think, well, generally these are seeking to try and
 22 approximate what is a good outcome for consumers.
 23 THE CHAIRMAN: Do you want to add anything?
 24 MR HUNT: I think that must be correct in the general search
 25 market. To be clear, it is not something I have

63

1 assessed in my reports, but just thinking about it
 2 logically. Then general search or search engine
 3 providers must — they care about what users care about,
 4 they are trying to provide useful results for users.
 5 That is one dimension.
 6 There are trade-offs, frankly, that they need to
 7 make on other things, and I am sure we are going to come
 8 to that in some other areas, but broadly speaking, yes,
 9 sure, they need to be able to make decisions about
 10 ranking, organic ranking based on which they think will
 11 provide results that are useful for them and the people
 12 that want to use their service.
 13 MS ROSE: Thinking about your point about ripple effects in
 14 other markets, obviously we are focused on the ripple
 15 effect in the market for CSSs, but obviously there are
 16 other intimately involved markets: merchants and also
 17 merchant hubs. So if you have an algorithm that keeps
 18 the CSSs dominant on the first page, the quid pro quo
 19 for that is that the merchants are being forced down.
 20 MR NOBLE: Yes.
 21 MS ROSE: Because there is only a certain number of spots.
 22 MR NOBLE: Yes, there is no getting away from that. In
 23 a zero sum game, any winner must imply — a new winner
 24 is a new loser.
 25 MS ROSE: There is no inherent reason in economic terms why

64

1 CSSs should appear higher on a search for a Nikon camera
 2 than merchants selling a range of Nikon cameras?
 3 MR NOBLE: No, no. In a sense —
 4 MS ROSE: That is the very judgment that the search engine
 5 makes.
 6 MR NOBLE: Yes, yes, and in a sense we implicitly rely on
 7 the functioning of the general search market to sort of
 8 make those trade—offs, and I think, as we heard from
 9 some of the factual witnesses, Google has a whole
 10 variety of ways, no doubt Bing and other search
 11 providers, to keep tabs on that and that can be formal
 12 ways, but it's also informal ways. They are reading
 13 blog posts about "people don't like seeing this sort of
 14 result". That's a way of —
 15 MS ROSE: (overspeaking) the diversity algorithm.
 16 MR NOBLE: Yes, precisely. In a sense one can always try
 17 and further enhance what it is that a market participant
 18 is engaging in, but in a sense markets are not always
 19 perfect, but they may be the best that we have available
 20 to us societally in order to achieve, in a sense, what
 21 are difficult trade—offs.
 22 MR HUNT: I think, inherently, it's just logically correct
 23 that if you use space for one thing, you are displacing
 24 other sorts of links. So I think, inherently, that is
 25 correct. I think that what we see is that — in fact,

65

1 the record, if we look at it, over time of how users
 2 have engaged with different types of links, it looks
 3 different at different points of time.
 4 So clearly, in certain cases it may well be a user
 5 finds useful a link to a CSS, that provides them with
 6 valuable information to compare products, and at other
 7 times it could be that they find a link direct to
 8 a merchant the more useful. I think that is ultimately
 9 an empirical question about how users respond.
 10 MS ROSE: It could be a market—wide trend. So there could
 11 be some times when it appears that users in general
 12 prefer CSSs and other times when they change their minds
 13 and prefer merchants.
 14 MR HUNT: It could be. I do think —
 15 MS ROSE: The way people use the Internet changes.
 16 MR HUNT: The way — that's right. I think — look, I'm
 17 sure user preferences have changed. In fact, one of the
 18 real complexities of this case is how — what Google has
 19 presented to users has changed the user preferences over
 20 time, and that is an inherent problem that all of us are
 21 trying to deal with when we are looking at the evidence
 22 base here, because user preferences clearly have changed
 23 and there is a question about to what extent they have
 24 changed because of what Google has presented them with.
 25 THE CHAIRMAN: Yes.

66

1 We said we would break at 12.45, so that seems
 2 a good moment to do that. You are both in the course of
 3 giving your evidence, so you cannot discuss the case
 4 with anyone else or on your team. I do not personally
 5 see any objection to you having lunch together, I am
 6 sure you have many other things you can talk about.
 7 We will resume at 1.45.
 8 (12.46 pm)
 9 (The short adjournment)
 10 (1.45 pm)
 11 (Proceedings delayed)
 12 (1.50 pm)
 13 THE CHAIRMAN: Mr Hunt, Mr Noble, we wanted to ask you some
 14 questions about, I will call it, the remedy box. It has
 15 been called various things, the compliance mechanism
 16 box, but I think remedy box is probably simplest — you
 17 know what I mean — that Google has introduced following
 18 the Decision, so the post—Decision period.
 19 I am not going to ask whether this should be
 20 regarded as Google's CSS or part of Google's CSS, which,
 21 as, Mr Noble, I think you say at one point, that is
 22 a different — really a legal question. But I wanted to
 23 ask really whether it is in the same market as CSSs. Is
 24 it a substitute or is it just part of general search, as
 25 I think, Mr Noble, you say, and the complement. I think

67

1 that is the sort of area to explore.
 2 First of all, the format of the remedy box. Does
 3 that differ significantly from the previous, do you
 4 think, shopping unit in any relevant sense?
 5 MR HUNT: So I think it is largely the same, visually
 6 largely the same from a user perspective. There are
 7 some differences in terms of the specific links. So
 8 prior to October 2017, there was a specific link to the
 9 Google Shopping stand—alone site. That was removed
 10 going into the remedy box and then the "By [CSS]" links
 11 were added. So I think there were some limited changes
 12 to the presentation of the box from a user perspective.
 13 THE CHAIRMAN: Mr Noble?
 14 MR NOBLE: Yes, I think, visually, I concur.
 15 THE CHAIRMAN: The selection of products for display in the
 16 remedy box, is there any significance in that of what is
 17 chosen to go into it?
 18 MR HUNT: I mean, obviously, that is a technical question.
 19 My understanding from the evidence base is that, no,
 20 it is largely the same. So I think it is Mr Braendle
 21 kind of refers to it, but there's also some documents
 22 from KPMG, there's a KPMG report where there is a page
 23 where they compare the pre and post—October 2017 kind of
 24 box, and it says that it is, I think, largely the same.
 25 So again, that's outside my area of expertise, but

68

1 I understand it's largely the same.
 2 THE CHAIRMAN: But, of course, it does include products that
 3 come not from the Google stand-alone separate shopping
 4 site, now GSE, Google Shopping Europe, but through
 5 a CSS —
 6 MR HUNT: Yes —
 7 THE CHAIRMAN: — product.
 8 MR HUNT: — or intermediated by kind of other firms —
 9 THE CHAIRMAN: Or other firms, yes.
 10 MR HUNT: — yes, correct.
 11 THE CHAIRMAN: The selection of products is then made by ...
 12 who controls the selection, as you understand it?
 13 MR HUNT: So I have referred to it in my report as Google
 14 Search. Precisely the entity, in all honesty, the legal
 15 entity, I am not sure, but it is not — the key thing is
 16 it's not Google Shopping Europe that decides which PLAs
 17 appear in the remedy box.
 18 MR NOBLE: Yes, that's my understanding, that it is part of
 19 Google or what Google regards as Google's general search
 20 that makes the selection using a generalised second
 21 price auction mechanism. I think, just going back to
 22 the earlier conversation we had about the role of
 23 prices, in a sense precisely what gets then presented in
 24 the box is obviously influenced by whatever the
 25 feedstock is that's coming into the second price

69

1 auction.
 2 So it will be receiving things from Google Shopping
 3 Europe, but it will obviously receive things from other
 4 entities. The outcome of the selection mechanism will
 5 then be influenced by all the dimensions in which people
 6 are altering, so the prices that they are bidding
 7 obviously will have an influence, but the way the items
 8 are described, the images, also the learning that the —
 9 in a sense, the learning that the algorithm has about
 10 what — which — when people click, you know, which
 11 things do people actually click on to apply quality
 12 scores.
 13 MR HUNT: So my understanding is aligned with Mr Noble's.
 14 I think a key factor was it was the same prior
 15 to October 2017 and post-October '17.
 16 THE CHAIRMAN: When a CSS participates in the remedy process
 17 to get into the remedy box, is it functioning as a CSS
 18 in your view?
 19 MR HUNT: In my view, no, it's an intermediary between
 20 a merchant/online retailer and Google. But the —
 21 I mean, the level of interaction can be extremely low in
 22 the self-service form of — you know, that's offered to
 23 merchants. Again, my understanding is actually the
 24 merchant can do pretty much everything, but they have to
 25 click a box to associate their kind of account with

70

1 a comparison shopping service account. So in that
 2 example, the comparison shopping service, supposedly
 3 comparison shopping service, is doing very, very little.
 4 You know, very little indeed.
 5 THE CHAIRMAN: Mr Noble, do you agree with that?
 6 MR NOBLE: Well, I think it goes to the issue of what is
 7 a CSS, in the sense of is it therefore still functioning
 8 as a CSS when it performs those roles. My perspective
 9 is I think it is performing a role of a CSS in that
 10 it is processing, it is engaging with merchants and
 11 there are obviously different ways that they can engage
 12 with merchants. So that's one side of the two-sided
 13 network. It can obviously engage via self-service,
 14 which is something that didn't exist before, but it can
 15 engage in the managed model as well.
 16 When you look at what it appears that the top 40 do,
 17 there is an annex 13 of my report, I have conducted
 18 a review of public information of which models are
 19 people adopting. You find a pretty broad swathe: so
 20 some do adopt the sub-service only; some adopt managed
 21 only; some offer a mix of the two. So in that regard,
 22 you've got a variety of different ways of interacting
 23 with one half of the two-sided network.
 24 Then, in terms of how is it they're accessing the
 25 other half of the two-sided network, the customers,

71

1 obviously that depends on the business model they've
 2 adopted, but they all operate websites, so they can
 3 access consumers directly through direct engagement.
 4 They can, if they wish, also obviously offer different
 5 things like publisher model and so on, so they can gain
 6 customers that way.
 7 The other route is then to participate in the remedy
 8 box to acquire customers in that regard and then
 9 obviously when their button is clicked on, they are
 10 acquiring a customer at that moment.
 11 THE CHAIRMAN: But thinking — they can clearly do other
 12 things —
 13 MR NOBLE: Yes.
 14 THE CHAIRMAN: — outside the remedy box, but actually, when
 15 they participate in the remedy box, what service are
 16 they providing to users?
 17 MR NOBLE: What, the — in terms of to the consumer?
 18 THE CHAIRMAN: Yes. By "user", I mean, consumer, yes.
 19 MR NOBLE: Yes. So I think it depends on which model they
 20 are adopting. So if they are in a managed model, then
 21 the merchant will have contracted with the CSS in
 22 a sense to manage the interaction with the PLA, with the
 23 remedy box. That includes, as I understand it, things
 24 like deciding what it is that is bid on, deciding how
 25 it is bid on, the price that it is bid on, ensuring the

72

1 quality of the data that's been provided to Google is
 2 high quality, because obviously if it's low quality, it
 3 potentially is going to be either not selected or it
 4 will, you know, harm the ranking.
 5 So in the managed model, then it's obviously
 6 undertaking a number of functions to interact on behalf
 7 of the merchant with the PLA.
 8 Under the self-service model, it is doing less,
 9 it is essentially acting more as a portal for the
 10 merchant on the one half to connect with the remedy box
 11 on the other.
 12 THE CHAIRMAN: But for the consumer who sees the, I think
 13 they call it, a tile, in the remedy box, which has been
 14 bid for and put in by a CSS on behalf of the merchant,
 15 whether it is managed or self-service, what is the user
 16 getting from the CSS as a CSS service?
 17 MR NOBLE: I mean, they are getting presented to them on —
 18 you know, in response to a general search query,
 19 something that has ranked highly in the selection
 20 process and therefore, according to Google's remedy box
 21 algorithm, is highly relevant to whatever it is that the
 22 user has inputted. So in terms of — so are they
 23 providing things like the ability to filter and so on?
 24 No, they are not. But are they affecting the prominence
 25 in the sense of a particular shopping option? Then

73

1 potentially, yes, they are.
 2 THE CHAIRMAN: Mr Hunt?
 3 MR HUNT: So, I think from my perspective, the intermediary
 4 is doing — so, take the self-service model. They're
 5 doing arguably nothing material that I can see, to be
 6 perfectly honest.
 7 As regards the managed service, in my view, bidding
 8 in an auction I don't think is a core part of being
 9 a comparison shopping service.
 10 Then in terms of what is presented to the user,
 11 well, that is determined by Google. So there is some
 12 influence from the intermediary potentially around some
 13 of the details of the product feed perhaps which —
 14 perhaps they can provide advice if there is a better
 15 picture, slightly better description, perhaps.
 16 I actually don't know how commonly an intermediary would
 17 need to get involved in those sort of details, but
 18 I don't think that those sort of details can reasonably
 19 be called a kind of comparison shopping service. That's
 20 kind of advising as a form of intermediary. Advertising
 21 or marketing intermediary.
 22 THE CHAIRMAN: Under this regime of the remedy box, how does
 23 Google Shopping Europe, the Google distinct shopping
 24 property, and CSSs — how are they now competing?
 25 MR HUNT: So, again, my understanding of Google — that

74

1 Google Shopping Europe is providing — actually,
 2 unfortunately it's not nearly as clear as I would like
 3 it to be from the documents. But it potentially is
 4 providing — it's clearly providing a self-service
 5 option. It may be providing a managed service option,
 6 but I'm not 100% clear from the documents whether it is
 7 or not. Google hasn't clarified that, so ... But it is
 8 providing that same intermediary role that we just
 9 described and it's the same role that other
 10 intermediaries are providing, but it's this sort of
 11 narrow service.
 12 THE CHAIRMAN: Where is the competition with CSSs?
 13 MR HUNT: I mean, I guess a merchant can choose to go to
 14 interact with or be associated with GSE and they can
 15 choose to be associated with or interact with other
 16 CSSs. But my understanding is to some extent that can
 17 be the equivalent of clicking on different boxes to
 18 associate their merchant accounts with different CSS
 19 accounts or with GSE.
 20 So they are competing, but it can be competing in
 21 quite a narrow sense.
 22 THE CHAIRMAN: Are they competing on the various aspects of
 23 competition that you identified this morning?
 24 MR HUNT: As a CSS? No, I don't think so.
 25 THE CHAIRMAN: In terms of their filtering qualities or

75

1 their views or —
 2 MR HUNT: As regards the remedy box, they are not providing
 3 any of those services at all. So it is this narrow,
 4 very narrow kind of marketing advertising intermediary
 5 service that they're providing and then my understanding
 6 is that it is limited to that.
 7 THE CHAIRMAN: Yes, Mr Noble?
 8 MR NOBLE: I think there are sort of two dimensions to the
 9 competition that I think it's worth drawing out. One is
 10 the stand-alone website versus the stand-alone website
 11 which we know they all have. That's a requirement of
 12 being part of the remedy mechanism. So in terms of the
 13 factors we talked about earlier, I think, you know, to
 14 a greater or lesser extent, depending on precisely how
 15 each firm specifies their website, the CSSs are
 16 competing against each other and GSE has essentially
 17 a sub-part or a stand-alone website part of the Google
 18 website where, in a sense, they're competing in that
 19 way.
 20 Then within the remedy itself, then obviously
 21 a number of these dimensions are not present in terms
 22 of, you know, it's not possible on the remedy to filter,
 23 for example, we've mentioned that.
 24 But I think one of the mentions we talked about was
 25 in terms of the quality of the inventory and the quality

76

1 of the description and the accuracy that we — you know,
 2 in fact when you click on something, it really — it is
 3 that price and it is available and it is what you said
 4 it was and the image is correct and there's no broken
 5 links. Those types of dimensions, I think they are
 6 present there too, because obviously if someone is
 7 serving up poor quality data, wrong prices, broken
 8 links, you know, hard to see images, etc, then either
 9 they won't be selected by the auction mechanism or, if
 10 they are, then actually they're going to deliver a poor
 11 consumer experience.

12 THE CHAIRMAN: Do you want to add anything?

13 MR HUNT: As regards the stand-alone kind of websites, it is
 14 one of Google's criteria. Then, you know, there's an
 15 incredibly small amount of traffic that goes to
 16 the stand-alone websites. So about 1% of the traffic
 17 through the remedy box goes to the stand-alone websites.
 18 So it's very small. So to the extent that comparison is
 19 happening, it's within the remedy box itself, not —
 20 not — at least not traffic from Google to
 21 the stand-alone websites.

22 That is as true for Google Shopping Europe as it is
 23 for the other intermediaries. I mentioned the statistic
 24 earlier, but you can see from Google Shopping Europe's
 25 accounts that only 3% of its revenues, these days, come

77

1 from the stand-alone website. So I think I understand
 2 that the rest therefore comes through the remedy box.
 3 So what really matters is within the remedy box.
 4 MS ROSE: Can I just ask about that? Because I think you
 5 told us — we were looking, before lunch, at the
 6 question of traffic, shopping comparison traffic and
 7 what comes — and I think there is a difference between
 8 you and Mr Noble, which we have on page {11/4/45} of the
 9 joint report which we looked at before lunch.

10 MR HUNT: Yes.

11 THE CHAIRMAN: This is the 96%.

12 MS ROSE: Yes, it is the 96%.

13 MR HUNT: Yes.

14 MS ROSE: I think, so Mr Noble made the point that your 96%
 15 does not take into account users who engage with the top
 16 of the SERP.

17 THE CHAIRMAN: By "the top of the SERP", just to be clear,
 18 do you mean the shopping button?

19 MR NOBLE: No. No, I —

20 MS ROSE: No, he means the organic results.

21 MR NOBLE: Yes, in a sense, I'm looking at the SERP as
 22 a whole and so — which is — that's the first point
 23 about the denominator.

24 MS ROSE: Yes.

25 So do we know — if you have got something that is

78

1 classified by Google as a shopping query so that the
 2 shopping box will show, do we know what proportion of
 3 users will click on the shopping box and what proportion
 4 will click on another result on the SERP?

5 MR HUNT: So my understanding is that of total product
 6 queries that are — that go into kind of Google Search,
 7 the kind of general search, about 15% of queries are in
 8 the remedy box and the remainder are — and I can check
 9 and confirm that figure. The remainder are clicks on
 10 merchant links. So, for example, merchant organic —

11 MS ROSE: So 85% are on the organic search results or on the
 12 adverts, but not on the shopping box?

13 MR HUNT: That's my understanding. It's around that sort of
 14 figure.

15 MR NOBLE: Yes, and I think also — and, again, maybe we
 16 need to go away and double-check these numbers, but
 17 almost step 1 is there's a query inputted into the
 18 general search query box and then the first question
 19 is: does the remedy box show? Because I don't think
 20 the — it doesn't show for all product queries, it shows
 21 for quite a large share and I'd have to check exactly
 22 because that number does change over time. But it's the
 23 majority, but it's not 100%. Then I think that's —
 24 then you move on to Mr Hunt's —

25 MS ROSE: So the 15% that go then to the remedy box is when

79

1 it is showing for a product —

2 MR NOBLE: Yes, I think that's right, yes.

3 MS ROSE: So you might get — so there will be a proportion
 4 that does not show at all, and when it does show, only
 5 15% click on it?

6 MR HUNT: No, no, I think it's 15% is the total again from
 7 number of product queries.

8 MS ROSE: So whether it shows or not?

9 MR HUNT: Yes, I believe that's right.

10 MS ROSE: So that includes when it does not show?

11 MR HUNT: I believe that's correct, because —

12 MR NOBLE: Yes. Yes —

13 MR HUNT: — it's total traffic figures —

14 MR NOBLE: I think we might need to go and —

15 MS ROSE: Can we double check it?

16 MR HUNT: But, for example, I know, from a completely
 17 different case I did that was a merger case in online
 18 made-to-measure blinds, that, for example, if you put
 19 "online blinds" into Google, as I did several times for
 20 that merger, you don't get a remedy box. So that's an
 21 example of a product query where you won't get a remedy
 22 box, and in that case, actually most users — they'll
 23 either click on an AdWords link or they click on an
 24 organic link —

25 MS ROSE: Now, the organic links —

80

1 THE CHAIRMAN: Just --- sorry, before you go ---
 2 MS ROSE: Sorry.
 3 THE CHAIRMAN: So you think that the --- of all --- the 15%
 4 you think is of queries where a remedy box is shown,
 5 then 15% go through the remedy box? Is that ---
 6 MR HUNT: No. The difficulty is sometimes it's the cuts.
 7 So my understanding is if you took total traffic and if
 8 you look at total traffic to merchants and total traffic
 9 to comparison shopping services and total traffic
 10 through the remedy box, that's the --- the proportion of
 11 the total traffic that goes through the remedy box is
 12 about 15%. But that's not telling you --- that's across
 13 all different queries, ones that have shown the remedy
 14 box and haven't shown the remedy box, it's just
 15 the outcome.
 16 MS ROSE: Okay.
 17 THE CHAIRMAN: Then the ---
 18 MR HUNT: That's because all we have from Google are total
 19 traffic aggregate figures. So that's all --- that's the
 20 only information we can give you.
 21 THE CHAIRMAN: The 96% is what? Just explain.
 22 MR HUNT: So the 96% is if you take all traffic to
 23 comparison shopping services ---
 24 MS ROSE: Mm--hm.
 25 MR HUNT: Okay?

81

1 MS ROSE: So organic search or through the remedy box?
 2 MR HUNT: Through --- yes, exactly, through anything. That's
 3 the sort of denominator or numerator, sorry. On the
 4 top, you've got essentially traffic through the remedy
 5 box. So traffic through the remedy box divided by total
 6 traffic to all comparison shopping sites.
 7 THE CHAIRMAN: So comparison shopping services for traffic
 8 post--Decision are very dependent on the remedy box?
 9 MR HUNT: Yes.
 10 THE CHAIRMAN: That is the point you're making?
 11 MR HUNT: Exactly, that's it.
 12 THE CHAIRMAN: Overwhelmingly dependent,
 13 MR HUNT: That's it.
 14 THE CHAIRMAN: So, for them ---
 15 MR NOBLE: Well ---
 16 THE CHAIRMAN: Sorry.
 17 MR NOBLE: Sorry --- no, no. I think what we're saying is
 18 conditional on someone having clicked on something
 19 that is inside the remedy box, what is the share of that
 20 traffic that is going in a sense through a PLA? Is that
 21 right?
 22 MR HUNT: No, no ---
 23 MR NOBLE: No, is that not ---
 24 (Simultaneous speakers -- inaudible)
 25 MR HUNT: That's 99%. This figure is 96%, which is, as

82

1 I said, it's the clicks to what you can consider to be
 2 comparison shopping services on the --- sorry, it's on
 3 the bottom, and on the top, you've got clicks on the
 4 remedy box.
 5 MS ROSE: Yes.
 6 THE CHAIRMAN: You will not get many --- sorry, just to
 7 follow that up then, so, of course, the comparison
 8 shopping services will not appear as an organic link
 9 just below ---
 10 MR HUNT: Exactly. They ---
 11 THE CHAIRMAN: --- because they have been demoted? So then,
 12 to get to them, they could have ---
 13 MR HUNT: They could have AdWords or I believe for
 14 Google Shopping you could still click on the tab,
 15 there's a menu link tab.
 16 MS ROSE: So can I just ask you about the product sites box
 17 which is on the first page of the SERP, which seems to
 18 be a grouping of CSSs on the front page of the SERP?
 19 MR HUNT: Well, front page --- I think you normally need to
 20 scroll down to find it, but, yes, I mean, if you scroll
 21 down ---
 22 MS ROSE: Within the top 10 anyway?
 23 MR HUNT: Yes.
 24 MS ROSE: So does that not attract any traffic?
 25 MR HUNT: So we don't know precisely ---

83

1 MS ROSE: How long has that been there?
 2 MR HUNT: --- because all we have is organic traffic, and the
 3 clicks on the product sites is included within the
 4 organic traffic information that we have, but it is
 5 included within this 96%.
 6 MS ROSE: Do you know when that box first appeared? Is it
 7 2024, I think?
 8 MR HUNT: I'm not ... that may be right.
 9 MS ROSE: Okay.
 10 MR NOBLE: Yes, I think it is '94 --- sorry, 2024, but I'm
 11 not completely sure.
 12 PROFESSOR SMITH: I'm sorry, I'm still confused. I'm not
 13 clear what your denominator is, Mr Hunt, because you
 14 said it's the number of searches to --- to CSSs.
 15 MR HUNT: It's not searches, it's traffic. So it's taking
 16 all the sum of traffic to comparison shopping services,
 17 so sigma traffic to comparison shopping services in sort
 18 of, you know, mathematical terms, okay, on the bottom.
 19 Okay? On the top, it is only the traffic through the
 20 remedy box. Okay?
 21 So it is counting each single click on the remedy
 22 box as comparison shopping traffic.
 23 MS ROSE: Including when they go direct ---
 24 MR HUNT: Including when they go direct to merchants.
 25 All traffic, all clicks on the remedy box, are

84

1 treated as comparison shopping traffic. So that's ...
 2 PROFESSOR SMITH: That is the 96%, is it?
 3 MR HUNT: Yes.
 4 PROFESSOR SMITH: So if you take 100 clicks to comparison
 5 shopping services, including the remedy box, 96 of them
 6 are to the remedy box?
 7 MR HUNT: Yes.
 8 PROFESSOR SMITH: Okay.
 9 THE CHAIRMAN: That will include Google Shopping Europe as
 10 a CSS?
 11 MR HUNT: Yes.
 12 THE CHAIRMAN: A click to a CSS?
 13 MR HUNT: Yes.
 14 MS ROSE: If, instead of counting clicks direct to the
 15 merchant sites from the remedy box, you only counted
 16 clicks to the CSS website, what percentage of all
 17 traffic to CSSs would be coming through the remedy box?
 18 MR HUNT: Okay, so it's roughly 99% of the traffic going
 19 through the remedy box goes direct to merchants. So
 20 therefore approximately 1% is going direct to comparison
 21 shopping services. Just by the logic of what we just
 22 described, 4% is not going through the remedy box. So
 23 one in five —
 24 MS ROSE: So 20%?
 25 MR HUNT: 20%. But, to be clear, I believe quite a lot of

85

1 that, of that 5%, I believe, but I'd need to check that,
 2 3% of the 5% goes to Google's stand-alone shopping
 3 service, because I believe that it's probably going
 4 through the menu links, although we don't have that
 5 precise —
 6 MS ROSE: When you say 3%, do you mean three percentage
 7 points or 3%? Do you mean 60% of the —
 8 MR HUNT: I would need to check that because the — again
 9 we've got imperfect information.
 10 MS ROSE: All right.
 11 MR HUNT: So the 3% figure is actually, when you look at
 12 Google Shopping Europe's accounts, 3% of their revenues
 13 come from the stand-alone website. Okay? That tells
 14 you most of their views come from the shopping unit, but
 15 I haven't worked out precisely the figures —
 16 MS ROSE: How that tallies with other CSSs?
 17 MR HUNT: No.
 18 MS ROSE: But that implies then — but that does imply that
 19 in fact the majority, significant majority of traffic to
 20 CSS websites, is not coming through the remedy box?
 21 MR HUNT: I'm not sure that's correct.
 22 MS ROSE: But you just told me —
 23 MR HUNT: Well, sorry, if you're counting Google Shopping
 24 Europe, yes —
 25 MS ROSE: Yes.

86

1 MR HUNT: But — and I believe Google Shopping Europe, quite
 2 a bit of it, or some of its traffic comes through the
 3 menu link. But, yes, if you include Google Shopping
 4 Europe, yes, that's correct.
 5 MS ROSE: But the reality is that very little traffic is
 6 going to CSSs by comparison with the amount of traffic
 7 that is going to merchants?
 8 MR HUNT: That's correct.
 9 MS ROSE: But that could reflect a consumer preference for
 10 going direct to the merchant rather than to an
 11 intermediary.
 12 MR HUNT: Yes, that certainly can be the case. But we've
 13 also got to see that where we have ended up is in
 14 a situation where consumer behaviour has been materially
 15 influenced by Google over the years. But that's right,
 16 I mean, it may reflect — it's possible it reflects
 17 consumer preferences as they are now.
 18 MS ROSE: But most consumer preferences actually are not
 19 going where Google wants them to go because the majority
 20 of consumer traffic is going direct to Amazon.
 21 MR HUNT: Well, so — sorry, so can you ...?
 22 MS ROSE: Yes. Most shopping journeys now start on Amazon,
 23 not Google.
 24 MR HUNT: So I've certainly seen some numbers that ...
 25 There were some numbers that Google has put forward from

87

1 a survey that I think said that 63% of shopping
 2 journeys —
 3 MS ROSE: Shopping journeys — started on Amazon.
 4 MR HUNT: — started on Amazon.
 5 MS ROSE: Yes.
 6 MR HUNT: I mean, that's kind of ... So take that as read
 7 and I have not looked into that survey, but I think the
 8 other 37% are starting, I think, largely on Google.
 9 Again, there are other kind of search engines as well.
 10 MS ROSE: Of course — well, hang on though. A lot of
 11 shopping journeys will start on the websites of
 12 individual merchants because a lot of people are now
 13 shopping on mobile phones and now have apps, so you'll
 14 have a John Lewis app or a Marks & Spencers app on your
 15 phone and a lot of shopping journeys start on those
 16 apps.
 17 MR HUNT: Maybe. I've not looked into that so I can't
 18 tell —
 19 MS ROSE: But you live in the world.
 20 MR HUNT: What you're telling me makes sense and I can see
 21 that that may well make sense. I can't — but I've
 22 not —
 23 MS ROSE: I am just challenging whether you can say that
 24 Google has control over the head space of the consumer
 25 when actually what you have seen is consumers are

88

1 shopping in lots of different ways online but actually,
 2 to a significant extent, shopping less on Google than
 3 they used to.
 4 MR HUNT: I think that's — well, you say less on ...
 5 MS ROSE: Proportionately. Proportionately —
 6 MR HUNT: As a fact, I haven't looked into that —
 7 MS ROSE: — not in absolute numbers.
 8 MR HUNT: — so I'm not —
 9 (Simultaneous speakers — inaudible)
 10 But, look, in principle clearly, Amazon, it's
 11 undeniable that a material number of consumers are going
 12 to Amazon to look for products. That's correct.
 13 MS ROSE: I mean, there is not any inherent reason why CSSs
 14 should get preference in the SERP to merchants, is
 15 there?
 16 MR HUNT: Inherently?
 17 MS ROSE: Yes, in competition terms.
 18 MR HUNT: I mean, again — you know, look, ultimately, this
 19 case is about self—preferencing, right? So the key
 20 question is how Google's treating its own CSS vis-à-vis
 21 others.
 22 But, inherently, as a general search service, then,
 23 to the extent that they're seeking to — I mean, there's
 24 a number of trade—offs going on, but to the extent —
 25 let's just assume that they're seeking to provide the

89

1 best service to users and to fulfil user preferences,
 2 which I think — that doesn't always hold, but let's
 3 just assume that holds — then, sure, I mean, they may
 4 well decide that users — it may be the case that users
 5 prefer links to merchants. But the truth is, when you
 6 look at some of the evidence base, it's clear that at
 7 earlier points in time, before perhaps user preferences
 8 have developed, changed, been influenced perhaps, then
 9 users at earlier points of time clearly did value
 10 receiving information from comparison shopping sites.
 11 Now, what users prefer now is — you know, many,
 12 many years later, is different, right? But clearly, at
 13 earlier points of time, they valued being shown
 14 comparison shopping services at times over merchants and
 15 now that may be different.
 16 MR NOBLE: I might just — I think I agree with Mr Hunt on
 17 the thrust of his answer about the fact that there's no
 18 inherent reason why people would prefer CSSs or not.
 19 I think the point on what do they prefer and when,
 20 I think — I mean, I don't know whether we want to go
 21 into that now. I think there's quite an important
 22 debate about different sources of evidence that
 23 the Tribunal might want to draw on to in a sense draw
 24 its conclusions about things like the de—linking
 25 experiment and the CLAs versus PLAs. I don't know

90

1 whether we're going out of sequence if we dive into that
 2 now.
 3 PROFESSOR SMITH: (Off microphone — inaudible).
 4 THE CHAIRMAN: I think that's probably an analysis of the
 5 evidence rather than economics, is it not —
 6 MR NOBLE: Well, I — I was — rather than telling you —
 7 THE CHAIRMAN: — rather than a discussion about the
 8 experiments and how reliable and so on?
 9 MR NOBLE: Well, I was going to offer a framework in the
 10 sense of how one might evaluate them, rather than in
 11 the sense offer my evaluation, if that might assist.
 12 THE CHAIRMAN: Yes.
 13 MR NOBLE: Because my understanding is, in a sense, what is
 14 presented to the Tribunal is three sort of groups of
 15 evidence. You've got the CLAs versus the PLAs, where
 16 you have heard evidence about the experiments that
 17 Google did and then told the Commission about. That's
 18 obviously a recent example.
 19 Going back in time, then you've got the de—linking
 20 experiment, which they did much earlier in the time
 21 period.
 22 Then, in between, you've got something which isn't
 23 an experiment, which is then, essentially, the business
 24 choices made by Google. That is used, I think, in
 25 various, either reports or bits of evidence to sort of

91

1 argue one way or the other.
 2 I think, for me, there are really three dimensions
 3 that one can evaluate these on. So the first one is,
 4 almost from an empirical perspective: is this an
 5 experiment? Of course one can then debate, first, is it
 6 one, and then if it is, is it a good one? Obviously,
 7 PLAs/CLAs are, de—linking is, and then the business
 8 choices are not.
 9 The second dimension is then, do they have images on
 10 them, on the SERP? Because we do know, I think from
 11 a lot of factual evidence, that images, they alter the
 12 way people engage quite significantly, and PLA/CLA do
 13 have images, in a sense the business choices made by
 14 Google with things like the catalogue variant and the
 15 product variant, those also have images generally. But
 16 the de—linking experiment, as I understand it, does not;
 17 that's a text based experience.
 18 PROFESSOR SMITH: Do you mind reminding me what the
 19 de—linking experiment is?
 20 MR NOBLE: So, the de—linking experiment, as I understand
 21 it, was an experiment run by Google, I forget precisely
 22 the date, it's much earlier though in the chronology
 23 than the PLA/CLA, which was that Google wanted to
 24 evaluate whether or not — because, at the time, it was
 25 presenting essentially a header result in a blue link

92

1 that described the product query that it was responding
2 to. Then it had three offers beneath it, written in
3 text, usually with a price at the end, and then it told
4 you where you would be taken if you clicked on that
5 link.

6 It then, in a sense, de-linked them by presenting
7 precisely the same thing, but you no longer could click
8 on the three offers. So the words were the same but
9 they were no links. So the only way to engage with it
10 was to click on the header which then took you through
11 to what was then Google's comparison shopping service,
12 and then, as I understand it, once you were into that
13 world, you did get presented with images and obviously
14 the offers that you had been presented were now, in
15 a sense, the three that were there, were there, and then
16 there were others too, and then you would engage with
17 it.

18 My understanding of that experiment was that Google
19 did find favour with the — the — what essentially then
20 became — sorry, the de-linked version, which is then —
21 evolves into what's called the catalogue variant, which
22 is essentially — it's a bit like a CLA, I think is the
23 way that the debate goes, in the sense that you do
24 a general search query, you see a results page, you then
25 see this text-based response. The only way to engage

93

1 with it if you want is to click on the header. You are
2 then taken to essentially Google CSS, you are then
3 presented with images, you then choose where to go next.
4 Google's statistics were that that — it found it to be
5 more favourable, users preferred it over the offer
6 variant, where in a sense, I guess you could call it
7 re-linking, those links were there.

8 But the reason I highlight that is because, from an
9 empirical perspective, I think there is a really
10 important question about what information does that
11 convey, because from my perspective, my understanding of
12 the evidence is that images matter to the way consumers
13 engage and obviously if the first thing that you're
14 seeing doesn't have images, then that alters, you know,
15 the information that's contained in whatever the
16 performance of those statistics are.

17 MR HUNT: Would you like me to comment on that?

18 THE CHAIRMAN: Yes.

19 MR HUNT: I'm just seeing a slightly quizzical look. It
20 might be helpful, because I know in the image bundle
21 there's actually an image of what the de-linking
22 experiment is. If you're all perfectly familiar with
23 it, we perhaps would not need to go to that, but it
24 might be helpful if — if —

25 THE CHAIRMAN: The image bundle?

94

1 MR HUNT: Or at least I have been given a set of slides that
2 I understand was called the image bundle, but I don't
3 know what the correct reference to that would be.

4 MS ROSE: I'm sure Google's tiny legal team can give us the
5 reference.

6 MR HUNT: So I understand there's a claimant's bundle and
7 a ...

8 (Off microphone discussion)

9 I mean, I think this should all be very
10 uncontroversial. But just so that we're all on the same
11 page. I don't know whether my team can ...

12 {A1/3}. So if we go down —

13 THE CHAIRMAN: Just one minute.

14 PROFESSOR SMITH: It is on the screen.

15 MR HUNT: But it's not this one, it's {A1/3/2}. Here we go.

16 So just to be clear, what Mr Noble was saying is if
17 you look — there's two different images here. If you
18 look on the top image, what you will see is that there
19 are three different products here. The fact that they
20 are underlined means that those are actual links
21 directly to those specific products. Okay?

22 If you look at the second image underneath, you'll
23 see that those same products are not underlined —

24 MS ROSE: So you have to go —

25 MR HUNT: — so instead you click and you go to the

95

1 Google Shopping website, whereas in the first example,
2 you would click on that and go direct to the product
3 website. So that's why it's called de-linking, because
4 you're removing the links direct to the product sites.

5 My understanding is — of the discussion at the time
6 was that, and I think this is consistent with what
7 Mr Noble said, the evidence as it was analysed within
8 Google was that consumers engaged more and clicked more
9 and went through to merchants more once they were taken
10 to the Google Shopping stand-alone site. So that tells
11 you something about consumer preferences, albeit, as
12 Mr Noble was saying, there are some kind of potentially
13 complicating factors.

14 PROFESSOR SMITH: Because you do not want to click on the
15 Proctor-Silex link if it then turns out that the
16 Hamilton Beach looks a lot nicer?

17 MR HUNT: It could be about looks. In all honesty, it's
18 difficult to infer precisely. I think this is the point
19 Mr Noble is trying to make. There's a question about
20 exactly what does that tell you about consumer
21 behaviour.

22 MS ROSE: You have not really got enough information on that
23 landing page to make a comparison, so you go somewhere
24 where you will get more information?

25 MR HUNT: Well, potentially. I mean, what we know is, just

96

1 as a fact, we know that when consumers — when the
 2 de-linking experiment occurred, consumers went on to
 3 Google Shopping's website and ultimately, the, if you
 4 like, positive signals, the amount of clicks/non-clicks,
 5 etc, were more when they'd gone on to Google Shopping's
 6 website, so — and again, precisely why —
 7 MS ROSE: At some point, Google's business model has moved
 8 away from this de-linking view or the catalogue view to
 9 the PLAs, to a clear preference for PLAs?
 10 MR HUNT: Yes. Yes, it did. So this experiment was in
 11 early — in fact it says it here, early 2008.
 12 MS ROSE: Yes.
 13 MR HUNT: Then, after this, I think in November 2009
 14 perhaps, around that, is when they introduced the kind
 15 of catalogue variant and the product variant — or the
 16 offer variant, which I think is possibly in the next
 17 slide or two down? So if we went to the next one
 18 {A1/3/3}. Yes. So this one here, we see the —
 19 THE CHAIRMAN: The offer variant.
 20 MR HUNT: Yes, this is the offer variant, the product
 21 variant, where the links are direct through to
 22 merchants' websites.
 23 MS ROSE: Yes.
 24 MR HUNT: If we go to the next slide down {A1/3/4}, this is
 25 then the catalogue variant, where you have the images,

97

1 but clicks on the images then go through to
 2 Google Shopping's website. What we know from the
 3 evidence base is that, over time, between 2009 and 2012,
 4 there were more clicks that went through to the
 5 catalogue variant, or there was more engagement with the
 6 catalogue variant. We don't have all the information
 7 about why that is, whether Google was making decisions,
 8 for example, to show the catalogue variant more
 9 frequently or consumers engaged more with the catalogue
 10 variant. We don't have that information. But we do
 11 know that as a fact, between 2009 and 2012, there were
 12 more clicks on the catalogue variant.
 13 MS ROSE: Then in 2012/2013, when they monetise, what we
 14 then get is PLAs with individual merchants.
 15 MR HUNT: Yes.
 16 MS ROSE: So that is quite a major swerve of strategy by
 17 Google, and I do not think we have really heard an
 18 explanation for that, why you move away from the
 19 catalogue variant or ... to single product.
 20 MR HUNT: Yes. I mean, I —
 21 THE CHAIRMAN: That's not the question.
 22 MR HUNT: So, yes, I agree with you, I'm not ...
 23 MR NOBLE: Sorry, and just, the framework that I was
 24 offering, there are three dimensions to it. We've
 25 covered two of them. So one of them was about the

98

1 images that we just talked about there and whether or
 2 not they're present. The other one was: is it an actual
 3 experiment or not or is it a business choice?
 4 The third one is essentially about to whom are you
 5 linking, because in the first — so in the de-linking,
 6 one is linking only to Google. We know that because
 7 they were not linking to anyone else at that time.
 8 In the sense business choices part, which is the
 9 part Mr Hunt just spoke about, the catalogue variant and
 10 the offer variant, again it's linking only either to
 11 Google itself when it's going to its CSS website or it's
 12 only using its merchant links to go to there.
 13 In the PLA/CLA experiment, that is the one where
 14 they are linking to — either themselves, if they win
 15 under the CLA, or to the third party, and the reason
 16 that may matter in terms of the evaluation of the
 17 evidence is that when they do that link through, it can
 18 either be a good quality connection or a bad quality.
 19 Now, obviously one reason why it might be a bad
 20 quality is because it might be that the information sent
 21 from Google to the third party is good quality
 22 information, but the CSS provides a bad response.
 23 There's some evidence provided to the Commission, which
 24 Google regards as demonstrating that the — you know, in
 25 a sense, the query is passed on but what you get back is

99

1 not good.
 2 Then the second issue is that, I think this is
 3 a point highlighted by Mr Stables of Kelkoo, is that
 4 there are a number of instances, around 30%, where the
 5 query itself is not passed on.
 6 MS ROSE: 35%.
 7 MR NOBLE: Yes, 35%.
 8 Now, my understanding of that is it's to do with
 9 data protection because there is a long tail of queries
 10 and you might reveal something about who was doing the
 11 asking. Of course, that is an important factor, because
 12 one would think that that would be present in both the
 13 factual and the counterfactual. Because if it is driven
 14 by data protection then it's not in a sense — one can
 15 debate have they taken the right view on that, but
 16 assuming they have, then in a sense there is a limit to
 17 what it is that Google can pass on to a third party.
 18 MS ROSE: My understanding is that that can be overcome with
 19 an API?
 20 MR NOBLE: That may be possible. That I couldn't — that
 21 would be in a sense out of my realm.
 22 MR HUNT: Apologies, can I just correct what I said? So
 23 what I said wasn't precisely correct. So I've just been
 24 to figure 3 of my second report. I don't think we
 25 necessarily need to see it. The fact is between 2008

100

1 and 2012, the links from the Product Universal to Google
 2 CSS increased, so — in fact, it might be easiest, can
 3 I ...
 4 THE CHAIRMAN: Well, shall we have a look at it?
 5 MR HUNT: This is my second report, {14/1/73}, figure 3.
 6 THE CHAIRMAN: Just one second.
 7 MR HUNT: Yes, this is it. It's just I didn't get what
 8 I said precisely factually correct.
 9 So if you look at this image, what this actually
 10 shows is there's an increased proportion of traffic from
 11 the Product Universal to Google CSS. So what I'd said
 12 is it was increased usage of the catalogue variant.
 13 I don't know that for a fact. I don't know precisely
 14 actually what's driving this. So I —
 15 MS ROSE: It could be coming from the shopping tab?
 16 MR HUNT: Well, I mean, again —
 17 MS ROSE: We just do not know.
 18 MR HUNT: Yes, we don't know. You've got a number of
 19 hypotheses, and I mention that in the paragraph under
 20 that, 182. But what we know is more traffic was going
 21 in this period to Google's own CSS. That, as Mr Noble
 22 correctly said, that's clearly a business decision by
 23 Google. It's not an experiment. But it must tell you
 24 something. Right?
 25 On the PLA — on the CLA experiment, I know you've

101

1 heard a lot of evidence about that, so again, unless you
 2 want me to comment on it, I won't.
 3 THE CHAIRMAN: Going back to your 96%, which I think I now
 4 have understood, that is all traffic to CSSs is 96,
 5 including GSE, is through the remedy box?
 6 MR HUNT: Yes.
 7 THE CHAIRMAN: What effect, if any, would that have on
 8 CSSs — and just to be clear, that 96%, it is going to
 9 CSS, but it is going actually through to merchants. The
 10 click is going —
 11 MR HUNT: The vast majority is going through to merchants,
 12 correct.
 13 THE CHAIRMAN: That is the 99%.
 14 MR HUNT: Yes, that's right. The way I have treated those
 15 clicks through to merchants is as traffic to Google CSS.
 16 THE CHAIRMAN: Well, leaving that aside —
 17 MR HUNT: But — so that is kind of why kind of, logically,
 18 I have treated it in that way, but you are correct that
 19 the actual traffic goes through from the box to the
 20 merchant.
 21 THE CHAIRMAN: So the user will not see the CSS comparative
 22 page?
 23 MR HUNT: No. No, they won't.
 24 THE CHAIRMAN: So would that have any effect on the
 25 incentives of CSSs to invest in improvements to their

102

1 functionalities, customer reviews and so on?
 2 MR HUNT: Yes, I mean, it has a huge impact. So the actual
 3 traffic going to the stand-alone websites is very, very
 4 low. Earlier, we talked about what is a CSS, we talked
 5 about the two-sided nature of the CSSs, of platforms.
 6 If they get very, very little traffic, they are learning
 7 very little about consumer preferences. They are then
 8 also — there's very little traffic that they can offer
 9 to merchants. That makes them not very attractive for
 10 merchants. But that then, because of the indirect
 11 networks effects, affects the quality of the service
 12 they can offer to users in the first place.
 13 So the fact that there's so little traffic going
 14 direct to CSSs' websites, yes, has huge implications.
 15 THE CHAIRMAN: Mr Noble.
 16 MR NOBLE: I'd certainly agree that if your stand-alone
 17 website has very limited traffic, then that would reduce
 18 your incentive to invest in it compared to a scenario
 19 where you have a lot of traffic going through it.
 20 The only point I would highlight, I think perhaps
 21 a slightly different view from Mr Hunt, is on the impact
 22 on network effects, because the fact that a CSS is able
 23 to engage with the remedy means that they are able to
 24 offer merchants potentially very significant volumes of
 25 traffic by the act of engaging with the remedy, because

103

1 in a sense that is a gateway to consumers that are
 2 beginning their shopping journey on the SERP, on general
 3 search.
 4 MR HUNT: I would just say that's a very limited — we've
 5 already discussed this earlier, it's a very limited
 6 engagement with the merchants.
 7 THE CHAIRMAN: Yes.
 8 Under the remedy box, the data on user behaviour and
 9 what users select from the remedy box, does — is it
 10 relevant who gets the data on —
 11 MR HUNT: My understanding is that only Google gets that
 12 data on the remedy box. I believe that's correct.
 13 I don't believe that any of that information goes
 14 through — certainly when there's clicking on the
 15 merchants — sorry, on the links that go direct through
 16 to merchants, I don't believe any of that information
 17 goes to the intermediary or the CSS.
 18 Actually, I don't know for a fact what happens when
 19 you click on the "By [CSS]" link, the information that
 20 the CSSs get. But as we discussed earlier, that's
 21 a very small amount of traffic in any case.
 22 MR NOBLE: My understanding is that CSSs do have access to
 23 some information about that. So, for example, the
 24 performance of various of their ads that they place, the
 25 various PLAs. So they do have some information.

104

1 MR HUNT: But is that just — but in terms of the actual
 2 query information, is that ...?
 3 MR NOBLE: I have to say I don't know all the fine detail,
 4 precisely which information they have, but I think they
 5 do get information about, in a sense, the performance of
 6 their engagement with the remedy to help them further
 7 refine that —
 8 PROFESSOR SMITH: They would surely have to, because if they
 9 are actively working with the merchants in bidding to
 10 the auction process, they would need to get feedback if
 11 they are going to be able to give intelligent advice —
 12 MR NOBLE: Yes, yes, that's my understanding is that they
 13 can see, you know, how often things are appearing and
 14 are they winning, you know, what positions are they
 15 getting, etc. But, ultimately, that is a sort of
 16 factual point about the precise operation of the remedy.
 17 So they — I believe they do get that kind of
 18 information to allow them to engage appropriately and
 19 also refine their engagement with the remedy.
 20 MR HUNT: Again, I am not sure that's the case, inasmuch as
 21 it is Google that chooses — my understanding is that
 22 the PLAs have a certain metric, they will have images,
 23 they will have data, they will have quality metrics, and
 24 it is Google that makes the Decision, given the bidding
 25 behaviour, about what's presented to users and it is not

105

1 clear to me what information is provided to the
 2 intermediaries, the CSSs.
 3 THE CHAIRMAN: They will have information on to what extent
 4 their PLAs —
 5 MR HUNT: Are clicked on? They must have that, right? Yes.
 6 THE CHAIRMAN: If the remedy box brought the infringing
 7 conduct that was found to an end, would you expect to
 8 see an increase in traffic to CLAs from the general
 9 search page — to CSSs, sorry, from the general search
 10 page or not necessarily?
 11 MR HUNT: Okay, so what — shall we be clear what we're
 12 defining as a CSS, because it's quite important? Do you
 13 mean to the stand-alone website?
 14 THE CHAIRMAN: The stand-alone website.
 15 MR HUNT: Look, if there were genuine competition on the
 16 merits, you would imagine that that would give the
 17 opportunity for certain CSSs to be able to invest in
 18 their websites, to improve their websites, and
 19 therefore — and their offerings to offer better
 20 services to users, therefore to be able to compete for
 21 merchants. I would have expected that to show, if you
 22 like, better kind of metrics for kind of competitive
 23 outcomes. I think that would be consistent with
 24 competition on the merits. Yes, I would think so.
 25 THE CHAIRMAN: Mr Noble?

106

1 MR NOBLE: So just to be clear, so we're assuming that the
 2 remedy box does bring the infringement to an end —
 3 THE CHAIRMAN: Yes.
 4 MR NOBLE: — and we're treating clicks on PLAs in the
 5 remedy box as traffic attributable to the CSS that
 6 placed the ad; is that right?
 7 THE CHAIRMAN: That begs the question.
 8 MR NOBLE: Okay. Well, maybe I reframe it —
 9 THE CHAIRMAN: We need to distinguish whether it does or it
 10 does not.
 11 MR NOBLE: So, do I expect that, in a sense, the traffic to
 12 the stand-alone website from the SERP would go up —
 13 THE CHAIRMAN: Yes.
 14 MR NOBLE: — on the basis that the remedy has ended the
 15 infringement? No, I would not, because on the
 16 assumption that in a sense the algorithms that we talked
 17 about earlier that have a tendency, as the Commission
 18 decided, to demote the CSSs would still be in place on
 19 that basis, they are no more prominent on generic
 20 results. I think there is almost a natural answer to
 21 what's the ratio between picking on a PLA that goes
 22 direct to a merchant versus the "By [CSS]". I think
 23 that's really a function of user behaviour and the way
 24 they are presented. So I think the short answer is, no,
 25 I don't think it would necessarily result in a change.

107

1 THE CHAIRMAN: If one then distinguished Google's
 2 stand-alone website, CSS website, and third-party CSS
 3 websites, if the remedy ended the infringement, would
 4 one expect traffic to independent CSS websites to go up?
 5 MR HUNT: Can I just check the question, because I'm not
 6 sure I've entirely understood it? Are we saying
 7 the remedy box, if we assume the remedy box as it
 8 actually has been —
 9 THE CHAIRMAN: Yes.
 10 MR HUNT: — okay, remedied the abuse, would you expect?
 11 Then are we saying would ... So if it's ended the abuse,
 12 we're allowing competition on the merits, you're
 13 allowing CSSs to compete. But there's a bit of
 14 a tension because essentially what does — I'm not quite
 15 sure what remedying the abuse then means if we're saying
 16 the remedy box as it was.
 17 THE CHAIRMAN: Let us break it down this way. Maybe put
 18 aside the remedy box. We have the infringement of
 19 self-preferencing Google CSS coupled with demoting
 20 third-party CSSs.
 21 MR HUNT: Yes.
 22 THE CHAIRMAN: That is the infringement. Once that comes to
 23 an end, what would you expect to see in terms of traffic
 24 to Google's CSS and third-party CSSs?
 25 MR HUNT: Well, I think the question I gave is then — then

108

1 I stand by that. I would expect, once you're removing
 2 the self—preferencing behaviour and you're enabling
 3 rival CSSs to compete on a level playing field with
 4 Google's CSS, I would expect that you would see
 5 greater — the rival CSSs would be in a better position
 6 to compete. So I stand by the answer that I gave,
 7 albeit, you know, there's some complexity around the
 8 mechanics of what actually removing the infringement
 9 looks like.
 10 THE CHAIRMAN: Yes.
 11 MR HUNT: Yes.
 12 THE CHAIRMAN: So forgetting then about the specific remedy
 13 box and whether it did or did not, Mr Noble, can you
 14 comment on that?
 15 MR NOBLE: So can I make sure I've understood? So the way
 16 in which we are ending the infringement is we're
 17 removing the promotion limb; is that it?
 18 THE CHAIRMAN: Well, the infringement is a combination of
 19 a promotion limb and a demotion limb.
 20 MR NOBLE: Yes.
 21 THE CHAIRMAN: If it is brought to an end so that everything
 22 is lawful, and I am not looking at how you do it, but
 23 what outcome would you expect to see in terms of
 24 traffic?
 25 MR NOBLE: Well, I think it crucially depends on how you end

109

1 it and ... Maybe if we go back to my analogy of the
 2 levelness of the playing field, the critical question
 3 I ask myself is: is the playing field level? Not almost
 4 the height of the playing field.
 5 So the thing that I would expect the ending of the
 6 infringement to achieve is a level playing field. That
 7 might be a high level playing field or it might be a low
 8 level playing field. In my framework, both constitute
 9 the ending of an infringement. So obviously, if one is
 10 at a high level playing field, one would expect to see
 11 large volumes of traffic going to stand-alone CSS
 12 websites. If one is at a low level playing field, then
 13 one would expect to see low levels of traffic going to
 14 their stand-alone websites.
 15 THE CHAIRMAN: What about the ratio of traffic as between
 16 the Google stand-alone site —
 17 MR NOBLE: The Google stand-alone site?
 18 THE CHAIRMAN: — and the third-party stand-alone site?
 19 MR NOBLE: The stand-alone sites. That is a good question.
 20 I mean, it is hard to say precisely what you would
 21 expect to see in that situation. Certainly you would
 22 expect to see that Google is — absent it having some
 23 unique selling point, you'd anticipate it would be one
 24 among many in the market. So I think it's quite hard to
 25 define a specific percentage or — that you would expect

110

1 to see.
 2 THE CHAIRMAN: Yes, I wasn't really asking about specific
 3 percentage, I was asking about what trend you would
 4 expect to see.
 5 MR NOBLE: In a sense, the levelness of the playing field
 6 tells you — well, perhaps put it the other way. The
 7 unlevelness of a playing field in favour of Google, you
 8 would anticipate would result in them achieving greater
 9 levels of traffic to their stand-alone website compared
 10 than —
 11 THE CHAIRMAN: Compared to third parties.
 12 MR NOBLE: Compared to third parties, therefore you
 13 transition to a level playing field. Then if it is
 14 at the same height, as it were, as the unlevel playing
 15 field we had before, then you would expect that Google's
 16 share would go down relative to what it was. But it
 17 matters, the height of the playing field. If you alter
 18 the height of the playing field at the same time as the
 19 angle, as it were, then you end up in a quite ambiguous
 20 situation because it's not as obvious what the impact
 21 would be on Google's relative share compared to everyone
 22 else.
 23 The reason for that is that, in a sense, the share
 24 of Google in an unlevel playing field is being biased
 25 towards it. I mean, that's the logic of

111

1 self—preferencing, that you are, you know, playing
 2 downhill and everyone's playing uphill. But then if you
 3 alter the height of the playing field, if that makes
 4 sense, then actually, analytically, you end up in quite
 5 a complicated situation.
 6 But — and I think that's why it links this issue of
 7 how is it you are ending the abuse — if one says that
 8 the abuse is ended just by removing a promotion limb and
 9 the demotion limb remains the same, then you might say
 10 the height of the playing field is the same as it was
 11 before, because everybody's demoted. It's a low playing
 12 field, it used to be a low playing field tilted in
 13 favour of Google, now it's a low playing field flat.
 14 PROFESSOR SMITH: What sort of change would raise — I am
 15 not sure I completely follow your analogy. What sort of
 16 change would raise the level of the playing field as
 17 well as levelling it off?
 18 MR NOBLE: Altering the algorithm would. So if you — there
 19 are various signals in the algorithm that the Commission
 20 has decided tend to demote CSSs. If you were to remove
 21 those signals or alter them such that the CSSs featured
 22 prominently in organic results, then I would say in
 23 a sense the playing field has gone up, because in
 24 response to general search queries, you now get
 25 a significant proportion of them show CSSs as well as

112

1 merchants and review sites and so on.
 2 THE CHAIRMAN: I have not quite followed why you have, to
 3 take your example, the unlevel playing field, which
 4 favoured Google CSS and disfavoured the third parties.
 5 If you level it, whether it is — if it is high or low
 6 will affect the total amount of traffic. But I do not
 7 see why even if it — I have not followed why you say it
 8 might not alter the ratio which was clearly in favour of
 9 Google CSS when it was unlevel.
 10 MR NOBLE: So I think what I'm thinking about here is that
 11 in the infringement period that one in a sense has —
 12 Google has been found to unfairly favoured its own
 13 shopping offering —
 14 THE CHAIRMAN: Yes.
 15 MR NOBLE: — and that that — the consequence of that is
 16 that it may have resulted in greater traffic going to
 17 its stand-alone CSS website than it otherwise would have
 18 done. I think the question you were asking me was: how
 19 might that share alter in the after period once the
 20 infringement has disappeared relative to the
 21 infringement period?
 22 THE CHAIRMAN: Well, not specifically how much, but would
 23 you expect it to alter?
 24 MR NOBLE: Yes, and my answer to that is that if what
 25 happens is that the only thing you remove is the

113

1 promotion aspect of, in a sense, Google promoting its
 2 own CSS more than a rival's, then you would anticipate
 3 that the stand-alone website share would fall because
 4 it would start to look like, as a stand-alone website,
 5 much more similar to all the rivals who are also all
 6 demoted and that the traffic that remains is now
 7 primarily going through the remedy box in the form of
 8 PLAs. Is that assisting?
 9 PROFESSOR SMITH: Let me try one more question.
 10 Since it is agreed that most of the traffic we are
 11 talking about goes through the remedy box and the
 12 traffic to CSSs, Google and rival CSSs, is quite a small
 13 proportion, levelling the playing field is going to
 14 change the proportions going to Google vis-à-vis rival
 15 CSSs. That would have to be a really big change. You
 16 would need a big change in the proportion going to the
 17 remedy box to offset the natural reduction in Google's
 18 share and rise in the rivals' share. Is that not right?
 19 MR NOBLE: Sorry, can you just ask that one more time just
 20 to make sure I've correctly understood?
 21 PROFESSOR SMITH: That was a final attempt to understand
 22 what the issue was.
 23 Most of the traffic goes through the remedy box.
 24 MR NOBLE: Yes.
 25 PROFESSOR SMITH: Holding the amount of traffic in the

114

1 remedy box constant for a moment, and re—levelling the
 2 playing field reduces Google's CSS share, raises rival
 3 CSS share. That's the levelling, other things being
 4 equal, the proportion through the remedy box.
 5 MR NOBLE: Yes.
 6 PROFESSOR SMITH: So you need a — to reverse that change,
 7 you need quite a significant change in the proportion of
 8 traffic going through the remedy box to fuel — so
 9 you have got to break the ceteris paribus assumption
 10 about the remedy box to get anything other than
 11 a rebalancing between Google and the other CSSs?
 12 MR NOBLE: Yes, I think that is right, yes, I think that is
 13 right.
 14 PROFESSOR SMITH: Let us end on that happy note.
 15 MR NOBLE: Yes.
 16 THE CHAIRMAN: My question was, not thinking about the way
 17 the remedy box is structured, but just thinking about
 18 the prior infringement with the unlevel playing field,
 19 whether a solution, an effective solution to that
 20 infringement, which involves levelling the playing
 21 field, you would expect the relative share of Google's
 22 traffic through Google's CSS, however defined, and third
 23 parties to level off with the one going — Google's
 24 going down relative to the other? That was my question.
 25 MR NOBLE: Yes. So I think if you broadly define it to

115

1 include all traffic that goes through the SERP that in
 2 a sense is attributed to CSSs, yes, I think you would
 3 anticipate that Google's share, which was very, very
 4 high, you know, would come down. Quite how much then
 5 depends on, you know, the dynamics of that competition.
 6 MR HUNT: Yes, I agree, and I think that the fact that
 7 Google had a very high share and was making lot of
 8 profit means there's a strong profit motive for rival
 9 CSSs to try to sort of compete for those revenues,
 10 volumes and revenues. So, consequently, I would expect
 11 them to be making investments to try to attract users
 12 and attract merchants.
 13 THE CHAIRMAN: Yes.
 14 If we looked, Mr Hunt, at your — you have a table
 15 in your first report, which is at {12/1/158}. This is
 16 your figure 9.4, what does that show about traffic from
 17 the CSS tiles in the remedy box?
 18 MR HUNT: So, in the remedy box, we're just focusing on the
 19 very right-hand side of this diagram after the last
 20 vertical dotted line.
 21 THE CHAIRMAN: Yes.
 22 MR HUNT: What we can see is that the kind of vast majority
 23 of the traffic is what I have termed to be Google CSS
 24 traffic. But to be clear, as we've already discussed,
 25 most of that traffic is direct to merchants —

116

1 THE CHAIRMAN: Yes.
 2 MR HUNT: — and allocated to Google CSS because the vast
 3 majority of the economic value goes to Google.
 4 THE CHAIRMAN: So you are treating that as Google CSS
 5 traffic, not —
 6 MR HUNT: Correct, yes. I think, conservatively, I say
 7 it is at least 90% of the economic value goes to Google.
 8 I think the actual value — we don't have — I have
 9 imperfect information, the actual value might be 98/99%,
 10 but it's at least 90%.
 11 THE CHAIRMAN: Is that why you attribute traffic, which
 12 is — where the user is clicking on a CSS tile in the
 13 remedy box and going straight through to a merchant —
 14 MR HUNT: Yes.
 15 THE CHAIRMAN: — is that why you attribute that traffic to
 16 Google?
 17 MR HUNT: Primarily, yes.
 18 THE CHAIRMAN: Any other reason?
 19 MR HUNT: I think also Google gets the information from the
 20 consumer engaging with the box. But I think it's
 21 primarily to do with the economic value. That kind
 22 of — again, I have sought to draw an analogy with the
 23 Commission, albeit the Commission said it's the same
 24 economic value for a click on a link within the shopping
 25 box as on Google stand-alone CSS, so, here, it is not

117

1 the exact same value, it's not the entirety of the
 2 value, but it's a very large share of it from clicking
 3 on the link.
 4 THE CHAIRMAN: Mr Noble, do you want to comment on whether
 5 that traffic should be regarded as Google traffic or CSS
 6 traffic?
 7 MR NOBLE: The conclusions that I reach in my report is that
 8 it should not, it should be regarded as attributable to
 9 the CSS that placed the advert. I was just trying to
 10 find the chart that shows you what the shares are.
 11 I don't have a copy of it printed out, but it's in my
 12 annexes. There's a series of charts that show you what
 13 the shares are by country. You've got Google on the one
 14 hand and you've got the rival CSSs on the other, and you
 15 see, at various points, you know, the share attributable
 16 to the rival CSSs goes up. It follows a different
 17 pattern in each country, but perhaps I can find those
 18 later.
 19 THE CHAIRMAN: Yes.
 20 MR NOBLE: One of the — just on this point about the
 21 attribution of economic value, during the Commission
 22 Decision period, in a sense there was only one bit of
 23 economic value to attribute, because Google was
 24 vertically integrated at that point, it had exclusive
 25 access to the box at that time, and so when it was

118

1 monetising, the economic value is the same to it,
 2 whether it in a sense sells a click to a merchant
 3 through its box that's presented on the SERP or it sells
 4 a click via its stand-alone website.
 5 Now, in the remedy period, nothing's changed about
 6 the stand-alone website, you know, that is — and
 7 I think everyone is agreed, that is traffic attributable
 8 to Google CSS. But the remedy box, you have
 9 disaggregated it into two parts: you've got one part,
 10 which is the CSS element; and then you've got another
 11 part which is the, in a sense, access fee or advertising
 12 fee, or whatever you want to call it fee, that goes to
 13 Google Search.
 14 Now, the ratio between those is then essentially
 15 what the auction and the market dynamics that you see
 16 between CSSs — that will determine what those ratios
 17 are. But, you know, obviously, the line moves around
 18 a little bit depending whether you're talking about
 19 a managed query, whether you're talking about
 20 a self-service and also over time because the margins
 21 don't stay constant.
 22 THE CHAIRMAN: Is the difference between you then that
 23 you are treating what you call the access fee as
 24 something quite separate because it is not going into
 25 the accounts of GSE?

119

1 MR NOBLE: Yes. Yes, one is essentially — I mean, the way
 2 the second price auction works is that GSE and the
 3 various CSSs, they place a bid; somebody wins that bid
 4 and then money gets given to Google Search. Of course,
 5 Google, when it's dynamically creating the results page,
 6 isn't just thinking about presenting the remedy box,
 7 it's also thinking, well, it has alternative offers from
 8 AdWords and various other, you know, things that it can
 9 show on the website, and it set itself rules, like VCAP,
 10 which is it won't show more than a certain share of the
 11 screen will be advertising because it wants to maintain
 12 its attractiveness as a general search engine. That
 13 means it needs a — in its view, a large share of
 14 the page must be dedicated to organic results.
 15 Obviously, those are self-imposed rules. But, you know,
 16 subject to those rules, it then in a sense conducts the
 17 whole page auction and, in a number of instances, the
 18 remedy box will win and then it's presented, and then
 19 obviously if the consumer clicks on it, then Google gets
 20 some money and whoever placed the PLA gets some money.
 21 That might be itself because it might be GSE, it might
 22 be Kelkoo, it might be any one of the other CSSs.
 23 THE CHAIRMAN: Mr Hunt?
 24 MR HUNT: So, I mean, I think, broadly, it's the way
 25 Mr Noble described it, but in fact the amount that goes

120

1 to Google is a very, very large share. So on
 2 self-service, according to Kelkoo's data, which is the
 3 data that we have on margins, 99% of the bid value goes
 4 to Google, which is not a surprise because what we have
 5 is a highly commoditised service, the intermediary
 6 service, you've got prices being set by a second price
 7 auction, meaning that you bid — or you pay what the
 8 person who second most values that particular slot
 9 values it at. But when you've got very, very, very
 10 similar products being provided, then it's not
 11 a surprise that the maximum willingness to pay will be
 12 very close and therefore the difference between one bid
 13 and the other will be extremely narrow, hence the amount
 14 that is paid, I think largely will be going through to
 15 Google. It's the mechanics of the auction.

16 THE CHAIRMAN: Yes, do you want to say anything more —
 17 MR NOBLE: I mean, I think there's two things to think about
 18 in terms of what determines the price in that mechanism.
 19 One is that ultimately there's a willingness to pay to
 20 be presented on the SERP and that could be high, that
 21 could be low. I think it depends on how much the person
 22 that wants to present the thing on the SERP wants it to
 23 be presented. Then there's the degree of competition
 24 that exists between people that are also wanting to
 25 present things on the SERP. It can be the case that

121

1 somebody really wants to present something on the SERP,
 2 I can give a personal example of me trying to sell
 3 something via AdWords. I had very high willingness to
 4 pay for that; I was trying to move a static caravan from
 5 my driveway and I was desperate to get rid of it. I put
 6 in very high bids, but eventually Google's algorithms
 7 threw me out because they determined that my ad was
 8 performing so poorly that they didn't wish to have my ad
 9 on their website.

10 So —
 11 THE CHAIRMAN: Do you still have the caravan?
 12 MR NOBLE: No, I managed to get rid of it another way, at
 13 even greater expense I would say!

14 So there is one aspect, which is: how much are you
 15 willing to pay for this? That's how much in a sense
 16 value that you, the advertiser, can gather from somebody
 17 clicking on it, somebody engaging with it, and whether
 18 that's buying a Bialetti coffee machine or whatever
 19 it is.

20 The second thing is: who are the other people that
 21 also want to bid for that same click? Now, I actually
 22 beat — the ads that I actually placed for that caravan
 23 were very cheap, despite the fact I was willing to bid
 24 very high. That reflected the fact that other people,
 25 the next best bidder, the second price bidder, they

122

1 didn't want to bid very high for that click.

2 Obviously, if there are lots and lots of people all
 3 wanting to bid for Bialetti coffee machine and in a
 4 sense they all have similar willingness to pay, it is
 5 precisely what you would expect from a second price
 6 auction, that the prices are — you know, they are close
 7 to the willingness to pay, because the next person is
 8 also willing to pay a very similar amount, and the next
 9 one and the next one.

10 Then it actually — I mean, in the limit, if
 11 everyone bids exactly the same, it collapses to being
 12 a quality auction, because if everyone is willing to pay
 13 a pound for this click, then you would expect that
 14 you'll be ranked in terms of all the factors that go
 15 into deciding who has got the best advert.

16 MR HUNT: But what we see from, you know, the outcome, i.e.
 17 from the self-service, where you see essentially the
 18 vast, vast, vast majority of the amount that merchants
 19 are willing to pay gets paid to Google, you know, is
 20 what you'd expect of something that's highly
 21 commoditised. I think the — whilst we're not talking
 22 about going through all the counterfactuals now, the
 23 critical factor is differentiation, and in the example
 24 we are discussing, there's — here, or the Bialetti
 25 coffee maker, if it's something there, there's very,

123

1 very little differentiation between one PLA and another
 2 PLA. In other scenarios that we're not talking about at
 3 the moment, but when you're thinking about different
 4 potential ways that CSSs might compete, then actually
 5 there could be material differentiation, so you can get
 6 some quite different outcomes. But anyway, we are not
 7 talking about that right now.

8 Mr Noble's example of the caravan. There may well
 9 have been material differentiation in that case. I'm
 10 not sure. But the examples that we are talking about,
 11 there aren't, so basically Google ends up with — to be
 12 clear, Google ends up with the vast majority of the
 13 value and ends up still presenting the PLA on the SERP
 14 and presenting it to users. So it's a pretty good
 15 outcome for Google.

16 THE CHAIRMAN: On the question of discrimination, I think
 17 the issue between you is that, Mr Noble, you say there
 18 is no discrimination on the basis that Google's
 19 self-standing CSS, Google Shopping Europe, that is
 20 Google's CSS and it is treated like all third-party CSSs
 21 for the purpose of the remedy.

22 MR NOBLE: Yes.

23 THE CHAIRMAN: Mr Hunt, you say that Google's CSS is not
 24 confined to Google Shopping Europe and the question is
 25 whether third-party CSSs can compete on the merits with

124

1 this broader concept of what — Google's CSS.
 2 Is that fair?
 3 MR HUNT: (Off microphone) Yes, that's exactly my point —
 4 THE CHAIRMAN: There have been various developments in the
 5 remedy, which I do not think are discussed quite so much
 6 in your reports. There have been a number of things
 7 that have happened. There was the spend match incentive
 8 in, I think, May 2018, and then the CLAs were introduced
 9 in March 2019. So there have been various stages.
 10 Which version, as it were, of the remedy do you
 11 think, Mr Noble, restored competition on the merits or
 12 does it not matter? Do you say any of them or ...?
 13 MR NOBLE: I think when, in a sense, the remedy first
 14 launched, that restored competition on the merits at
 15 that point.
 16 THE CHAIRMAN: The further development of bringing in CLAs
 17 is not relevant in your view?
 18 MR NOBLE: No, I think once you have in a sense equality of
 19 treatment, then you have achieved an end at that point.
 20 THE CHAIRMAN: Does the introduction of CLAs make any
 21 difference at all?
 22 MR NOBLE: I think, in a sense, you — it's a different form
 23 of access that you are providing to the SERP and so
 24 I don't think it inherently alters the nature of it,
 25 because in the way I'm conceiving of the remedy box,

125

1 it is not part of Google CSS, so you're providing
 2 equivalent access to GSE as you are providing to third
 3 parties and you provide that equivalence, whether it's
 4 a PLA or a CLA or a PLACSS, all these different
 5 variants, in a sense, the critical part is that you're
 6 offering them on a non-discriminatory basis to
 7 everybody.
 8 THE CHAIRMAN: It is not something that perhaps relates so
 9 much to you, Mr Hunt. Do you want to comment?
 10 MR HUNT: So, yes, from my perspective, none of those
 11 changes have remedied the abuse. But again, that goes
 12 back to because I see Google CSS as being much wider.
 13 But I can give some examples of why I don't think, sort
 14 of correctly considered, those changes do actually
 15 enable CSSs to compete.
 16 So, you know, you've heard a lot about CLAs, so I'm
 17 assuming that I don't need to go too much into them,
 18 because I know you've heard evidence.
 19 THE CHAIRMAN: We know what they are but that —
 20 MR HUNT: So, I mean, essentially, they were largely
 21 provided not as the default. We obviously know there
 22 are some experiments they were provided as the default;
 23 very, very little traffic went through the CLAs.
 24 There's a number of other problems with them as well.
 25 Then later, I can — if that would be helpful, I can

126

1 explain why I don't think, for example, later variants
 2 have either remedied the abuse, such as the PLA, what's
 3 termed the PLACSS. So if that would be helpful, I can
 4 explain it?
 5 THE CHAIRMAN: Yes, if you would, please.
 6 MR HUNT: So my understanding — in fact, again this might
 7 be helpful to do it by reference to an image, just so
 8 that we're all thinking about the right thing. So if we
 9 could go back to the image bundle, if someone's got
 10 a reference to that. It's a few slides down, where
 11 we have ... I think it's this one or the next one down,
 12 sorry.
 13 Yes, it's this one. That's it.
 14 THE CHAIRMAN: Number 12.
 15 MR HUNT: Yes. Slide 14 here or {A1/3/14}.
 16 So this is an example, so just so that we're clear,
 17 we have a — this is a remedy box, and then we've got
 18 a number of different tiles. My understanding is all of
 19 these tiles, apart from the one that I think is blue,
 20 but I'm colour blind, but I'm fairly sure it's blue.
 21 THE CHAIRMAN: Yes —
 22 MR HUNT: The one in blue is the PLACSS and all the other
 23 ones are PLAs. Okay?
 24 THE CHAIRMAN: Yes.
 25 MR HUNT: So what we can see here — so a PLACSS is

127

1 essentially a PLA that's placed by a CSS, and it's first
 2 worth thinking about what is a PLACSS. So my
 3 understanding is if you click on the tile for a PLACSS,
 4 you go through to the CSS web page for one specific
 5 product. Okay? So it'll have to be, in this case —
 6 actually this case isn't a great example because it
 7 doesn't specify precisely what the product is, but it's
 8 one specific product. Okay? So it will have to be,
 9 say, a 55-inch Sony Bravia, whatever, a very precise
 10 product. You can see a number of merchants that sell
 11 that very, very specific product. Okay? Then you have
 12 got that alongside a number of kind of PLAs. It's worth
 13 just trying to think through and understand how useful
 14 that is for a consumer.
 15 First of all, to be clear, when you're looking at
 16 this as a consumer, it's not obvious to you why this
 17 particular tile is different from the other tiles. You
 18 can see it hasn't got quite the same information, but if
 19 you're used to clicking on these links and going through
 20 to a merchant, but you click on this other link and you
 21 don't go through to a merchant, you go through to a CSS
 22 page with lots of different or variants of the same kind
 23 of product, you can just — you can understand, for
 24 a consumer, that's perhaps not what you'd expect.
 25 It's also worth just standing back and thinking

128

1 about this.

2 So I believe you have heard evidence of what they

3 kind of call this kind of funnel of behaviour. So, for

4 example, when consumers are shopping and they're at the

5 start of the funnel, where they haven't really worked

6 out what they want yet, they might put "digital camera"

7 in, okay? Then, as you go further down the funnel,

8 you're getting a clearer idea of what you want. It

9 might just be worth thinking about, say, two examples,

10 one where you're at the top of the funnel, one where

11 you're at the bottom, just to understand how useful

12 a PLACSS might be for you as a consumer. Right?

13 So if I'm at the top of the funnel, I don't know

14 what I want yet. I go on to Google, I put in "digital

15 camera" or "TV", and this one specifically is "sony tv",

16 but it could just be "digital TV" or "LCD TV", something

17 like that.

18 Then I'm presented with a number of different offers

19 for different types of TVs. Okay? So that might be

20 useful for me when I'm trying to kind of think about,

21 you know, different types of TVs. But then, on the

22 specific link I click on for a CSS, I got to that link

23 and all I get is lots of different versions of the same

24 TV, which isn't very useful for me when I'm at the start

25 of a kind of a shopping funnel.

129

1 Equally, when I'm near the end of the shopping

2 funnel and I know what I want and I put that into Google

3 and I'm presented with a load of different PLAs for that

4 specific product, and then I click on the link and I go

5 through to the CSS page and what I get is loads more

6 links to that specific product, that's also not very

7 useful for me as a consumer because I have just been

8 presented with that by Google.

9 So you can see how a PLACSS link actually isn't very

10 useful from a consumer perspective. So whilst, in

11 principle, you might say that CSSs can compete with

12 merchants, it doesn't meaningfully — you can see how

13 they're not actually able to provide a useful service

14 for users.

15 THE CHAIRMAN: Yes.

16 I do not know if you want to comment, because

17 I think your point is that it is not really relevant

18 because the structure of the remedy box has cured the

19 abuse.

20 MR NOBLE: Yes. I mean, the only — and it's maybe more of

21 a footnote than a comment is the — in a sense, the more

22 options that are on the table in terms of, you know,

23 a PLACSS essentially competing against a PLA, then you

24 can get some quite interesting outcomes in a second

25 price auction, because, as I understand it, one of the

130

1 concerns that Mr Hunt is expressing is that because

2 everybody values this PLA in a similar way, they're all

3 likely to bid a similar price and therefore, you know,

4 the majority of the value goes to Google.

5 When you have a PLACSS, actually you've introduced

6 a further dimension of differentiation, and so you can

7 get some quite interesting sort of hierarchy outcomes in

8 terms of — it might be that the CSS wants to bid more

9 because — and I think Mr Braendle talked about this,

10 that actually, ultimately, if they feel confident that

11 they can convert this into a sale or a click through,

12 they might be able to charge merchants more for that,

13 essentially altering the quality of it.

14 Now, ultimately, whether they can do that or not is

15 a question for them and it's a question for the sort of

16 market outcomes.

17 MR HUNT: But I think, given the reasoning that I just gave,

18 you can understand why they shouldn't be able to convert

19 it better because they're not able to provide users

20 a very useful experience in either of the examples

21 I gave. So, because of that, you would not expect them

22 to be able to outcompete a merchant.

23 MS ROSE: What do you think would be useful experience?

24 MR HUNT: This is then the big question, I think, for the

25 counterfactuals, right? So this is quite a big

131

1 question, so —

2 THE CHAIRMAN: Just before we get to it, can I pause there,

3 because we will come back to counterfactuals, I think,

4 if we may, if that is all right, and separate that,

5 because we are going to have to explore counterfactuals

6 quite a bit.

7 I wanted to just round this off by asking you about

8 the other change, you talked about changes in the sort

9 of remedy, which was the margin that was set for GSE for

10 its bids. I think we heard that initially it was 5%,

11 then it was increased maybe to 15%, it ended up at 20%.

12 There was that change.

13 Does that have any — make any difference in your

14 view, Mr Noble, to whether the remedy restored

15 competition on the merits?

16 MR NOBLE: In terms of — well, my understanding is what

17 Google were setting there was a minimum per bid

18 margin —

19 THE CHAIRMAN: For its GSE?

20 MR NOBLE: For its — yes, for GSE. I think it's

21 conceivable, it could have set a very, very low number

22 that in a sense — and I think it's paragraph 700 in the

23 Decision, cautions against having a charging mechanism

24 that results in something that's equivalent to the

25 abuse.

132

1 Now, if it had set a margin of 0.1%, then I think
 2 I would be quite concerned, because, you know, that
 3 level in a sense — you get into the territory where it
 4 might simply be the case that no CSSs use this mechanism
 5 and it just becomes a Google exclusive territory because
 6 it sets itself such a tiny margin.

7 Now, the question is: are 5, 10 and 20%, or 15%, are
 8 they high enough that in a sense we can be confident
 9 enough that they're north of some critical level?

10 I think that's actually where seeing what the sort of
 11 equilibrium margins look like is quite helpful, because
 12 on self—service, in a sense, my understanding of most of
 13 what GSE does is that it is a form of self—service and
 14 so the — you see the kind of equilibrium margin that
 15 various people are earning is very low, it's typically
 16 less than 5%.

17 So because of that, I think one in a sense can feel
 18 comforted that these percentages were all higher than
 19 the kind of critical value that they needed to be.

20 Now, I think there's a separate debate about, well,
 21 what else can you infer from these margins, but I think
 22 one can take comfort that the margins that are on
 23 self—service are substantially south of 5% and therefore
 24 it wasn't that you had to raise it to 10% to therefore
 25 achieve an end to the infringement.

133

1 THE CHAIRMAN: It was not necessary to do that?

2 MR NOBLE: I don't think it was necessary to do that in
 3 order to achieve an end to the infringement. It might
 4 have been necessary to do that in order to induce entry,
 5 which is I think one of the objectives that Google had.
 6 That was also, I believe, one of the objectives of the
 7 spend match programme, was that the Commission, I think,
 8 had indicated to it that it saw a signal of success as
 9 being that the non—Google CSSs would have a very
 10 substantial market share. Of course, one surefire way
 11 of doing that is to, in a sense, give them some free
 12 money, which is a bit what the spend match is, and in
 13 order to essentially handicap yourself, which is to put
 14 your own target margin higher and higher so that you
 15 dissuade people from using your own in—house offering.

16 MR HUNT: I mean, my understanding is broadly aligned with
 17 Mr Noble's. My understanding is that the margin was set
 18 not thinking about competition or anything, it was
 19 really set as trying to show the Commission that CSSs
 20 were using the remedies, they had to have some tool for
 21 doing that, and it was a combination of the spend match
 22 and this margin, where they are trying to provide some
 23 incentives for merchants to use via intermediaries.

24 PROFESSOR SMITH: Yes, so it is that kind of a reverse
 25 margin squeeze to make sure that your competition gets

134

1 enough of the market rather than squeezing them out of
 2 the market? You are squeezing your competition into the
 3 market?

4 MR HUNT: Whether it's a reverse margin squeeze, I am not
 5 sure that's the terminology I'd use, but you're trying
 6 to find some way of kind of enticing ... you know, but
 7 actually both entry by kind of rival kind of
 8 intermediaries, because some of the way — again,
 9 I don't understand exactly how the incentive structures
 10 worked, but there were ways that they were trying to get
 11 new entry as intermediaries, and at the same time
 12 providing incentives for merchants to switch. But,
 13 again, as discussed, it's a very narrow service.

14 MS ROSE: Cheaper for merchants to use rival CSSs than
 15 Google Europe?

16 MR HUNT: Yes.

17 MS ROSE: So why do they still use Google's GSE?

18 MR HUNT: I think it's a complex question. I don't have all
 19 the answers because I don't have Google's information.
 20 But you have got to remember that Google started at the
 21 start of the post—Decision period with all of the
 22 merchants. So all of them had a relationship with
 23 Google. My understanding is the merchants have other
 24 relationships with Google for AdWords or AdSense and
 25 other things like that. There might be reasons why it's

135

1 just frankly easier to continue to deal with Google.

2 I mean, clearly, Google has a very strong brand, many of
 3 the rival intermediaries don't have those same strong
 4 brands. So I think there's a number of reasons why
 5 Google may have retained some share, but I agree, the
 6 way that the auction is set up and this margin that
 7 Google takes is trying to get the merchants to switch to
 8 rivals. But clearly, not all of them have done.

9 THE CHAIRMAN: Do you want to add anything?

10 MR NOBLE: No, I mean, I guess — I mean, it may be that
 11 Mr Hunt and I are straying a little bit too much into
 12 almost the fine motivations of why is it that Google set
 13 these precise margins. I think it's fair to say neither
 14 of us know the detail about that, but —

15 THE CHAIRMAN: You agree that it is not to restore
 16 competition, as such, on the merits and induce entry —

17 MR NOBLE: Yes, I mean, that's certainly one way of
 18 interpreting it, is that this is a method of inducing
 19 entry by making yourself more expensive.

20 THE CHAIRMAN: Yes.

21 I think that would be a sensible moment to take
 22 a 10—minute break.

23 (3.35 pm)

24 (A short break)

25 (3.51 pm)

136

1 THE CHAIRMAN: Can I just ask you to look at the Commission
 2 Decision at recital 700(d) of the Decision, which is on
 3 {BA/2/233}.

4 Perhaps one should scroll up on the start of 700 on
 5 the previous page {BA/2/232}, if you have got that,
 6 where it says:

7 "In particular, any measure chosen by Google and
 8 Alphabet ..."

9 That is to bring the infringement to an end, and
 10 then we have got the various subparagraphs, (a), (b),
 11 (c), and then on the next page is (d) {BA/2/233}:

12 "Should not lead to competing comparison shopping
 13 services being charged a fee or another form of
 14 consideration that has the same or an equivalent object
 15 or effect as the infringement established by this
 16 Decision."

17 Now, Mr Hunt, you have commented on that, I think,
 18 in your first report at paragraph 192, which is at
 19 {I2/1/1/87}. You say, at 192 — you can read that:

20 "This prevents Google from replacing discriminatory
 21 ranking treatment with an equally discriminatory pricing
 22 mechanism."

23 As a general interpretation of what it means, do you
 24 agree, Mr Noble, that is a fair paraphrase?

25 MR NOBLE: Yes.

137

1 THE CHAIRMAN: Now, then what significance does that have,
 2 if any, Mr Hunt, for the remedy that we have got?

3 MR HUNT: So just — if I may, can I just start off with
 4 a broad sort of answer?

5 THE CHAIRMAN: Yes.

6 MR HUNT: Just standing back from it all, let's have
 7 a completely theoretical monopolist. Right? If you're
 8 a monopolist, what you can do is engage in price
 9 discrimination, you can essentially extract all of the
 10 consumer surplus, right, by setting always a price
 11 essentially at willingness to pay of each of the
 12 consumers and you extract from the surplus. That's kind
 13 of a classic economic theory, it's called third degree
 14 price discrimination. Okay?

15 So, you can do that as a monopolist because you're
 16 not facing competition, right? So you can basically
 17 set — you're not — competition is not limiting the
 18 amount that you can extract from any individual consumer
 19 because you can always set a price for that consumer
 20 exactly equal to their willingness to pay. Okay?

21 THE CHAIRMAN: Yes.

22 MR HUNT: So the outcome in this hypothetical example of
 23 a monopolist is that they are able to extract all of the
 24 consumer surplus, okay, because of a lack of
 25 competition.

138

1 Now, let's then set that example aside and think
 2 about what we're actually thinking about for the remedy
 3 box. What we have is an example where Google has — I'm
 4 not saying that there's not any degree to which
 5 consumers might kind of go to a rival or go elsewhere to
 6 look for products, but Google has a material degree of
 7 market power. In fact, if we take a comparison shopping
 8 service market, then essentially they are very, very
 9 predominantly the player in that market with a very,
 10 very high market share and they've developed a system
 11 for extracting all of the willingness to pay of
 12 merchants to which they retain for their own value, and
 13 then what they've done with the remedy box is they've
 14 come up with a very clever —

15 THE CHAIRMAN: Sorry to interrupt you. When you say "very
 16 high market share", are you talking —

17 (Simultaneous speakers — inaudible)

18 — are you saying the comparison shopping market or
 19 the general search market?

20 MR HUNT: No, I'm saying the comparison shopping market. So
 21 during the Decision period, where they're demoting rival
 22 comparison shopping services and under the Commission's
 23 definition they are the — so, sir, this should be
 24 uncontroversial — the Product Universal, the shopping
 25 unit, are part of Google CSS, so Google has — again,

139

1 I haven't got the numbers in right of me — a very, very
 2 high share of that market —

3 THE CHAIRMAN: Yes, I see, understood.

4 MR HUNT: — and they extract a very, very large part of the
 5 value of that market, as they are able to do as
 6 a monopolist, and then, kind of what they've done with
 7 the remedy box is they've come up with an alternative
 8 way of doing things with these rival intermediaries, you
 9 know, CSSs, that sort of bid in the auction, but
 10 actually an auction that looks very, very similar and
 11 allows Google to extract all of the surplus or a very,
 12 very (inaudible) of the surplus — a very large part,
 13 sorry, of the surplus, I should say.

14 So what they've got is an outcome with the remedy
 15 box that looks very, very similar to the outcome
 16 beforehand in terms of the value that Google retains and
 17 there's very little value for rivals and, in practice,
 18 I would say, very, very little competition, which
 19 I think is a serious problem, because I would imagine if
 20 there would have been material competition that would
 21 have brought prices down and led to better outcomes.

22 MS ROSE: When you say "brought prices down", what do you
 23 mean by "prices"?

24 MR HUNT: That merchants would pay less, for example, in
 25 costs per click would be one example of what I mean by

140

1 "price".
 2 MS ROSE: How would that work?
 3 MR HUNT: So, for example, let's say — and this is entirely
 4 hypothetically, and I'm not — but let's just say
 5 you have different CSSs competing to appear in some
 6 mechanism that we can describe, which we'll end up
 7 discussing, to appear on the SERP. Okay? Presumably,
 8 the CSSs, one of the ways that they are going to compete
 9 for merchants, to sign merchants up, is to offer them
 10 better costs per click, lower costs per click than rival
 11 CSSs, and to the extent that a CSS is more efficient at
 12 matching consumers to merchants, they should be able to
 13 express that in lower pricing to merchants and still be
 14 able to make good margins. That's what we see in other
 15 markets, that is what we see in competitive markets.
 16 MS ROSE: But if you have only got, say, five spots
 17 available in the all-important box, you have only got,
 18 say, five tiles, is not the price of the auction for
 19 those spots, however they are formatted, whether they
 20 are, you know, catalogue format or whatever they are, is
 21 not the price for appearing in those tiles going to be
 22 higher if CSSs can extract more value?
 23 MR HUNT: So the — so not necessarily —
 24 MS ROSE: For that auction?
 25 MR HUNT: Not necessarily. So I think — again, we can

141

1 think about what we look at. Let's say there were
 2 different CSSs competing for the box. Okay?
 3 MS ROSE: Sorry, competing for ...?
 4 MR HUNT: For the box.
 5 MS ROSE: Yes. Yes —
 6 MR HUNT: There's a box shown — this is the scenario 3B.
 7 MS ROSE: Let us say there are 40 CSSs competing for five
 8 slots.
 9 MR HUNT: No, no, no, but this is not slots, this is saying
 10 in say scenario 3B, where a box gets presented and
 11 the CSS wins the box.
 12 MS ROSE: The whole box?
 13 MR HUNT: The whole box.
 14 MS ROSE: All five tiles?
 15 MR HUNT: All five —
 16 MS ROSE: Or —
 17 MR HUNT: Four tiles, or whatever it might be. It doesn't
 18 need to be —
 19 MS ROSE: But that would be very expensive.
 20 MR HUNT: No — I mean, so they're going to have to pay
 21 something for access, I have no issue with that.
 22 MS ROSE: But you are getting half of the SERP, or a big
 23 chunk, like a third of the SERP.
 24 MR HUNT: Yes, sure —
 25 MS ROSE: Surely, that is very valuable?

142

1 MR HUNT: Yes, yes. No, it has value. I'm not saying it
 2 doesn't have value. But they key point is you have
 3 a CSS competing with another CSS for access for that
 4 space. Okay?
 5 MS ROSE: That will make the price go up because they are
 6 buying that space.
 7 MR HUNT: No, so — no, no, no. So — but let's be clear
 8 about how competition works.
 9 If I'm a CSS and I'm better — I do a better service
 10 of matching users to merchants, that leads more sales to
 11 merchants because I'm better, then, you know, I will be
 12 able to bid for that. But let's say my next best CSS is
 13 not nearly as efficient and good at doing it as me and
 14 it's the second price auction and I pay their price —
 15 yes — then I'm paying less than I would pay because of
 16 the second price auction, okay? Then the outcome of
 17 that will be that I will be able to pertain(?) some of
 18 the value and profit myself, but presumably, as we see
 19 in competition in other markets, I can compete some of
 20 that away by having slightly lower prices to merchants
 21 to get more merchants to work with me.
 22 So one of the ways I'm going to compete on the
 23 merchants' side will be presumably having slightly lower
 24 prices and offering a better service. That's what we
 25 see in other markets. That's the sort of generic

143

1 understanding of how markets work. Right?
 2 You look quizzical.
 3 MS ROSE: Yes, I am quizzical, but I will leave it for
 4 others to ask questions.
 5 THE CHAIRMAN: Yes, Mr Noble?
 6 MR NOBLE: If I might just offer two thoughts on this.
 7 I think in Mr Hunt's example it is worth distinguishing
 8 between two factors that are going on here. So one is
 9 almost the willingness to pay factor, which is how much
 10 is someone willing to either buy an individual tile or
 11 buy a whole box for?
 12 Now, in his example, I think the way I'd understood
 13 it is that in a sense there may be in fact higher
 14 willingness to pay in total, you know, when you add up
 15 the five boxes versus selling the whole box, and the
 16 reason for that is, in the logic flow, that the CSS is
 17 in a sense better than the incumbent box in terms of
 18 inducing somebody to engage with it. So that pushes up
 19 the willingness to pay for buying the space on the SERP.
 20 The second factor that's going on here is then the
 21 degree of differentiation between the people that are
 22 bidding for that.
 23 Now, it's a truism that, in a sense, when you have
 24 very high levels of differentiation or different
 25 willingnesses to pay, you get — so your first best, the

144

1 second best is a lot worse than you, you pay a low price
 2 and you get a lot of surplus for yourself. But the
 3 critical question here is: how much better are you than
 4 the next guy? If you have 20 CSSs, say, and let's say
 5 they're all pretty good, in that scenario then actually
 6 there isn't necessarily a very big delta between the
 7 first best and the second best, and the first best that
 8 wins the whole box pays the price that the second best
 9 would have been willing to pay to win the whole box.

10 So what that then can lead to is a situation where
 11 if the willingness to pay has gone up and the degree of
 12 differentiation is still low, in fact what happens is
 13 you pay more, that access to the service is costing even
 14 more under this scenario.

15 Now, that's conditional on all of those factors, you
 16 know, it's — we don't know how much differentiation
 17 there would be because there is no such box for us to
 18 analyse the data for. But conceptually, it is not clear
 19 to me that, you know, if you, in a sense, sort of
 20 franchise the box or lease the box or sell the box,
 21 whatever you want to call it, that that would
 22 necessarily result in lower prices, either to the person
 23 buying the box, so giving money to Google, or to the
 24 merchants that are giving money to the CSSs to then go
 25 and essentially buy the box.

145

1 THE CHAIRMAN: Mr Hunt?
 2 MR HUNT: So what we see in other comparison services, and
 3 there's a very short annex in my second report that
 4 looks at those services, but they've been looked at, for
 5 example, by the Competition Market Authority, is that we
 6 don't see that there's 30 or 40 of them, in fact they
 7 tend to be more concentrated markets because there's
 8 network effects, so it's not a huge surprise that you
 9 end up with a fewer number of those firms.
 10 THE CHAIRMAN: We are talking about like flight
 11 comparison —
 12 MR HUNT: Yes, I'm talking about that, or
 13 Moneysupermarket.com, that sort of —
 14 MS ROSE: Or Rightmove?
 15 MR HUNT: Yes, or ... yes, potentially Rightmove, okay? So
 16 the — but the examples that I have specifically looked
 17 at are what we've looked at, say, financial services,
 18 and then we've looked at sort of travel, Booking.com.
 19 Okay?
 20 MS ROSE: Yes.
 21 MR HUNT: So you end up seeing, because of the nature of
 22 those markets, they end up looking somewhat more
 23 concentrated.
 24 Just to be clear, it's not clear to me why we
 25 wouldn't see some degree of differentiation between

146

1 providers.
 2 MS ROSE: But your model does depend on that?
 3 MR HUNT: Well, I mean, this is all theoretical.
 4 MS ROSE: Yes, but that is an element — that is something
 5 you are assuming?
 6 MR HUNT: Yes.
 7 MS ROSE: Also, so your model, what you are hypothesising,
 8 it is implicit in that that there is significant
 9 concentration in the market?
 10 MR HUNT: It's not implicit within that, but there's
 11 significant differentiation.
 12 MS ROSE: But I think what you just said was you do not get
 13 20, you —
 14 MR HUNT: Yes.
 15 MS ROSE: With the network effects you only get a small
 16 number.
 17 MR HUNT: I wouldn't expect there to be 20.
 18 MS ROSE: So that means then that most of the CSSs will fail
 19 anyway?
 20 MR HUNT: I think the reality is I think all of — when you
 21 say most, I'm not quite sure that's —
 22 MS ROSE: Well, we have heard about large numbers of CSSs
 23 that were active around 2006.
 24 MR HUNT: Sure, but, I mean, over time, yes, I don't think
 25 all of them are going to be active in the market.

147

1 Perhaps — I mean, what we don't know, genuinely don't
 2 know, is how these markets will develop. Would you have
 3 ended up with more niche CSSs, some focusing on some
 4 products areas and some focusing on others? In all
 5 honesty I can't tell you I know that.
 6 MS ROSE: But a niche CSS is unlikely to be able to compete
 7 for the whole of the SERP, surely?
 8 MR HUNT: No, but for certain products why couldn't you.
 9 You see in other markets — it depends what your network
 10 is, what's driving the network effects. Why couldn't
 11 you see —
 12 MS ROSE: But if it is a niche —
 13 MR HUNT: Yes, sure, but if it's niche and you've got the
 14 users. So just to give you an example. I'm making
 15 up — cosmetics or something or fashion.
 16 MS ROSE: I hate to break it to you, those are not niche.
 17 MR HUNT: Is that not niche?
 18 MS ROSE: No.
 19 MR HUNT: By "niche", I mean not covering all parts.
 20 MS ROSE: Motorcycle parts.
 21 MR HUNT: Motorcycle parts. There we go. But you could see
 22 something — or sports apparel, whatever it might be.
 23 You could possibly see —
 24 MS ROSE: So if the search is niche then a niche operator
 25 might be the highest bidder is what you are saying?

148

1 MR HUNT: It could possibly be like that, yes. Again, it's
 2 just hypothesis, I haven't got any evidence to support
 3 that and I'm not saying that I do.
 4 MR NOBLE: If I might just add one dimension to the debate.
 5 I think one really important lesson from economics about
 6 network effects is that, and it's a lesson that — you
 7 know, the economics profession has been on a journey
 8 over the last 10/15 years — is that — and it's taught
 9 itself the lesson that it didn't take them seriously
 10 enough early in the Internet — was that network effects
 11 can, as Mr Hunt alludes to, create significant degrees
 12 of market power, differentiation, etc.
 13 Now, I'm using that in the more neutral sense about
 14 not whether you qualify to be dominant or not, it's just
 15 you end up with not many players in a market when
 16 you have very strong network effects. But that is
 17 subject to one very important caveat, that network
 18 effects can be very substantially undermined by
 19 multi-homing. You can see that in the Commission's
 20 decision when they look at: does Google have market
 21 power in general search? Because what they demonstrate
 22 is that there are network effects, the single-sided
 23 network effects in general search. That's generally
 24 agreed.
 25 There's then a very large debate in the Commission

149

1 Decision about whether or not users that go to Google
 2 also go to other search engines. There's a table in
 3 there where the Commission concludes that, no, they do
 4 not. That matters because that allows you then,
 5 logically, to interpret a very high market share as
 6 being a sign that in a sense you have a degree of
 7 enduring market power, which is what they do in the
 8 Decision.
 9 So you can take the analogy here and we can ask
 10 ourselves the question: do we think there is significant
 11 amounts of multi-homing in the CSS market? Now, let's
 12 look at both sides. On the merchant side I think we can
 13 conclude fairly robustly, yes, there is a lot of
 14 multi-homing. The very nature of an affiliate network
 15 is that of multi-homing; you're trying to send your
 16 feeds out to lots of CSSs. Amazon features in lot of
 17 different CSSs; so does eBay. So, in a sense, I think
 18 we can tick that box fairly clearly.
 19 Next, let's think about the consumer side. Do we
 20 think we have multi-homing there? I think the answer
 21 again is very likely, yes, because the fact that CSSs
 22 are so dependent on traffic from the SERP and not on
 23 their own brand, on other sources of traffic that are in
 24 a sense native to them, tells us that actually consumers
 25 are not single homing to one, it's not that they all

150

1 flock to Kelkoo and that means that Kelkoo is therefore
 2 different and therefore can attract merchants on the
 3 other side of the network, it's that the merchants have
 4 to go to the general search in order to get their users
 5 to come to them.
 6 THE CHAIRMAN: CSSs.
 7 MR NOBLE: Sorry, the CSSs have to go to the general search
 8 in order to get the users to come to them.
 9 So I think from that you can conclude — well, you
 10 can anticipate multi-homing because the users are not
 11 loyal to one or other particular CSS. I would contrast
 12 that with, for example, say, in travel. So in travel,
 13 again you can ask the two questions. You know, these
 14 are often two-sided networks. Airlines, hotels, they
 15 often multi-home. There are things called global
 16 distribution systems that are designed to facilitate
 17 multi-homing. Almost all travel agents cover all
 18 airlines and all major hotel brands.
 19 So on the hotel side, you will often find that.
 20 Now, it's not always true, there will be exclusives and
 21 things like that, but it is broadly true. But the
 22 question is: on the user side, the consumer side, where
 23 do people go? Do they go to a general search engine or
 24 some other sort of source to think about, "Where shall
 25 I buy my flight from? Where shall I buy my hotel from?"

151

1 I'm sure some people do do that, but one of the
 2 concerns that underlies a lot of debate in some of these
 3 markets is the fact that that isn't what people do, that
 4 they recognise the brand, they go to Booking.com, they
 5 directly navigate there or they use the app or whatever
 6 means they do to get there. Essentially, that is a form
 7 of single homing to the specific brands and that then
 8 creates a degree of differentiation and/or market power
 9 because consumers are loyal to Booking.com or whatever
 10 other example you want to take.
 11 Now, I haven't studied those markets specifically,
 12 but you can see how in a sense you end up with quite
 13 a different outcome in those. That's why, for example,
 14 I think question marks are raised about some markets
 15 where you have high levels of concentration and in other
 16 markets they are not.
 17 MS ROSE: It is interesting. I mean, those markets are also
 18 CSSs, they are just in different areas such as financial
 19 services or travel.
 20 MR NOBLE: Yes. I think in the language of the Commission
 21 they call them "vertical".
 22 MS ROSE: Yes, but it's the same thing, it's just in
 23 a different product market?
 24 MR NOBLE: Exactly.
 25 MS ROSE: What happened in those markets without there being

152

1 the kind of infringing conduct that was found
 2 in relation to the product market we are looking at, is
 3 it not plausible that the same thing might have happened
 4 in relation to this product market, that you might have
 5 found Shopping.com would have been the Skyscanner of
 6 product comparison?

7 MR NOBLE: I don't think we have any particular evidence to
 8 tell us one way or the other on that. I think what we
 9 do see is that there were a large number of CSSs active
 10 in different areas, so one might draw something from the
 11 fact there were 361 aggregators in the SO. That's
 12 a large number relative to most of these other markets.
 13 But I have not conducted a detailed analysis of that, so
 14 I'm not sure I can give you a cast iron answer on that.

15 PROFESSOR SMITH: Is the difference in this case that Google
 16 is certainly not now a player in things like insurance
 17 comparison markets? I suspect because there it is not
 18 simply a matter of searching for a price, you have to
 19 have a conversation with the supplier. So Google does
 20 not compete with Compare the Market or whatever and
 21 therefore we do not have the issue of Google
 22 self-preferencing its own insurance website because it
 23 does not have one?

24 MR NOBLE: One hypothesis is that the difference may be to
 25 do with the nature of the comparison, which is what

153

1 I think you're alluding to, which is that in energy,
 2 actually, in order to provide someone with a helpful
 3 comparison, you may need to know quite a few things
 4 about them: their location, their energy usage and so
 5 on. It may be that you don't need to know as much in
 6 order to show them a selection of cameras.

7 It may be ultimately that that is what distinguishes
 8 one market from another, that actually you get quite
 9 a different set of outcomes because you have to make
 10 further enquiries in order to be able to answer the
 11 queries. So it may be, for example, that in order to
 12 provide a useful answer on a flight, you need to know,
 13 well, where are you flying from, and to, when, what
 14 class of travel, etc, in order to be able to actually
 15 provide anything of use to somebody. Whereas if you
 16 search for a Bialetti coffee machine that may be enough
 17 already, that in a sense it's a simpler query type. But
 18 as I say, I haven't done a detailed analysis to try and
 19 compare these different markets.

20 MR HUNT: Might it be possible to — so on the joint expert
 21 statement I have specifically kind of addressed this
 22 issue. Might it be possible just to pull up a paragraph
 23 from that? We went to page 28 of the joint expert
 24 statement.

25 I'm not going to read the whole thing here, but

154

1 essentially I deal with this kind of precise issue
 2 noting that they can be — we have to get that page
 3 back. So what I note is that specifically as regards
 4 the question of multi-homing, it's still possible that
 5 CSSs could — well, the language that I have used here
 6 is — and this is the final paragraph on this page — it
 7 says in the second sentence:

8 "CSSs can build participation on both sides of the
 9 market and compete through genuine differentiated
 10 services and by doing that they may be able to create
 11 competitive advantages."

12 Specifically, I note the CMA's evidence when looking
 13 at other specialised search markets, other verticals,
 14 and, quoting the CLA, I note that there are significant
 15 advantages to scale and several specialised search
 16 verticals are highly concentrated as a result. So it
 17 was just there is — neither Mr Noble nor I have looked
 18 specifically at — done an exhaustive look at the
 19 evidence, but I'm just noting that in other specialised
 20 search verticals, that is what one sees as the outcome.

21 THE CHAIRMAN: We are just going to lower the blinds.

22 (Pause).

23 In the post-Decision period there is still the tab
 24 in the bar menu at the top of the SERP labelled
 25 "shopping", which you can click on and go straight

155

1 through to the Google, now called Google Shopping
 2 Europe, the Google self-standing shopping site. We can
 3 see that in various illustrations. I think you know
 4 what I am referring to.

5 MR HUNT: Yes.

6 MR NOBLE: Yes.

7 THE CHAIRMAN: That goes exclusively to Google Shopping
 8 Europe. Is that significant in economic terms?

9 MR NOBLE: I don't think it's particularly significant
 10 because I think the debate that we are focused on here
 11 is really about users, step 1, conducting a general
 12 search query and then, step 2, how do they engage with
 13 the SERP page in terms of the results, the results that
 14 are presented to them in response to that query.

15 MR HUNT: I don't think it is materially significant. As
 16 I said before, my understanding is only 3% of GSE's
 17 revenues are from the stand-alone website according to
 18 the GSE's accounts. So I don't think that is material.

19 THE CHAIRMAN: It is there, but nobody reproduces it, so one
 20 can effectively —

21 MR HUNT: I'm not sure we have specific traffic information
 22 for that, but we can infer that from the (overspeaking).

23 THE CHAIRMAN: — the 3%.

24 MR HUNT: Yes, exactly.

25 THE CHAIRMAN: Pretty small. Then a quite separate

156

1 question. We know — it follows from the Decision —
 2 that there was this restriction of competition for about
 3 10 years, more than 10 years, depending which national
 4 market you look at. Do you think that would have
 5 affected the independent CSSs' ability to invest on
 6 improvements in their sites that would have an effect
 7 now in the post-Decision period? Mr Noble.

8 MR NOBLE: Well, I think if you are getting low volumes to
 9 your website then you would — I think I mentioned this
 10 earlier — then you would have, all else equal, a lower
 11 incentive to invest in it. I mean, strictly speaking,
 12 your incentive to invest is about your forecast traffic
 13 that you expect to get. But if you get low traffic and
 14 continue to expect to get low traffic then you would
 15 have a reduced incentive to invest relative to
 16 a scenario where you got and expected to get high
 17 volumes of traffic.

18 MR HUNT: I agree with that. I also think that there's —
 19 we talked about some of the additional impacts of low
 20 traffic volume. For example, the CSSs not being able to
 21 understand user preferences because they don't have that
 22 information, so that will have a significant negative
 23 impact on them. It is also going to have an impact on
 24 their merchant relationships. A CSS requires merchants
 25 to want to engage with them to provide them with feeds

157

1 of data. Ideally, exclusive leads, in an ideal world,
 2 but you can see how if you've got very, very little
 3 traffic, why is a merchant going to want to deal with
 4 you? So you can see how they would have lost users,
 5 they would have lost merchants and they won't be able to
 6 refine them and improve their website. So for those
 7 reasons as well I think that the abuse will have very
 8 significantly impacted on CSSs' abilities to compete.

9 THE CHAIRMAN: Anything else you want to add?

10 MR NOBLE: I would just add that CSSs do have other sources
 11 of traffic, so I don't think it's — it's sort of not
 12 SERP or bust. There is certainly a question that the
 13 Commission looks at about, in a sense, the
 14 substitutability of SERP traffic for other traffic.

15 THE CHAIRMAN: Yes.

16 MR NOBLE: But CSSs do have other sources of traffic; they
 17 may not be substitutes in the strict economic sense that
 18 one can switch from one to the other, but they do have
 19 other sources of traffic, notably the publisher business
 20 model, which is essentially where, instead of using the
 21 SERP to gain user engagement, they use publishers of
 22 content to gain user engagement and then either present
 23 something that's a bit more like a CLA, so that you
 24 would click through and then come to the Kelkoo or
 25 whichever CSS's website, or something that's a bit more

158

1 like a PLA where you click through and then you go
 2 through to the merchant. So obviously, in a sense, the
 3 empirical question of "What's the balance of these?"
 4 then depends on how important the publisher and the
 5 other sources are relative to SERP traffic.

6 MR HUNT: Some CSSs, including, for example, Kelkoo, did
 7 develop and have developed publisher businesses. That
 8 business looks quite different from a CSS business.
 9 I think there's some material similarities on the
 10 merchant side that you get feeds of data from merchants
 11 and you have merchant relationships. On the other side
 12 it looks very different because, in line with what
 13 Mr Noble said, you have relationships with publishers,
 14 i.e. website owners. Okay? My understanding is that
 15 the website owners essentially have the ability to, if
 16 you like, choose from your inventory and present that to
 17 the people on those websites. So just as an example, it
 18 could be, say, a newspaper that has an article about
 19 gadgets or something and could present a — it's like
 20 display advertising, presenting something to consumers
 21 that are on that sort of newspaper web page.

22 But there's some very material differences there
 23 inasmuch as it's quite different in terms of the intent
 24 of the user. A user is on a web page doing something
 25 and they're being presented with a display of

159

1 advertising or they're presented with, essentially,
 2 an ad. My understanding is mostly what's happened
 3 in that context is that what's actually presented to
 4 users commonly are direct-to-merchant clicks. So what
 5 happens is users go directly from the publisher's
 6 website to the merchant's website and not to the CSS's
 7 kind of website. So there are some important
 8 differences there. So you're not getting any —

9 THE CHAIRMAN: The user does not even know necessarily there
 10 is a CSS?

11 MR HUNT: No, exactly, that's my understanding, when they go
 12 direct to the merchant. So there's no doubt that some
 13 CSSs have been able to make some revenues from
 14 publishers. But my understanding is that in many cases
 15 the willingness to pay for that traffic is lower
 16 because, for example, it's not a consumer that's
 17 necessarily shopping and looking for — so the actual
 18 intent to purchase may be lower because of the way that
 19 the ad is being presented to the consumer. It's not
 20 like they've gone into a search engine and entered
 21 a specific shopping search term.

22 So yes, CSSs have been able to use their
 23 relationships with merchants to monetise that to some
 24 extent through this publisher traffic. They have got
 25 revenues from that, that's true. But what it isn't is

160

1 enabling them to maintain and improve CSS businesses
 2 during that period.
 3 THE CHAIRMAN: Thank you. I think we will probably end
 4 there.
 5 MR NOBLE: Sorry, if I might just make one very brief point.
 6 THE CHAIRMAN: Yes.
 7 MR NOBLE: I have to say I'd have to check the facts on
 8 this, but I think the choice about whether or not the ad
 9 is, as it were, that's presented on a publisher is a PLA
 10 or a CLA is in a sense — there have been various
 11 versions of that. There is a propensity. I think, now
 12 to have a more PLA style direct—to—merchant box. But
 13 I do think there have been instances where you've had
 14 a CLA style where you have clicked through and you have
 15 gone to Kelkoo.
 16 I believe — I can't remember the references, but
 17 I do think there's some factual evidence about the
 18 relative performance of that and that, actually,
 19 I believe, I think some CSSs found that the
 20 direct—to—merchant, the PLA style, actually performed
 21 better than the CLA style.
 22 MS ROSE: It would be useful to have the reference.
 23 MR NOBLE: Yes, I can look those up overnight. I think it's
 24 from Mr Stables, but I can try and find that.
 25 THE CHAIRMAN: If we were to resume at 10.00 tomorrow

161

1 morning, does that cause you any inconvenience?
 2 MR HUNT: No.
 3 MR NOBLE: No. I know I'm not meant to communicate with my
 4 team, but might it be okay if I communicate with them
 5 about that reference? That might aid me finding it.
 6 THE CHAIRMAN: Well, I would think that probably the lawyers
 7 will be able to find it.
 8 MR NOBLE: Okay, fine.
 9 THE CHAIRMAN: It would be better that way.
 10 So we will resume at 10 o'clock tomorrow.
 11 Just to remind you, I know you know, you have both
 12 been witnesses before, but of course you cannot discuss
 13 the case with anyone, including any member of your
 14 teams.
 15 (4.29 pm)
 16 (The hearing adjourned until 10.00 am
 17 on Tuesday, 14 July 2026)
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 19
 20
 21
 22
 23
 24
 25

162

1	INDEX
2	
3	MR MATTHEW HUNT (affirmed)2
4	Examination—in—chief by MR JOWELL2
5	MR ROBIN NOBLE (affirmed)4
6	Examination—in—chief by MR PICKFORD4
7	MR MATTHEW HUNT & MR ROBIN NOBLE6
8	Questions from THE TRIBUNAL6
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

163

A					B				
a13 (1) 95:12	adopting (2) 71:19 72:20	151:17	apparel (1) 148:22		b (1) 137:10	124:1,17 144:8,21 145:6	broadly (6) 13:23 64:8		
a1314 (1) 127:15	ads (8) 10:25 11:1 12:4,6	along (2) 12:25 18:19	appeal (1) 42:20		ba2135 (1) 21:23	146:25	115:25 120:24 134:16		
a132 (1) 95:15	31:18 42:1 104:24 122:22	alongside (1) 128:12	appealing (2) 27:21 28:19		ba2154 (1) 55:22	bioletti (4) 122:18 123:3,24	151:21		
a133 (1) 97:18	adense (1) 135:24	alphabet (1) 137:8	appear (11) 9:18,20 10:14		ba2155 (1) 56:2	154:16	broken (2) 77:4,7		
a134 (1) 97:24	advantages (2) 155:11,15	already (4) 52:17 104:5	30:2 58:1,2 65:1 69:17		ba2172 (1) 54:14	biased (1) 111:24	brought (4) 106:6 109:21		
abilities (1) 158:8	advert (3) 11:3 118:9 123:15	116:24 154:17	83:8 141:5,7		ba2183 (1) 55:6	bid (24) 9:16,22 10:4 23:4	140:21,22		
ability (8) 22:2 28:2 32:5	advertisements (2) 10:14	also (61) 1:13 3:10 4:8 5:25	appeared (1) 84:6		ba2232 (1) 137:5	24:2,7 72:24,25,25 73:14	build (2) 40:15 155:8		
34:12 60:17 73:23 157:5	11:12	9:18,23 12:11 16:15 17:5	appearing (2) 105:13 141:21		ba2233 (2) 137:3,11	120:3,3 121:3,7,12	bundle (10) 1:25		
159:15	advertiser (1) 122:16	18:20 20:15,22 22:1,20,21	appears (3) 12:9 66:11 71:16		ba235 (1) 37:24	122:21,23 123:1,3 131:3,8	4:9,13,15,20 94:20,25		
able (30) 20:23 34:4 39:15	advertising (11) 22:25	24:1,6 25:20 26:9,9 35:1	appropriately (1) 105:18		ba286 (1) 53:5	132:17 140:9 143:12	95:2,6 127:9		
59:8 64:9 103:22,23	24:12,15,17 59:20 74:20	39:21 41:1,11,14,25	applied (1) 54:4		ba288 (1) 53:11	bidder (3) 122:25,25 148:25	business (18) 10:2 11:14		
105:11 106:17,20 130:13	76:4 119:11 120:11 159:20	43:4,12,20 44:1 47:20	applies (3) 2:8 44:12 61:10		back (18) 6:21 17:4 27:20	bidding (6) 49:19 70:6 74:7	60:12 61:14,17,19,24 72:1		
131:12,18,19,22 138:23	160:1	48:16 51:17 55:2,18 62:23	apply (1) 70:11		32:1,1 50:11 63:12 69:21	105:9,24 144:22	91:23 92:7,13 97:7 99:3,8		
140:5 141:12,14 143:12,17	adverts (1) 79:12	64:16 65:12 68:21 70:8	approach (2) 12:3 36:23		91:19 99:25 102:3 110:1	bids (3) 122:6 123:11 132:10	101:22 158:19 159:8,8		
148:6 154:10,14 155:10	advice (3) 44:23 74:14	72:4 79:15 87:13 92:15	appropriate (1) 11:23		126:12 127:9 128:25 132:3	big (6) 114:15,16 131:24,25	businesses (3) 59:5 159:7		
157:20 158:5 160:13,22	105:11	103:8 105:19 114:5 117:19	approximately (1) 85:20		138:6 155:3	142:22 145:6	161:1		
162:7	advising (1) 74:20	119:20 120:7 121:24	apps (2) 88:13,16		bad (3) 99:18,19,22	binding (2) 53:2 54:21	bust (1) 158:12		
absent (1) 110:22	adwords (8) 41:15,20 46:17	122:21 123:8 128:25 130:6	area (3) 12:23 68:1,25		balance (1) 159:3	bing (2) 7:3 65:10	button (2) 72:9 78:18		
absolute (1) 89:7	80:23 83:13 120:8 122:3	134:6 147:7 150:2 152:17	areas (4) 64:8 148:4 152:18		bar (1) 155:24	bit (23) 6:21 15:5 22:14	buttons (1) 43:13		
absolutely (4) 16:18 33:13	135:24	157:18,23	153:10		barrier (5) 59:10,10,18 60:1	26:19 27:20 28:13 36:6	buy (9) 34:13 35:4 40:20,21		
51:20 56:16	affect (3) 56:21 58:23 113:6	alter (8) 62:24 92:11 111:17	arent (1) 124:11		61:4	38:1 39:19 42:19 48:6,13	144:10,11 145:25		
abuse (11) 60:9 108:10,11,15	affected (3) 54:13 58:21	112:3,21 113:8,19,23	arguably (1) 74:5		base (4) 66:22 68:19 90:6	49:10 87:2 93:22 108:13	151:25,25		
112:7,8 126:11 127:2	157:5	120:7 140:7	argue (1) 92:1		98:3	118:22 119:18 132:6	buying (5) 17:9 122:18 143:6		
130:19 132:25 158:7	affecting (1) 73:24	131:13	argued (1) 40:1		based (4) 11:1 50:22 64:10	134:12 136:11 158:23,25	144:19 145:23		
accept (1) 53:1	affects (3) 56:25 57:1 103:11	alternative (4) 41:23 55:8	arguments (1) 53:21		92:17	bits (1) 91:25			
accepted (2) 52:17 53:21	affiliate (1) 150:14	120:7 140:7	argued (1) 40:1		baseline (1) 55:15	black (4) 30:20,24 31:10,12	c (1) 137:11		
accepts (1) 40:10	affirmed (4) 2:10 4:2 163:3,5	alters (2) 94:14 125:24	argument (2) 30:7 37:4		basically (2) 124:11 138:16	blind (1) 127:20	call (16) 1:18,22 4:1 21:21		
access (14) 1:25 22:12 34:6	after (5) 44:11 56:1 97:13	although (3) 12:10 38:3 86:4	arguments (1) 53:21		basis (10) 1:17 2:16 9:1 23:7	blinds (3) 80:18,19 155:21	22:15,18 33:19 52:23		
41:24 72:3 104:22 118:25	113:19 116:19	always (16) 6:19 7:13 12:18	around (10) 46:18 48:9 58:9		43:14 51:10 107:14,19	blog (1) 65:13	67:14 73:13 94:6		
119:11,23 125:23 126:2	again (34) 3:5 15:9,12,21	18:15 31:13 34:8,12,17	74:12 79:13 97:14 100:4		124:18 126:6	blue (8) 7:16 36:10 44:2,4	119:12,23 129:3 145:21		
142:21 143:3 145:13	18:15 23:20 36:5 48:20	36:25 49:23 65:16,18 90:2	109:7 119:17 147:23		beach (1) 96:16	92:25 127:19,20,22	152:21		
accessing (1) 71:24	57:5 59:4 63:2 68:25 70:23	138:10,19 151:20	article (1) 159:18		bear (1) 6:12	bookingcom (3) 146:18			
according (3) 73:20 121:2	74:25 79:15 80:6 86:8 88:9	34:16,23,25 35:5,19	aside (3) 102:16 108:18		bearing (1) 50:6	152:4,9	called (16) 7:16 8:1 10:16		
156:17	89:18 97:6 99:10 101:16	37:11,14	139:1		beat (1) 122:22	both (13) 5:23 6:9 19:21	11:9 12:2 19:15 23:23 24:1		
account (6) 9:16 26:12	102:1 105:20 117:22	38:2,11,20,21,21,22,22,24,24	ask (15) 4:7 22:14 34:20		became (2) 22:24 93:20	27:18 39:20 43:2 67:2	67:15 74:19 93:21 95:2		
46:23 70:25 71:1 78:15	126:11 127:6 135:8,13	39:4,19,22 41:3,9,10 48:22	61:15 67:13,19,23 78:4		becomes (4) 23:5 24:10 25:8	100:12 110:8 135:7 150:12	96:3 138:13 151:15 156:1		
accounts (6) 75:18,19 77:25	139:25 141:25 149:1	87:20,22 88:3,4 89:10,12	83:16 110:3 114:19 137:1		133:5	155:8 162:11	calls (1) 37:15		
86:12 119:25 156:18	150:21 151:13	150:16	144:4 150:9 151:13		before (17) 5:12 6:10 23:12	bottom (4) 29:23 83:3 84:18	came (2) 23:22 49:23		
accuracy (2) 16:12 77:1	against (4) 28:11 76:16	ambiguous (1) 111:19	asked (1) 44:25		25:4 26:13 55:18,23 71:14	129:11	camera (10) 1:8 6:7 14:21		
achieve (6) 51:19,23 65:20	130:23 132:23	among (1) 110:24	asking (6) 56:22 100:11		78:5,9 81:1 90:7 111:15	bound (1) 53:19	20:25 30:12,19 44:3 65:1		
110:6 133:25 134:3	agents (1) 151:17	amount (13) 12:10 43:17	111:2,3 113:18 132:7		112:11 122:14	boundaries (1) 42:7	129:6,15		
achieved (1) 125:19	aggregate (1) 81:19	77:15 87:6 97:4 104:21	aspect (5) 15:13,24 22:9		112:11 132:2 156:16	boundary (1) 27:5	cameras (5) 13:10,11 31:6		
achieving (1) 111:8	aggregators (1) 153:11	113:6 114:25 120:25	114:1 122:14		162:12	bounded (1) 10:3	65:2 154:6		
acquire (2) 41:21 72:8	ago (1) 48:15	121:13 123:8,18 138:18	aspects (2) 7:24 75:22		beforehand (1) 140:16	box (133) 19:14 23:24 28:4	cannot (4) 49:22 55:5 67:3		
acquiring (1) 72:10	agree (40) 7:5,21	amounts (1) 150:11	assessed (1) 64:1		beginning (2) 1:6 104:2	30:14 31:7 33:8 42:15	162:12		
acquisition (2) 19:2,4	8:4,10,16,17,24 12:8	analogy (4) 110:1 112:15	assesses (1) 7:17		begs (1) 107:7	44:16,20,22 46:5,11	cant (4) 88:17,21 148:5		
across (1) 81:12	13:8,17 15:10,14 16:2	117:22 150:9	assist (3) 2:2 6:13 91:11		behalf (2) 73:6,14	48:10,19 49:24	161:16		
acting (1) 73:9	19:25 20:7,13 21:3	145:18	assisting (1) 114:8		behaviour (8) 21:13 87:14	67:14,16,16	capital (1) 59:11		
active (3) 147:23,25 153:9	24:14,24,25 43:7 49:8 50:9	analysed (1) 96:7	associate (2) 70:25 75:18		96:21 104:8 105:25 107:23	68:2,10,12,16,24 69:17,24	car (1) 13:3		
actively (1) 105:9	52:21 57:24 58:18 59:16	analysis (5) 14:25 40:5 91:4	associated (2) 75:14,15		109:2 129:3	70:17,25 72:8,14,15,23	caravan (4) 122:4,11,22		
actual (8) 95:20 99:2 102:19	60:2,20 61:20,23 71:5	153:13 154:18	assume (3) 89:25 90:3 108:7		behavioural (1) 20:23	73:10,13,20 74:22 76:2	124:8		
103:2 105:1 117:8,9	90:16 98:22 103:16 116:6	analytically (1) 112:4	assuming (5) 61:10 100:16		being (32) 1:9 29:9 32:4	77:17,19 78:2,3	care (6) 20:9,11 35:10 40:19		
160:17	136:5,15 137:24 157:18	112:4	107:1 126:17 147:5		34:23 36:5 45:9 49:1,9	79:2,3,8,12,18,19,25	64:3,3		
actually (56) 11:24 17:4,7	agreed (7) 14:3 21:19 52:4	angle (1) 111:19	assumption (2) 107:16 115:9		53:6,13,24 58:12,21 62:21	80:20,22	careful (2) 6:5 36:6		
26:6 34:6,17 37:13 38:2,4	56:13 114:10 119:7 149:24	annex (2) 71:17 146:3	attach (1) 49:17		63:2 64:19 74:8 76:12	81:4,5,10,11,14,14	carefully (1) 27:17		
39:6 43:6 45:3,6 47:23	agrees (1) 35:18	annexes (1) 118:12	attempt (1) 114:21		90:13 111:24 115:3	82:1,5,5,8,19 83:4,16	carousel (1) 16:4		
61:15 70:11,23 72:14	ahead (1) 43:14	annotated (2) 2:4 4:4	attempting (1) 35:11		121:6,10 123:11 126:12	84:6,20,22,25	carry (1) 48:13		
74:16 75:1 77:10 80:22	airline (1) 13:4	another (20) 7:23 8:5,8	attention (1) 63:17		131:9 137:13 150:6 152:25	85:5,6,15,17,19,22 86:20	cases (2) 66:4 160:14		
86:11 87:18 88:25 89:1	airlines (2) 151:14,18	15:9,16 16:7,12 20:10	attract (4) 83:24 116:11,12		157:20 159:25 160:19	102:5,19 104:8,9,12 106:6	cast (1) 153:14		
94:21 101:9,14 102:9	akin (1) 24:15	28:12,14 34:15 36:20	151:2		belief (2) 3:22 5:17	107:2,5 108:7,7,16,18	catalogue (14) 92:14 93:21		
104:18 108:8 109:8 112:4	albeit (6) 13:11 50:3 58:13	41:11 79:4 119:10 122:12	attractive (2) 38:25 103:9		believe (17) 12:10 46:18	109:13 114:7,11,17,23	97:8,15,25		
122:21,22 123:10 124:4	96:11 109:7 117:23	124:1 137:13 143:3 154:8	attractiveness (2) 8:6 120:12		80:9,11 83:13 85:25 86:1,3	115:1,4,8,10,17 116:17,18	98:5,6,8,9,12,19 99:9		
126:14 128:6 130:9,13	53:7,12,14,25	90:17 107:20,24 109:6	attributable (4) 107:5		87:1 104:12,13,16 105:17	117:13,20,25 118:25	101:12 141:20		
131:5,10 133:10 135:7	54:5,8,10,15,20 22:56,6,18	113:24 138:4 150:20	attribute (3) 117:11,15		129:2 134:6 161:16,19	119:3,8 120:6,18 125:25	category (1) 7:8		
139:2 140:10 145:5 150:24	57:22 58:19 59:14 61:10	153:14 154:10,12	118:23		believes (1) 63:20	127:17 130:18 139:3,13	cause (2) 59:22 162:1		
154:2,8,14 160:3	64:17 65:15 70:9 73:21	answers (1) 135:19	attributed (1) 116:2		below (2) 55:7 83:9	140:7,15 141:17	caused (1) 59:17		
161:18,20	112:18,19	anticipate (7) 25:13 57:6	attribution (1) 118:21		beneath (1) 93:2	142:2,4,6,10,11,12,13	caution (1) 49:11		
ad (6) 107:6 122:7,8	algorithmic (1) 52:3	110:23 111:8 114:2 116:3	auction (24) 22:21 23:4		best (14) 3:21 5:17 12:19	144:11,15,17	cautions (1) 132:23		
160:2,19 161:8	algorithms (8) 21:14	151:10	25:19 26:6 69:21 70:1 74:8		65:19 90:1 122:25 123:15	145:8,9,17,20,20,20,23,25	caveat (1) 149:17		
add (12) 12:7 24:23 25:11	52:12,23 53:25 54:4 61:10	anybody (1) 27:2	143:12 144:25		145:1,7,7,7,8	150:18 161:12	centimetres (1) 60:23		
37:10 43:1 63:23 77:12	107:16 122:6	anyone (5) 1:9 26:21 67:4	120:2,17 121:7,15		better (18) 21:1 51:25	boxes (2) 75:17 144:15	central (1) 10:5		
136:9 144:14 149:4	allimportant (1) 141:17	99:7 162:13	123:6,12 130:25 136:6		74:14,15 106:19,22 109:5	brand (5) 37:17 59:11 136:2	certain (9) 6:2 11:21 52:25		
158:9,10	allocated (1) 117:2	anything (14) 12:7 24:23	140:9,10 141:18,24		131:19 140:21 141:10	150:23 152:4	64:21 66:4 105:22 106:17		
added (1) 68:11	allow (2) 34:2								

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displacing (1) 65:23	during (5) 6:19 50:4 118:21	engage (22) 30:3 33:8 34:5	ever (1) 30:5	66:23 75:16 76:14 77:18	first (27) 1:20 4:8 5:23 24:20	gave (5) 24:16 108:25 109:6
display (3) 68:15 159:20,25	139:21 161:2	38:19 46:19 49:2,19	everybody (4) 35:18 57:16	89:2,23,24 106:3 141:11	41:13 50:14 56:3 64:18	131:17,21
displayed (1) 15:24	duty (1) 6:12	71:11,13,15 78:15 92:12	126:7 131:2	160:24	68:2 78:22 79:18 83:17	general (72) 7:1,1,3,7,9,22
dissuade (1) 134:15	dynamic (1) 50:24	93:9,16,25 94:13 103:23	everybodies (1) 112:11	extra (1) 47:12	84:6 92:3,5 94:13 96:1	9:7,9,13,15 12:16,17,23
distinct (3) 15:2,2 74:23	dynamically (1) 120:5	105:18 138:8 144:18	everyone (4) 111:21 119:7	extract (7) 138:9,12,18,23	99:5 103:12 116:15 125:13	15:6,21 18:15 21:12
distinction (7) 10:24 27:3,24	dynamics (3) 57:13 116:5	156:12 157:25	123:11,12	140:4,11 141:22	128:1,15 137:18 144:25	23:9,13,14,24 25:18 26:20
31:2,9 36:12 42:21	119:15	engaged (5) 48:22,24 66:2	everyones (1) 112:2	extracting (1) 139:11	145:7,7	27:4,7,12 29:5
distinctions (1) 29:25		96:8 98:9	everything (2) 70:24 109:21	extreme (2) 48:21 57:25	five (8) 20:21 85:23	30:1,5,10,13,22 31:4,12,25
distinctiveness (1) 50:23		engagement (7) 72:3 98:5	evidence (30) 5:13 6:10	extremely (3) 59:15 70:21	141:16,18 142:7,14,15	32:19,20 52:3,5,12 53:24
distinguish (3) 10:13 11:7		104:6 105:6,19 158:21,22	12:11 44:15 54:1,2 55:17	121:13	144:15	54:17 55:4,12 61:23 62:23
107:9		engages (1) 63:13	66:21 67:3 68:19 90:6,22		fixed (1) 19:9	63:7,13,24 64:2 65:7 66:11
distinguished (1) 108:1	earlier (19) 6:21,22 18:6	engaging (10) 33:21 34:1	91:5,15,16,25 92:11 94:12		flat (1) 112:13	67:24 69:19 73:18 79:7,18
distinguishes (1) 154:7	24:16 28:1 44:19 69:22	45:11 46:21 49:20 65:18	96:7 98:3 99:17,23 102:1		fleet (3) 9:3,21 10:6	89:22 93:24 104:2 106:8,9
distinguishing (1) 144:7	76:13 77:24 90:7,9,13	71:10 103:25 117:20	126:18 129:2 149:2 153:7		flight (3) 146:10 151:25	112:24 120:12 137:23
distortion (1) 59:17	91:20 92:22 103:4	122:17	155:12,19 161:17		154:12	139:19 149:21,23
distribution (1) 151:16	104:5,20 107:17 157:10	engine (16) 7:17 9:6,13,16	evolves (1) 93:21		flights (1) 13:4	151:4,7,23 156:11
dive (1) 91:1	early (3) 97:11,11 149:10	10:19 11:4,18,25 27:9	exact (1) 118:1		flock (1) 151:1	generalised (1) 69:20
diversion (1) 56:7	earn (1) 18:21	30:10,22 64:2 65:4 120:12	exactly (17) 17:16 26:10		flow (3) 45:7 57:3 144:16	generally (8) 11:9 18:23
diversity (1) 65:15	earning (1) 133:15	151:23 160:20	44:24 59:5 61:6 79:21		flying (1) 154:13	33:10 36:13 42:3 63:21
divided (1) 82:5	easier (1) 136:1	engines (13) 7:4,23 8:19,22	82:2,11 83:10 96:20		focal (3) 35:14 37:1 40:13	92:15 149:23
document (4) 5:8 50:16	easiest (1) 101:2	10:23 11:13 12:11,15 15:6	123:11 125:3 135:9 138:20		focused (3) 12:22 64:14	generate (1) 10:2
53:10 55:22	ebay (1) 150:17	52:12 62:23 88:9 150:2	152:24 156:24 160:11		156:10	generated (1) 20:17
documents (3) 68:21 75:3,6	economic (12) 56:23 64:25	enhance (1) 65:17	examinationinchief (4) 2:11		focusing (4) 36:6 116:18	generates (1) 20:2
does (59) 2:3 4:15,17,21,23	117:3,7,21,24 118:21,23	enough (8) 36:18 44:20	4:3 163:4,6		148:3,4	generic (6) 31:19 48:11
7:2 22:9 25:12 28:14 30:2	119:1 138:13 156:8 158:17	96:22 133:8,9 135:1	examining (2) 55:17 61:9		follow (3) 6:4 83:7 112:15	54:16 55:11 107:19 143:25
31:11 33:13 34:25 37:1,12	economics (4) 63:2 91:5	149:10 154:16	example (53) 8:7 9:15,25		followed (2) 113:2,7	generically (1) 46:12
38:2 40:8 44:21 48:4 50:6	149:5,7	enquiries (1) 154:10	10:2 13:13 17:12 28:2		following (2) 56:3 67:17	genuine (2) 106:15 155:9
51:18 56:19,21 57:25	economist (7) 10:10 29:7	ensure (1) 4:19	29:1,24 30:13,21 35:18		follows (3) 51:18 118:16	genuinely (1) 148:1
61:15,16,25 68:2 69:2	50:20 59:12 60:10	ensuring (1) 72:25	38:10 48:20,21 57:24,25		157:1	geographically (1) 10:3
74:22 78:15 79:19,22	63:15,20	entered (1) 160:20	71:2 76:23 79:10		footnote (1) 130:21	get (63) 8:23 14:16,22 18:23
80:4,4,10 83:24 86:18	60:25 61:18	enterprise (1) 37:19	80:16,18,21 91:18 96:1		forbidden (1) 1:9	20:17 24:8 25:17 31:13
92:16 94:10 96:20 104:9	effect (13) 20:1,10,16 21:11	entice (1) 10:7	98:8 104:23 113:3 122:2		forced (1) 64:19	34:6 36:14 38:23 39:15
107:2,9,10 108:14 116:16	59:14 62:10 63:6,10 64:15	enticing (1) 135:6	123:23 124:8 127:1,16		forecast (1) 157:12	46:11 58:2 59:17 62:9 63:4
125:12,20 132:13 133:13	102:7,24 137:15 157:6	entire (1) 61:14	128:6 129:4 138:22		forget (1) 92:21	70:17 74:17 80:3,20,21
138:1 147:2 149:20 150:17	effective (2) 57:10 115:19	entirely (3) 19:18 108:6	139:1,3 140:24,25 141:3		forgetting (1) 109:12	83:6,12 89:14 93:13 96:24
153:19,23 160:9 162:1	effectively (4) 12:16 55:5,11	141:3	144:7,12 146:5 148:14		forgive (1) 17:8	98:14 99:25 101:7 103:6
doesnt (10) 16:17 40:22	156:20	entirety (1) 118:1	151:12 152:10,13 154:11		form (11) 22:24 30:11 31:1,3	104:20 105:5,10,17 112:24
58:2 79:20 90:2 94:14	effects (18) 20:7,12,14 61:13	entities (2) 35:8 70:4	157:20 159:6,17 160:16		70:22 74:20 114:7 125:22	115:10 122:5,12 124:5
128:7 130:12 142:17 143:2	62:24 63:19 64:13	entity (3) 62:22 69:14,15	examples (6) 13:16 124:10		133:13 137:13 152:6	129:23 130:5,24 131:7
doing (18) 11:4,14 16:5	103:11,22 146:8 147:15	entrant (3) 58:20,21 59:8	126:13 129:9 131:20		formal (2) 27:15 65:11	132:2 133:3 135:10 136:7
33:15,16 35:12 48:17 71:3	148:10	entrants (1) 59:15	146:16		format (2) 68:2 141:20	143:21 144:25 145:2
73:8 74:4,5 100:10	149:6,10,16,18,22,23	entries (1) 43:12	except (1) 1:7		formatted (1) 141:19	147:12,15 151:4,8 152:6
134:11,21 140:8 143:13	efficiency (1) 50:22	entry (12) 19:13 59:3,4,11	exclusive (3) 118:24 133:5		forward (1) 87:25	154:8 155:2
155:10 159:24	efficient (3) 51:24 141:11	61:2,3,8 134:4 135:7,11	158:1		found (10) 4:8,14 5:1 55:2	157:13,13,14,16 159:10
dominant (2) 64:18 149:14	143:13	136:16,19	exclusively (1) 156:7		94:4 106:7 113:12 153:1,5	gets (11) 25:15 69:23
done (11) 9:1 12:14 27:14,14	effort (1) 5:24	equal (3) 115:4 138:20	exclusives (1) 151:20		161:19	104:10,11 117:19
52:25 113:18 136:8 139:13	either (19) 27:14 37:3 39:22	157:10	exercise (2) 27:19 42:24		four (1) 142:17	120:4,19,20 123:19 134:25
140:6 154:18 155:18	40:19 48:7 49:17 54:22	equality (1) 125:18	exhaustive (1) 155:18		framework (3) 91:9 98:23	142:10
dont (61) 19:16 27:14 31:13	73:3 77:8 80:23 91:25	equality (1) 126:3	exist (2) 16:17 71:14		110:8	getting (12) 32:7 38:13
33:3 39:2 42:2 43:3	99:10,14,18 127:2 131:20	130:1 137:21	existing (1) 55:7		franchise (1) 145:20	58:10 61:4 64:22 73:16,17
45:17,20 48:2 50:8 65:13	144:10 145:22 158:22	equilibrium (2) 133:11,14	exists (2) 62:25 121:24		frankly (3) 39:22 64:6 136:1	105:15 129:8 142:22 157:8
74:8,16,18 75:24 79:19	electronic (3) 2:1,17 4:15	equivalence (1) 126:3	expand (1) 7:6		free (5) 12:18 18:15 26:17	160:8
80:20 83:25 86:4 90:20,25	element (3) 24:11 119:10	equivalent (5) 12:12 75:17	expect (28) 63:10 106:7		27:10 134:11	gin (1) 28:13
95:2,11 98:6,10 100:24	147:4	126:2 132:24 137:14	107:11 108:4,10,23		frequently (1) 98:9	give (11) 5:14 48:3 81:20
101:13,13,18 104:13,16,18	else (6) 67:4 99:7 111:22	essence (2) 31:25 40:6	109:1,4,23		fresh (1) 1:4	95:4 105:11 106:16 122:2
105:3 107:25 117:8 118:11	133:21 157:10 158:9	essential (4) 27:11 29:4	110:5,10,13,21,22,25		friendly (2) 62:13,19	126:13 134:11 148:14
119:21 125:24 126:13,17	elsewhere (3) 47:25 60:18	33:1,3	111:4,15 113:23 115:21		front (2) 83:18,19	153:14
127:1 128:21 129:13 134:2	139:5	essentially (46) 11:6 14:11	116:10 123:5 133:20 128:24		fuel (1) 115:8	given (11) 5:21 6:9 13:24
135:9,18,19 136:3 145:16	emanating (1) 63:10	31:23,24 32:4,12,14 33:25	131:21 147:17 157:13,14		fulfil (1) 90:1	21:25 29:1 53:9 56:18 95:1
146:6 147:24 148:1,1	emphasise (1) 42:23	34:4 35:14 37:14 39:2,12	expected (3) 9:9 106:21		fulfils (2) 38:17,22	105:24 120:4 131:17
153:7 154:5 156:9,15,18	emphasised (1) 42:5	44:9 46:21,23 60:10,21	157:16		full (2) 5:24 42:24	gives (2) 17:12 35:14
157:21 158:11	empirical (4) 66:9 92:4 94:9	61:1 73:9 76:16 82:4 91:23	expense (1) 122:13		function (4) 30:11 36:6,7	giving (4) 14:13 67:3
dotted (1) 116:20	159:3	92:25 93:19,22 94:2 99:4	expensive (2) 136:19 142:19		107:23	145:23,24
double (1) 80:15	empirically (1) 37:3	108:14 119:14 120:1	experience (5) 51:22 77:11		functionalities (2) 18:3 103:1	global (1) 151:15
doublecheck (1) 79:16	enable (2) 43:18 126:15	123:17 126:20 128:1	92:17 131:20,23		functionality (8) 17:19	goes (34) 32:10 35:15,24
doubled (1) 56:5	enabling (3) 34:2 109:2	130:23 131:13 134:13	experiment (16) 90:25		32:18,24 33:6,9,12,23 35:2	36:11,11 43:9 47:20,24,25
doubt (3) 52:12 65:10	161:1	138:9,11 139:8 145:25	91:20,23 92:5,16,19,20,21		functioning (3) 65:7 70:17	48:5,7 71:6 77:15,17 81:11
160:12	encapsulated (1) 51:14	152:6 155:1 158:20 159:15	93:18 94:22 97:2,10		71:7	85:19 86:2 93:23 102:19
down (21) 2:12 53:20 57:18	encourage (1) 62:12	160:1	99:3,13 101:23,25		functions (1) 73:6	104:13,17 107:21
58:1 61:21 62:4 64:19	encourages (1) 63:18	established (2) 58:22 137:15	experiments (3) 91:8,16		fundamental (2) 27:5 36:12	114:11,23 116:1 117:3,7
83:20,21 95:12 97:17,24	end (27) 30:24,25 33:14	establishing (1) 42:7	126:22		funnel (7) 129:3,5,7,10,13,25	118:16 119:12 120:25
108:17 111:16 115:24	39:17 44:17 62:19 93:3	etc (6) 41:7 77:8 97:5	expert (13) 1:18 2:19,22		130:2	121:3 126:11 131:4 156:7
116:4 127:10,11 129:7	106:7 107:2 108:23	105:15 149:12 154:14	3:3,6,10,14,21 4:10,25		further (15) 14:16,21 20:25	13:22 17:4 32:1
140:21,22	109:21,25 111:19 112:4	europe (16) 23:22 69:4,16	5:13 154:20,23		31:3 48:14 53:20 54:1 55:2	58:2 59:22 64:7 67:19
downhill (1) 112:2	115:14 125:19 130:1	70:3 74:23 75:1 77:22 85:9	expertise (1) 68:25		63:12 65:17 105:6 125:16	68:10 69:21 73:3 77:10
draw (10) 10:23 27:5 31:2,8	133:25 134:3 137:9 141:6	86:24 87:1,4 124:19,24	explain (4) 39:24 81:21		129:7 131:6 154:10	82:20 85:18,20,22 86:3
42:21 43:20 90:23,23	146:9,21,22 149:15 152:12	135:15 156:2,8	127:1,4			87:6,7,10,19,20 89:11,24
117:22 153:10	161:3	europees (3) 46:22 77:24	explained (1) 40:16			91:1,9,19 99:11 101:20
drawing (2) 44:7 76:9	ended (7) 87:13 107:14	86:12	explains (3) 40:2 47:14 53:21			102:3,8,9,10,11
drawn (2) 12:12 23:19	108:3,11 112:8 132:11	evaluate (5) 28:5 35:16	explanation (2) 40:17 98:18			103:3,13,19 105:11
draws (3) 27:23 35:25 40:24	148:3	91:10 92:3,24	exploit (1) 51:7			110:11,13 113:16
driven (3) 9:3 20:20 100:13	ending (4) 109:16 110:5,9	evaluation (3) 35:12 91:11	explore (2) 68:1 132:5			114:7,13,14,16
driveway (1) 122:5	112:7	99:16	express (1) 141:13			115:8,23,24 117:13 119:24
driving (2) 101:14 148:10	ends (3) 124:11,12,13	even (6) 56:17 63:12 113:7	expressing (1) 131:1			121:14 123:22 128:19
dropout (1) 31:7	enduring (1) 150:7	122:13 145:13 160:9	expressly (1) 6:6			132:5 141:8,21 142:20
due (2) 53:7,14	energy (2) 154:1,4	eventually (1) 122:6	extent (13) 16:25 59:7 60:16			143:22 144:8,20 147:25

154:25 155:21 157:23	handful (1) 45:6	25:6 26:9 27:14 31:21,23	identifying (1) 50:25	indicated (1) 134:8	32:10 33:4 42:3 46:10	jump (1) 60:24
158:3	handicap (1) 134:13	33:3,20,25 34:3,10,14,18	ie (2) 123:16 159:14	indirect (6) 20:7,10,12,14	48:12 49:20 61:18 62:1	K
gone (7) 14:25 57:18 97:5	hang (1) 88:10	37:10,11 38:10 40:4,16	ii (1) 54:4	61:1 103:10	68:10,17 69:25 70:17	keep (2) 12:5 65:11
112:23 145:11 160:20	happened (4) 125:7 152:25	41:4 43:1 46:8,9	iii (1) 54:7	individual (5) 26:11 88:12	78:15 79:6,17 80:19	keeps (1) 64:17
161:15	153:3 160:2	47:8,14,17,20 48:3,15,20	illuminating (1) 42:13	98:14 138:18 144:10	88:7,17 89:6 90:21 91:1	kelkoo (8) 35:18 100:3
good (21) 1:3 8:12,13 9:22	happening (2) 41:5 77:19	50:1,8,13 51:11,20	illustrations (1) 156:3	induce (2) 134:4 136:16	93:12,21 119:9,24 123:15	120:22 151:1,1 158:24
15:17 29:6 36:15 37:7	happens (4) 104:18 113:25	52:10,15,21 53:18 57:21	im (49) 38:21 44:24 66:16	inducing (2) 136:18 144:18	126:17 130:2 131:11 133:3	159:6 161:15
41:20,22 63:22 67:2 92:6	145:12 160:5	58:15,17,25 59:17,24	75:6 78:21	inevitably (1) 52:6	135:2 136:11 160:20	kelkoos (1) 121:2
99:18,21 100:1 110:19	happy (2) 50:7 115:14	60:2,8,20 61:20 63:24	84:8,10,12,12,12 86:21	infer (4) 12:14 96:18 133:21	introduce (2) 2:14 19:19	key (6) 25:8 52:4 69:15
124:14 141:14 143:13	hard (7) 5:20 10:9 59:3,16	65:22 66:14,16 67:13	89:8 94:19 95:4 98:22	inference (4) 43:19,20	introduced (5) 55:19 67:17	70:14 89:19 143:2
145:5	77:8 110:20,24	68:5,18 69:6,8,10,13	108:5,14 113:10 124:9	44:7,12	97:14 125:8 131:5	introduction (2) 25:13
goods (1) 39:1	harm (1) 73:4	70:13,19 74:2,3,25	125:25 126:16 127:20,20	influence (2) 70:7 74:12	125:20	inventory (2) 76:25 159:16
google (181) 4:1 7:2 10:22	hasnt (2) 75:7 128:18	75:13,24 76:2 77:13	129:13,18,20,24 130:1,3	influenced (4) 69:24 70:5	invest (7) 102:25 103:18	invest (7) 102:25 103:18
12:1,9 22:20 23:19,21	hate (1) 148:16	78:10,13 79:5,13	139:3,20 141:4	87:15 90:8	106:17 157:5,11,12,15	investment (3) 18:7 59:11,20
24:5,6,8 25:5,22 40:1	havent (11) 26:15 33:9 60:8	80:6,9,11,13,16	143:1,9,9,11,15,22 146:12	informal (1) 65:12	investments (1) 116:11	involved (2) 64:16 74:17
43:10,10 45:9,22,24,24,25	81:14 86:15 89:6 129:5	81:6,18,22,25	147:21 148:14 149:3,13	information (48) 9:2,13	102:17,17 105:17	involves (4) 8:19 52:18 63:7
46:10,22,25 47:18	140:1 149:2 152:11 154:18	82:2,9,11,13,22,25	152:1 153:14 154:25	10:11 13:1 14:2 16:13,25	115:20	iron (1) 153:14
49:19,20,20,22,23 52:11	having (11) 12:2 14:25 17:9	83:10,13,19,23,25	155:19 156:21 162:3	17:11,13 20:23 32:8,10	isnt (8) 91:22 120:6 128:6	know (119) 6:2,4,9 10:2,5,25
56:11 61:15,16,24	header (3) 92:25 93:10 94:1	84:2,8,13,15,24	image (12) 1:11 11:1 77:4	43:14,17,22 44:17,20 66:6	129:24 130:9 145:6 152:3	12:1 14:25 17:6 18:10
62:11,22 65:9 66:18,24	heard (11) 17:12 33:18 65:8	85:3,7,11,13,18,25	94:20,21,25 95:2,18,22	71:18 81:20 84:4 86:9	160:25	19:11 24:20 26:4,10 27:25
67:17 68:9	head (1) 88:24	86:8,11,17,21,23	101:9 127:7,9	98:6,10 99:20,22	issued (1) 1:5	30:21 31:19 33:11 34:22
69:3,4,13,16,19,19 70:2,20	hearing (1) 162:16	87:1,8,12,21,24	images (17) 8:7 15:23 70:8	104:13,16,19,23,25	issues (1) 42:4	35:8 37:18,19 40:19 41:11
73:1 74:11,23,23,25 75:1,7	height (6) 110:4	88:4,6,17,20	77:8 92:9,11,13,15 93:13	105:2,4,5,18 106:1,3	items (1) 70:7	44:2 45:14 52:25 59:9
76:17 77:20,22,24 79:1,6	held (1) 14:25	89:4,6,8,16,18 90:16	94:3,12,14 95:17 97:25	117:9,19 128:18 135:19	iterations (1) 28:5	63:14 67:17 70:10,22 71:4
80:19 81:18 83:14 85:9	help (2) 42:21 105:6	94:17,19 95:1,6,15,25	98:1 99:1 105:22	156:21 157:22	itll (1) 128:5	73:4,18 74:16 76:11,13,22
86:12,23	helpful (8) 42:13 94:20,24	96:17,25 97:10,13,20,24	imagine (4) 62:1,3 106:16	informed (1) 43:18	its (156) 4:14 9:6 21:14 24:6	77:1,8,14 78:25 79:2 80:16
87:1,3,15,19,23,25 88:8,24	helpfully (1) 42:5	98:15,20,22 99:9 100:22	140:19	infrastructure (1) 18:8	25:23 26:3,4,4 27:19 28:4	83:25 84:6,18 89:18
89:2 91:17,24 92:14,21,23	hence (2) 41:21 121:13	101:5,7,16,18	impact (22) 25:9,14 49:2,7	infringement (19) 107:2,15	29:17 35:12 40:3,14 41:13	90:11,20,25 92:10
93:18 94:2 96:1,8,10	here (27) 4:5 9:3 13:4 23:8	102:6,11,14,17,23	54:5,7,9,24 57:21,23	108:3,18,22 109:8,16,18	46:14,18 47:17,22 51:21	94:14,20 95:3,11 96:25
97:3,5 98:2,7,17	hesitated (1) 14:13	103:2,21 104:4,11	58:3,6,25 59:2,6 60:16	110:6,9 113:11,20,21	52:11 58:2 63:5,18	97:1 98:2,11 99:6,24
99:6,11,21,24 100:17	hierarchy (1) 131:7	105:1,20 106:5,11,15	62:5 103:2,21 111:20	115:18,20 133:25 134:3	55:12,22 69:1,16 70:19	101:13,13,17,18,20,25
101:1,11,23 102:15 104:11	high (23) 20:3 60:1,22 61:3	108:5,10,21,25 109:11	157:23,23	137:9,15	73:5 75:2,4,9,10 76:9,22	104:18 105:3,13,14 109:7
105:21,24 108:19	73:2 110:7,10 113:5	116:6,14,18,22	impacted (1) 158:8	infringing (2) 106:6 153:1	80:6,13 81:6,14 83:1,2	112:1 116:4,5 118:15
110:16,17,22 111:7,24	helpful (8) 42:13 94:20,24	117:2,6,14,17,19	impacts (3) 39:20 60:11	inherent (5) 53:14 64:25	87:2,16 89:10,20 90:6,24	119:6,17 120:8,15
112:13 113:4,9,12	helpfully (1) 42:5	120:23,24 123:16 124:23	157:19	66:20 89:13 90:18	92:22 93:22 95:15,15	123:6,16,19
114:1,12,14 115:11	hierarch (2) 41:21 121:13	125:3 126:9,10,20	imperfect (2) 86:9 117:9	inherently (6) 61:22	96:3,17 99:10,11,11,11,12	126:16,18,19,21 129:13,21
116:7,23	here (27) 4:5 9:3 13:4 23:8	127:6,15,22,25	implications (3) 39:7,8	65:22,24 89:16,22 125:24	100:8,14 101:7,23 104:5	130:2,16,22 131:3 133:2
117:2,3,4,7,16,19,25	29:25 35:17 41:1 48:4 62:2	131:1,17,24 134:16	103:14	inhouse (1) 134:15	106:12 108:11 110:24	143:11 144:14
118:5,13,23 119:8,13	66:22 95:15,17,19	135:4,16,18 136:11 137:17	implicit (3) 40:18 147:8,10	initially (1) 132:10	111:20 112:11,13	145:16,16,19 148:1,2,5
120:4,5,19 121:1,4,15	97:11,18 113:10 117:25	138:2,3,6,22 139:20	implicitly (1) 65:6	input (3) 57:3,8,15	113:12,17 114:1	149:7 151:13 154:3,5,12
123:19 124:11,12,15,19,24	123:24 127:15,25 144:8,20	140:4,24 141:3,23,25	implies (2) 63:8 86:18	inpsut (3) 57:3,8,15	119:3,4	162:3,11,11
126:1,12 129:14 130:2,8	145:3 150:9 154:25 155:5	142:4,6,9,13,15,17,20,24	imply (2) 64:23 86:18	instances (3) 100:4 120:17	120:5,7,12,13,18,24	knowledge (3) 3:22 5:17
131:4 132:17 133:5 134:5	156:10	143:1,7 146:1,2,12,15,21	implying (1) 30:9	161:13	121:10,15 123:25 124:14	12:19
135:15,20,23,24	hesitated (1) 14:13	147:3,6,10,14,17,20,24	important (31) 11:17 12:15	instead (4) 43:23 85:14	125:22 126:3	kpmg (2) 68:22,22
136:1,2,5,7,12 137:7,20	hierarchy (1) 131:7	148:8,13,17,19,21	16:9,14 21:4,11 25:3,6	95:25 158:20	127:10,11,13,20	L
139:3,6,25,25 140:11,16	high (23) 20:3 60:1,22 61:3	149:1,11 154:20	28:9 29:9 34:10 37:11	instructed (1) 6:16	131:15 132:10,19,20,20,22	labelled (1) 155:24
145:23 149:20 150:1	73:2 110:7,10 113:5	156:5,15,21,24 157:18	42:6,7,19 44:25 45:5 46:9	insufficient (1) 28:7	128:17,12,16,25 130:20	lack (2) 60:15 138:24
153:15,19,21 156:1,1,2,7	116:4,7 121:20 122:3,6,24	159:6 160:11 162:2	48:16,25 49:3 57:3 58:4	insurance (3) 13:4 153:16,22	131:15 132:10,19,20,20,22	landing (1) 96:23
googles (52) 19:14 22:15	123:1 133:8 139:10,16	163:3,7	90:21 94:10 100:11 106:12	insurmountable (1) 59:15	133:15 135:4,13,18,25	language (2) 152:20 155:5
26:13,15 33:8 41:15	140:2 144:24 150:5 152:15	hunts (2) 79:24 144:7	149:5,17 159:4 160:7	integrated (1) 118:24	136:13 138:13 143:14	large (14) 38:12 45:1,20
42:12,14,15 48:19 49:24	157:16	hurdle (1) 60:22	impossible (1) 59:4	intelligent (1) 105:11	144:23 145:16 146:8,24	79:21 110:11 118:2 120:13
53:21,24 54:17	higher (11) 11:22 20:5 46:1	hypotheses (1) 101:19	improve (5) 21:9,14 106:18	intent (2) 159:23 160:18	147:10 148:13	121:1 140:4,12 147:22
55:12,20,24 56:4,7,8 61:14	51:5 52:7 65:1 133:18	hypothesis (2) 149:2 153:24	158:6 161:1	interact (6) 39:20,22 63:9	149:16,8,14 150:25	149:25 153:9,12
62:5 67:20,20 69:19 73:20	134:14,14 141:22 144:13	hypothesising (1) 147:7	improved (1) 51:5	73:6 75:14,15	154:17 155:4 156:9	largely (8) 68:5,6,20,24 69:1
77:14 86:2 89:20 93:11	highest (1) 148:25	hypothetical (1) 138:22	improvements (2) 102:25	interacting (1) 71:22	158:11,11 159:19,23	88:8 121:14 126:20
94:4 95:4 97:7 101:21	highlight (2) 94:8 103:20	hypothetically (1) 141:4	157:6	interaction (4) 30:23 38:17	160:16,19 161:23	larger (1) 45:21
108:1,24 109:4 111:15,21	highlighted (2) 29:24 100:3	I	inasmuch (2) 105:20 159:23	70:21 72:22	itself (11) 22:21 41:12,13	largest (1) 46:20
114:17 115:2,21,22,23	highlighting (2) 8:7 36:23	i14 (3) 3:11,12 5:1	inaudible (10) 2:6 40:23	interest (2) 22:2 38:13	76:20 77:19 99:11 100:5	last (3) 4:12 116:19 149:8
116:3 122:6 124:18,20,23	highly (6) 25:20 73:19,21	i142 (1) 3:13	60:4,6 61:5 82:24 89:9	interested (4) 20:3 29:22	120:9,21 133:6 149:9	late (1) 55:20
125:1 135:17,19	121:5 123:20 155:16	i1432 (1) 29:20	91:3 139:17 140:12	41:8 62:16	100:23 108:6 109:15	latency (2) 8:1 15:12
grateful (1) 1:16	history (1) 17:12	i1434 (2) 29:21 42:18	inbound (1) 41:21	interesting (4) 38:24 130:24	114:20	later (6) 6:18 54:12 90:12
great (1) 128:6	hold (1) 90:2	i144 (2) 3:17 5:5	incentive (7) 11:3 103:18	131:7 152:17	ive (7) 87:24 88:17,21	118:18 126:25 127:1
greater (5) 76:14 109:5	holding (1) 114:25	i1445 (2) 47:5 78:8	125:7 135:9 157:11,12,15	interface (2) 8:6 15:22	iv (1) 54:9	launch (1) 56:3
111:8 113:16 122:13	holds (1) 90:3	i2 (1) 2:18	incentives (4) 51:1 102:25	intermediaries (9) 33:7	judgment (5) 1:14 8:19	launched (1) 125:14
green (1) 36:10	homing (2) 150:25 152:7	i21 (1) 2:18	134:23 135:12	75:10 77:23 106:2 134:23	52:19 60:3 65:4	lawful (1) 109:22
grid (1) 16:3	honest (1) 74:6	i211 (1) 2:18	include (5) 16:8 69:2 85:9	intermediary (11) 70:19	judgment (5) 1:14 8:19	lawyers (1) 162:6
group (1) 38:8	honesty (3) 69:14 96:17	i21133 (1) 50:16	87:3 116:1	74:3,12,16,20,21 75:8 76:4	journey (2) 104:2 149:7	lcd (1) 129:16
grouping (1) 83:18	148:5	i21158 (1) 116:15	included (5) 19:11 24:8	87:11 104:17 121:5	journeys (5) 87:22	lead (4) 11:24 28:7 137:12
groups (1) 91:14	host (3) 12:25 18:9 62:2	i21187 (1) 137:19	26:15 84:3,5	intermediated (1) 69:8	88:2,3,11,15	145:10
gse (14) 69:4 75:14,19 76:16	hotel (3) 151:18,19,25	i21264 (1) 2:21	includes (4) 39:13 43:6	internal (1) 50:16	jowell (8) 1:20,22	leads (3) 11:21 143:10 158:1
102:5 119:25 120:2,21	hotels (1) 151:14	i21265 (1) 2:24	72:23 80:10	internet (2) 66:15 149:10	2,9,11,15,18 3:12 163:4	learned (1) 30:22
126:2 132:9,19,20 133:13	hour (1) 36:16	i31 (1) 4:9	including (8) 35:1 42:15			

leave (1) 144:3	london (2) 10:5 36:8	27:4,11,15,19,22 28:10	mention (1) 101:19	moment (7) 43:8 53:3 67:2	N	130:20 132:14,16,20 134:2
leaving (1) 102:16	long (3) 36:13 84:1 100:9	29:12,15 34:23 35:8,12	mentioned (7) 20:8 29:23	72:10 115:1 124:3 136:21	name (1) 24:6	136:10,17 137:24,25
led (1) 140:21	longer (3) 31:16 36:16 93:7	36:2,20 37:1,8 40:2,12	30:7 48:15 76:23 77:23	monday (1) 1:1		144:5,6 149:4 151:7
legal (5) 51:12 59:1 67:22	look (41) 12:1 33:11 35:19	41:2,16 42:3,8,12,20,21,24	157:9	monetisation (1) 27:1	narrow (6) 75:11,21 76:3,4	152:20,24 153:7,24 155:17
69:14 95:4	36:9 37:23 39:6,7 43:24	48:12,17,19 49:3,4,12	mentions (2) 39:10 76:24	monetise (4) 11:13 25:24	121:13 135:13	156:6,9 157:8,18 158:10,16
legs (1) 60:23	46:22 59:5 61:2,6 63:17,18	50:6,21 51:8,10 57:7,14	menu (4) 83:15 86:4 87:3	98:13 160:23	narrower (1) 13:11	159:13 161:5,7,23 162:3,8
less (11) 45:15 57:8,10,15	66:1,16 71:16 81:8 86:11	58:21 62:22,24 63:4,6,25	155:24	monetised (7) 22:15	national (1) 157:3	163:5,7
58:14 73:8 89:2,4 133:16	89:10,12,18 90:6 94:19	64:15 65:7,17 67:23	merchant (45) 14:5,5,17	23:2,3,23 24:11 26:25	native (1) 150:24	nobles (5) 58:11 60:17 70:13
140:24 143:15	95:17,18,22 101:4,9	110:24 119:15 131:16	15:18 23:16 32:17 33:16	27:10	natural (2) 107:20 114:17	124:8 134:17
lesser (1) 76:14	106:15 114:4 133:11 137:1	134:10 135:1,2,3	35:20,21,22 37:7,25	monetises (2) 25:5,22	nature (8) 49:6 56:20 62:25	nobody (1) 156:19
lesson (3) 149:5,6,9	139:6 142:1 144:2 149:20	139:7,8,9,10,16,18,19,20	39:13 18 40:1 44:1 49:6	monetising (1) 119:1	103:5 125:24 146:21	nod (1) 7:14
let (10) 29:16 32:2 35:16	150:12 155:18 157:4	140:2,5 146:5 147:9,25	64:17 66:8 70:24 72:21	money (6) 120:4,20,20	150:14 153:25	nondiscriminatory (1) 126:6
37:1 45:24 48:3 108:17	161:23	149:12,15,20 150:5,7,11	73:7,10,14 75:13,18	134:12 145:23,24	100:25 106:10 107:25	none (2) 55:7 126:10
114:9 115:14 142:7	looked (13) 27:17 62:1,5	152:8,23 153:2,4,20 154:8	79:10,10 85:15 87:10	moneysupermarketcom (1)	near (3) 9:2,21 130:1	nongoogle (1) 134:9
lets (15) 48:20 50:1 57:25	78:9 88:7,17 89:6 116:14	155:9 157:4	99:12 102:20 107:22	146:13	nearily (2) 75:2 143:13	nor (1) 155:17
89:25 90:2 138:6 139:1	146:4,16,17,18 155:17	marketing (2) 74:21 76:4	117:13 119:2 128:20,21	monopolist (5) 138:7,8,15,23	necessarily (11) 9:10 57:23	normally (1) 83:19
141:3,4 142:1 143:7,12	looking (18) 13:10,12 27:8,9	marketplaces (1) 37:25	131:22 150:12 157:24	140:6	100:25 106:10 107:25	north (1) 133:9
145:4 150:11,19	37:6 42:11 45:10 55:17	markets (32) 27:4 29:8	158:3 159:2,10,11 160:12	month (1) 56:3	141:23,25 145:6,22	notably (1) 158:19
level (17) 57:17,18 58:12	61:22 66:21 78:5,21	mercantonline (1) 70:20	merchantonline (1) 70:20	more (57) 10:6,7	160:9,17	note (4) 115:14 155:3,12,14
70:21 109:3	109:22 128:15 146:22	merchants (95) 13:19 16:8	18:21 19:7,23 20:2,9,11	20:1,2,16,17 21:5,6 24:18	necessary (5) 6:7,8 134:1,2,4	nothing (1) 74:5
110:3,6,7,8,10,12 111:13	153:2 155:12 160:17	18:21 19:7,23 20:2,9,11	23:4 24:2,7 25:24 26:14	31:3 34:20 36:22 39:10	need (33) 18:11 19:22,23	nothings (1) 119:5
112:16 113:5 115:23	looks (12) 53:3 60:12 66:2	144:1 146:7,22 148:2,9	32:8,15,16 37:17 38:4,9	51:24 58:22 61:12 66:8	22:13 43:2,3,4 58:7	noting (2) 155:2,19
133:3,9	96:16,17 109:9 140:10,15	152:3,11,14,16,17,25	39:11,12,21 41:1,2,7,7	73:9 94:5 96:8,8,9,24 97:5	60:11,12,14 61:25,25	notion (2) 28:19 40:18
levelling (4) 112:17 114:13	146:4 158:13 159:8,12	153:12,17 154:19 155:13	43:5 46:16,17 47:24	98:4,5,8,9,12 101:20	64:6,9 74:17 79:16 80:14	november (1) 97:13
115:3,20	looser (2) 39:22 43:5	marketwide (1) 66:10	48:22,23 49:18,22	107:19 114:2,5,9,19	83:19 86:1,8 94:23 100:25	nuanced (1) 24:18
levelness (2) 110:2 111:5	lose (1) 51:10	marks (3) 38:11 88:14	64:16,19 65:2 66:13 70:23	120:10 121:16 130:5,20,21	105:10 107:9 114:16	number (31) 16:7 20:9,11
levels (4) 110:13 111:9	loser (1) 64:24	152:14	71:10,12 81:8 84:24 85:19	131:8,12 136:19 141:11,22	115:6,7 126:17 142:18	43:6 46:12,15 54:3 64:21
144:24 152:15	loses (1) 58:4	marylebone (3) 36:11,14,16	87:7 88:12 89:14 90:5,14	143:10,21 145:13,14	154:3,5,12	73:6 76:21 79:22 80:7
lewis (8) 38:10,15,16,17,19	lost (2) 158:4,5	match (7) 21:7,14 37:21	96:9 97:22 98:14	146:7,22 148:3 149:13	needed (1) 133:19	84:14 89:11,24 100:4
41:7 44:3 88:14	lot (20) 9:20 14:22,25 61:3	125:7 134:7,12,21	102:9,11,15 103:9,10,24	157:3 158:23,25 161:12	needs (8) 13:23,24 22:11	101:18 120:17 125:6
like (56) 1:17 2:14 12:6,17	62:9 85:25 88:10,12,15	matches (1) 37:15	104:6,15,16 105:9 106:21	morning (5) 1:3 6:22 36:9	32:9 51:24 59:19 61:24	126:24 127:14,18
13:3 14:18 15:21 18:15	92:11 96:16 102:1 103:19	matching (6) 15:17 32:12,15	113:1 116:12,25 123:18	75:23 162:1	120:13	128:10,12 129:18 132:21
21:12 26:19,20 27:7,25	116:7 126:16 145:1,2	33:15 141:12 143:10	128:10 130:12 131:12	most (16) 7:17 8:14 42:7,19	negative (1) 157:22	136:4 146:9 147:16
28:6,13 31:1,9 32:15 34:16	150:13,16 152:2	material (11) 49:2 50:8 74:5	134:23 135:12,14,22,23	80:22 86:14 87:18,22	neither (2) 136:13 155:17	153:9,12
36:21 38:5 39:8,11 41:7	lots (9) 40:11 62:10,25 89:1	89:11 124:5,9 139:6	136:7 139:12 140:24	114:10,23 116:25 121:8	network (26)	20:1,7,10,12,14,16 21:11
53:12 59:5 60:12 63:6	123:2,2 128:22 129:23	140:20 156:18 159:9,22	143:10,11,20,21,23 145:24	133:12 147:18,21 153:12	41:6 57:9,9 71:13,23,25	41:6 57:9,9 71:13,23,25
65:13 72:5,24 73:23 75:2	150:16	materially (2) 87:14 156:15	151:2,3 157:24 158:5	mostly (1) 160:2	103:22 146:8 147:15	148:9,10
90:24 92:14 93:22 94:17	low (19) 70:21 73:2 103:4	mathematical (1) 84:18	159:10 160:6,23	motivated (1) 62:15	149:6,10,16,17,22,23	150:14 151:3
97:4 106:22 109:9 114:4	110:7,12,13 112:11,12,13	matter (8) 2:3 6:5 9:12	merger (2) 80:17,20	motivations (1) 136:12	150:14 151:3	networks (2) 103:11 151:14
120:9 124:20 129:17	113:5 121:21 132:21	40:22 94:12 99:16 125:12	merits (16) 50:13,19	motive (1) 116:8	neutral (1) 149:13	newspaper (2) 159:18,21
133:11 135:25 142:23	133:15 145:1,12	153:18	51:3,14,18 57:2,14 58:24	motorcycle (2) 148:20,21	next (15) 17:7 56:1 94:3	97:16,17,24 122:25
146:10 149:1 151:21	157:8,13,14,19	matters (3) 78:3 111:17	106:16,24 108:12 124:25	move (6) 12:21 22:15,21	nicer (1) 96:16	123:7,8,9 127:11 137:11
153:16 158:23 159:1,16,19	lower (11) 52:7,13 141:10,13	150:4	125:11,14 132:15 136:16	79:24 98:18 122:4	143:12 145:4 150:19	143:12 145:4 150:19
160:20	143:20,23 145:22 155:21	matthew (4) 2:10 6:23	method (3) 60:21,25 136:18	moved (5) 22:17,19 23:2,21	niche (9)	148:3,6,12,13,16,17,19,24,24
likely (5) 10:3,7 11:19 131:3	157:10 160:15,18	163:3,7	metrics (2) 105:23 106:22	79:7	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
150:21	loyal (2) 151:11 152:9	maximum (1) 121:11	microphone (9) 4:18	moves (1) 119:17	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
limb (5) 109:17,19,19	lunch (4) 6:21 67:5 78:5,9	maybe (9) 17:22 29:16 79:15	might (86) 9:18 10:12	ms (125) 25:22	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
112:8,9	limit (2) 100:16 123:10	88:17 107:8 108:17 110:1	11:23,24 13:10,11	26:2,6,13,19,25 27:3,16	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
limited (5) 68:11 76:6	103:17 104:4,5	130:20 132:11	14:2,20,22 16:3,3,4,22	29:1,4,13,20 33:1,18,21	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
103:17 104:4,5	limiting (1) 138:17	mean (67) 11:15 17:14 24:24	17:5,11 20:20,22	34:2,20,22,25 35:4,21 38:8	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
line (8) 12:12 40:25 60:4	61:21 62:4 116:20 119:17	25:12 26:22 27:13 29:1,24	30:17,19,20,21 31:5,18,19	41:1 61:9 64:13,21,25	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
159:12	159:12	34:3,10 35:6,25 36:4,7	36:8,14 38:3 42:13	65:4,15 66:10,15	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
lines (1) 18:19	major (3) 8:14 98:16 151:18	38:8 43:20 45:4 46:14	43:21,22,25 46:16 48:7,13	78:4,12,14,20,24 79:11,25	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
link (25) 14:4 34:17 44:2,4	majority (12) 44:15,15 79:23	48:25 51:18,22 63:2 67:17	49:1 50:3 55:16 63:12	80:3,8,10,15,25 81:2,16,24	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
45:24 66:5,7 68:8 80:23,24	86:19,19 87:19 102:11	68:18 70:21 72:18 73:17	80:3,14 90:16,23 91:10,11	82:1 83:5,16,22,24	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
83:8,15 87:3 92:25 93:5	116:22 117:3 123:18	75:13 78:18 83:20 86:6,7	94:20,24 99:19,20 100:10	84:1,6,9,23 85:14,24	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
96:15 99:17 104:19 117:24	124:12 131:4	87:16 88:6 89:13,18,23	101:2 110:7,7 112:9	86:6,10,16,18,22,25	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
118:3 128:20 129:22,22	maker (1) 123:25	90:3,20 95:9 96:25 98:20	113:8,19 117:9	87:5,9,18,22	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
130:4,9	makes (9) 10:10 59:3,4 65:5	101:16 103:2 106:13	120:21,21,21,22 124:4	88:3,5,10,19,23	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
linked (2) 22:3 23:15	69:20 88:20 103:9 105:24	110:20 111:25 120:1,24	127:6 129:6,9,12,19	89:5,7,13,17 95:4,24 96:22	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
linking (5) 99:5,6,7,10,14	112:3	121:17 123:10 126:20	130:11 131:8,12 133:4	97:7,12,23 98:13,16	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
links (27) 7:16	making (9) 22:8 43:9 62:16	136:2,10,10,17 140:23,25	134:3 135:25 139:5 142:17	100:6,18 101:15,17 131:23	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
46:13,15,16,17 62:19	82:10 98:7 116:7,11	142:20 147:3,24 148:1,19	144:6 148:22,25 149:4	135:14,17 140:22	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
65:24 66:2 68:7,10 77:5,8	136:19 148:14	152:17 157:11	153:3,4,10 154:20,22	141:2,16,24	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
79:10 80:25 86:4 90:5 93:9	manage (3) 38:14 39:2 72:22	meaning (2) 32:16 121:7	161:5 162:4,5	142:3,5,7,12,14,16,19,22,25	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
94:7 95:20 96:4 97:21	managed (9) 71:15,20 72:20	meaningfully (1) 130:12	60:15 70:24 91:20 92:22	143:5 144:3 146:14,20	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
99:12 101:1 104:15 112:6	73:5,15 74:7 75:5 119:19	means (17) 8:1,15 12:3	131:22 114:5 116:4 121:21	147:2,4,7,12,15,18,22	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
128:19 130:6	122:12	46:25 48:6 50:15 57:9	122:14,15 125:5	148:6,12,16,18,20,24	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
listing (1) 42:1	manufacturer (1) 17:21	78:20 95:20 103:23 108:15	126:9,12,17 136:11 144:9	152:17,22,25 161:22	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
little (22) 22:14 27:20 30:16	manufacturers (1) 38:25	116:8 120:13 137:23	145:3,16 154:5	much (26) 9:7 24:20 34:4	148:3,6,12,13,16,17,19,24,24	148:3,6,12,13,16,17,19,24,24
36:6 38:1 48:6,13 49:10	many (11) 35:25 46:18 60:23	147:18 151:1 152:6	148:6,12,			

129:7,19 138:14,20,24 141:7 142:2 143:4,16 146:15,19 159:14 162:4,8 once (8) 23:2 45:13 93:12 96:9 108:22 109:1 113:19 125:18 onebox (1) 56:11 ones (3) 28:1 81:13 127:23 online (10) 13:19 14:5 32:16 37:22,24 39:12,17 80:17,19 89:1 onto (2) 38:15 39:11 onwards (1) 25:23 open (2) 4:7 55:16 operate (6) 9:9 10:19,23 12:11 35:8 72:2 operated (1) 25:4 operating (1) 26:23 operation (5) 42:15 52:5 61:10 63:1 105:16 operator (1) 148:24 opinions (2) 3:20 5:16 opportunity (1) 106:17 opposed (1) 12:23 opposite (1) 51:22 option (4) 49:21 73:25 75:5,5 options (1) 130:22 order (16) 7:17 14:1 18:11 40:12,13 65:20 134:3,4,13 151:4,8 154:2,6,10,11,14 organic (27) 8:12 10:15,16,20,24 11:8,20,22 12:4,5,14 46:16 48:8 58:2 60:15 64:10 78:20 79:10,11 80:24,25 82:1 83:8 84:2,4 112:22 120:14 organised (1) 15:23 oriented (1) 43:11 others (10) 7:3 51:9,25 52:7 61:12 63:9 89:21 93:16 144:4 148:4 otherwise (5) 11:14 19:7 57:10 61:16 113:17 ourselves (2) 46:4 150:10 outcome (13) 63:4,22 70:4 81:15 109:23 123:16 124:15 138:22 140:14,15 143:16 152:13 155:20 outcomes (9) 51:19,23 106:23 124:6 130:24 131:7,16 140:21 154:9 outcompete (1) 131:22 outlet (1) 10:8 outside (3) 62:24 68:25 72:14 outwards (1) 37:2 ovals (1) 30:16 over (19) 2:24 3:7,13 21:10 45:15 60:24 61:4 62:11 66:1,19 79:22 87:15 88:24 90:14 94:5 98:3 119:20 147:24 149:8 overcome (1) 100:18 overnight (1) 161:23 overrefine (1) 31:15 overrides (1) 6:14 overriding (2) 6:12,14 overspeaking (2) 65:15 156:22 overwhelmingly (1) 82:12 own (12) 18:9 62:5 63:5 89:20 101:21 113:12 114:2 134:14,15 139:12 150:23 153:22 owners (4) 37:17 39:1 159:14,15 oxford (2) 9:19 36:8	panda (9) 52:24 53:10,14,25 54:5,7,10,19,22 paragaph (9) 14:10 21:21 29:17 50:15 101:19 132:22 137:18 154:22 155:6 paraphrase (1) 137:24 parentheses (1) 14:15 paribus (1) 115:9 part (24) 10:24 11:20 12:15 23:1 29:21 42:7 48:17 52:4,11 67:20,24 69:18 74:8 76:12,17 99:8,9 119:9,11 126:1,5 139:25 140:4,12 participant (1) 65:17 participate (2) 72:7,15 participates (1) 70:16 participating (1) 12:16 participation (1) 155:8 particular (16) 7:18 12:23 13:3,24 37:14 52:23 59:9,22 61:9 62:13 73:25 121:8 128:17 137:7 151:11 153:7 particularly (5) 20:3 29:22 38:24 41:10 156:9 parties (6) 1:17 11:11,12 113:4 115:23 126:3 partnerships (1) 59:21 parts (4) 119:9 148:19,20,21 party (6) 6:15 11:4 41:13 99:15,21 100:17 pass (2) 44:10 100:17 passage (2) 6:6 42:18 passed (2) 99:25 100:5 patent (1) 1:15 pattern (1) 118:17 pause (4) 29:19 51:15 132:2 155:22 pay (39) 9:17,20,24 10:1,6,13 12:13 18:22 19:3,3,11 20:6 24:21 121:7,11,19 122:4,15 123:4,7,8,12,19 138:11,20 139:11 140:24 142:20 143:14,15 144:9,14,19,25 145:1,9,11,13 160:15 paying (5) 6:16 11:2,4,5 143:15 payment (13) 9:1 10:20 11:10,20,21 19:1,8 23:17,20 25:8,13 26:11,12 payments (2) 19:1 23:6 pays (2) 24:17 145:8 peak (2) 36:8,12 people (32) 24:21 30:23 33:19 34:2 45:1 46:6 61:4 62:12,17,17,20 64:11 65:13 66:15 70:5,10,11 71:19 88:12 90:18 92:12 121:24 122:20,24 123:2 133:15 134:15 144:21 151:23 152:1,3 159:17 per (11) 19:1,1,3,3,10 20:5 26:6 132:17 140:25 141:10,10 percent (1) 45:7 percentage (8) 45:12,20,21 46:5 85:16 86:6 110:25 111:3 percentages (1) 133:18 perfect (1) 65:19 perfectly (3) 50:7 74:6 94:22 performance (4) 94:16 104:24 105:5 161:18 performed (1) 161:20 performing (2) 71:9 122:8 performs (1) 71:8 perhaps (21) 1:20 2:9 10:13 11:9 31:21 44:3,4 57:1 74:13,14,15 90:7,8 94:23 97:14 103:20 111:6 118:17 126:8 128:24 137:4 148:1 period (15) 50:5 60:9 67:18 91:21 101:21 113:11,19,21 118:22 119:5 135:21	139:21 155:23 157:7 161:2 person (5) 9:24 121:8,21 123:7 145:22 personal (1) 122:2 personally (2) 42:23 67:4 perspective (15) 11:16,17 50:20 56:24 59:2 63:2 68:6,12 71:8 74:3 92:4 94:9,11 126:10 130:10 persuaded (1) 44:14 pertain (1) 143:17 petrol (9) 9:2,4,5,15,17,19,25 10:1,12 phone (1) 88:15 phones (1) 88:13 picked (1) 7:14 pickford (6) 1:19 4:1,3,7 5:19 163:6 picking (1) 107:21 picture (1) 74:15 pla (23) 43:23 45:6,14 46:1 49:21 72:22 73:7 82:20 101:25 107:21 120:20 124:1,2,13 126:4 127:2 128:1 130:23 131:2 159:1 161:9,12,20 place (6) 15:8 47:3 103:12 104:24 107:18 120:3 placed (5) 107:6 118:9 120:20 122:22 128:1 placra (3) 92:12,23 99:13 placss (10) 126:4 127:3,22,25 128:2,3 129:12 130:9,23 131:5 plas (18) 22:20 24:1 30:15 49:19 69:16 90:25 91:15 97:9,9 98:14 104:25 105:22 106:4 107:4 114:8 127:23 128:12 130:3 plascias (1) 92:7 platform (6) 14:5,18 38:7,25 39:18 49:12 platforms (6) 32:17 39:13 40:1,17 43:2 103:5 143:14,15 144:9,14,19,25 plausible (3) 19:18 37:4 153:3 player (2) 139:9 153:16 players (2) 57:13 149:15 playing (35) 57:17,18,19 58:13,14 109:3 110:2,3,4,6,7,8,10,12 111:5,7,13,14,17,18,24 112:1,2,3,10,11,12,13,16,23 113:3 114:13 115:2,18,20 please (13) 2:18,18,21,24 3:2,5,12,17 4:8,12,25 5:5 127:5 pm (6) 67:8,10,12 136:23,25 162:15 points (9) 6:2 7:4 15:10 66:3 86:7 90:7,9,13 118:15 policies (1) 12:12 poor (2) 77:7,10 poorly (1) 122:8 portal (1) 73:9 position (1) 109:5 positions (1) 105:14 positive (1) 97:4 possible (8) 13:13 31:15 76:22 87:16 100:20 154:20,22 155:4 possibly (6) 34:15 58:16 59:4 97:16 148:23 149:1 postdecision (7) 47:15 50:4 67:18 82:8 135:21 155:23 157:7 postoctober (2) 68:23 70:15 posts (1) 65:13 potential (2) 30:17 124:4 potentially (18) 14:1,16 16:23 17:14 21:4,15 44:13 56:21 58:23 59:17 73:3 74:1,12 75:3 96:12,25 103:24 146:15 pound (1) 123:13	power (5) 139:7 149:12,21 150:7 152:8 powerful (1) 60:23 practice (4) 2:4 6:4 33:5 140:17 pre (1) 68:23 precise (5) 86:5 105:16 128:9 136:13 155:1 precisely (22) 14:20 25:17 26:10 45:2,19 65:16 69:14,23 76:14 83:25 86:15 92:21 93:7 96:18 97:6 100:23 101:8,13 105:4 110:20 123:5 128:7 predecision (1) 60:9 predominantly (1) 139:9 prefer (6) 66:12,13 90:5,11,18,19 preference (3) 87:9 89:14 97:9 preferences (11) 50:25 66:17,19,22 87:17,18 90:1,7 96:11 103:7 157:21 preferred (1) 94:5 present (15) 9:20 18:9 21:1 26:10 34:6 76:21 77:6 99:2 100:12 121:22,25 122:1 158:22 159:16,19 presentation (8) 8:5 15:22 23:8 28:16,17,20 45:16 68:12 presented (39) 21:9 23:10 25:7,9 30:13 31:6,18 37:13 43:22 44:1,8,16 45:13 49:1 66:19,24 69:23 73:17 74:10 91:14 93:13,14 94:3 105:25 107:24 119:3 120:18 121:20,23 129:18 130:3,8 142:10 156:14 159:25 160:1,3,19 161:9 presenting (9) 25:19 28:22 32:13 92:25 93:6 120:6 124:13,14 159:20 presents (1) 7:15 presumably (5) 10:5 51:10 141:7 143:18,23 presume (2) 9:25 61:20 pretty (6) 27:4 70:24 71:19 124:14 145:5 156:25 prevails (1) 51:4 prevents (1) 137:20 previous (4) 17:5 23:5 68:3 137:5 price (35) 9:17 14:4 16:17 17:12,21 25:18 26:6 34:9 35:1 69:21,25 72:25 77:3 93:3 120:2 121:6,18 122:25 123:5 130:25 131:3 138:8,10,14,19 141:1,18,21 143:5,14,14,16 145:1,8 153:18 pricerunner (1) 1:15 prices (13) 10:10 16:13 69:23 70:6 77:7 121:6 123:6 140:21,22,23 143:20,24 145:22 pricing (5) 9:11,13 17:13 137:21 141:13 primarily (3) 114:7 117:17,21 primary (2) 27:23 42:10 principally (1) 47:2 principle (3) 59:6 89:10 130:11 printed (1) 118:11 prior (3) 68:8 70:14 115:18 pro (1) 64:18 probably (6) 1:20 67:16 86:3 91:4 161:3 162:6 problem (4) 36:22 59:23 66:20 140:19 problems (1) 126:24 proceed (3) 43:25 44:5,18 proceeded (1) 44:9 proceedings (5) 1:6,8,11 6:19 67:11	process (7) 23:4 24:11 50:20,24 70:16 73:20 105:10 processing (1) 71:10 proctorsilex (1) 96:15 product (69) 14:4,6 15:1,2 16:16,25 17:2,21 18:2 22:17,18,18 23:6,15,15 26:22 32:6 33:16,17 35:14 37:2 38:16,18,18,22 40:14 42:1 43:10 44:2 45:9,11 46:7,21 49:22 55:19 57:15,20 98:19 101:1,11 128:5,7,8,10,11,23 130:4,6 139:24 152:23 153:2,4,6 products (28) 13:5,6,19,20,25 16:7 21:8,15 32:5,12,21 34:2 35:1 39:15 41:8 52:6 66:6 68:15 69:2,11 89:12 95:19,21,23 121:10 139:6 148:4,8 profession (1) 149:7 professor (28) 41:14,25 42:3,11 43:7 44:14 45:21 48:12 49:17 50:6,10 84:12 85:2,4,8 91:3 92:18 95:14 96:14 105:8 112:14 114:9,21,25 115:6,14 134:24 153:15 profit (3) 116:8,8 143:18 profits (1) 50:22 programme (1) 134:7 prominence (1) 73:24 prominent (1) 107:19 prominently (1) 112:22 promoting (1) 114:1 promotion (4) 109:17,19 112:8 114:1 prone (4) 53:6,13,24 56:19 propensity (1) 161:11 property (4) 22:18 23:3,20 74:24 proportion (12) 46:1,20 79:2,3 80:3 81:10 101:10 112:25 114:13,16 115:4,7 proportionate (1) 45:25 proportionately (2) 89:5,5 proportions (1) 114:14 protection (2) 100:9,14 provide (17) 14:2 17:1 18:12 27:9 32:24 64:4,11 74:14 89:25 126:3 130:13 131:19 134:22 154:2,12,15 157:25 provided (11) 16:13 32:4 43:17 46:8,13 73:1 99:23 106:1 121:10 126:21,22 providers (3) 64:3 65:11 147:1 provides (3) 11:18 66:5 99:22 providing (19) 21:24 32:18,20 34:1 44:22 72:16 73:23 75:1,4,4,5,8,10 76:2,5 125:23 126:1,2 135:12 public (1) 71:18 publisher (6) 72:5 158:19 159:4,7 160:24 161:9 publishers (4) 158:21 159:13 160:5,14 pull (2) 2:18 154:22 punishable (1) 1:11 purchase (10) 34:17 38:16 39:16 43:9,14,18,25 44:5,11 160:18 purchased (1) 14:6 purchases (1) 20:4 purchasing (2) 38:21 44:18 pure (3) 12:6 24:17 59:2 purely (1) 12:13 purist (4) 35:7 36:5 49:9 63:3	purpose (2) 25:18 124:21 pushed (1) 58:1 pushes (1) 144:18 puts (3) 27:7 32:11 60:6 putting (4) 8:14,21 21:7 62:20	Q	q (13) 2:21 3:2,5,10,16,20,24 4:12,24 5:5,8,11,16 qualification (1) 24:16 qualify (1) 149:14 qualitatively (1) 37:3 qualities (1) 75:25 quality (26) 8:11 9:14,22 15:22 16:12,22 20:4 21:10 24:19 50:23 52:13 70:11 73:1,2,2 76:25,25 77:7 99:18,18,20,21 103:11 105:23 123:12 131:13 queries (15) 7:8 13:13 21:6,6,25 56:11 79:6,7,20 80:7 81:4,13 100:9 112:24 154:11 query (37) 7:18 8:22 9:7 13:9,24,24 15:17,18 23:9,13 24:19 27:8 30:23 31:4,12 32:11,12 43:21 44:8 45:8,9 46:7,10 73:18 79:1,17,18 80:21 93:1,24 99:25 100:5 105:2 119:19 154:17 156:12,14 question (54) 25:10 31:23 34:4,20 42:13 45:1 50:12 56:22 57:1,12 58:9 59:1,12,25 60:5,8 61:9,13 62:7 66:9,23 67:22 68:18 78:6 79:18 89:20 94:10 96:19 98:21 107:7 108:5,25 110:2,19 113:18 114:9 115:16,24 124:16,24 131:15,15,24 132:1 133:7 135:18 145:3 150:10 151:22 152:14 155:4 157:1 158:12 159:3 questions (7) 6:10,24 7:1 67:14 144:4 151:13 163:8 quickly (1) 44:11 quid (1) 64:18 quite (43) 25:2,2 26:5 29:10 39:4 45:15 46:14 48:25 50:5 60:3 75:21 79:21 85:25 87:1 90:21 92:12 98:16 106:12 108:14 110:24 111:19 112:4 113:2 114:12 115:7 116:4 119:24 124:6 125:5 128:18 130:24 131:7,25 132:6 133:2,11 147:21 152:12 154:3,8 156:25 159:8,23 quizzical (3) 94:19 144:2,3 quo (1) 64:18 quote (1) 28:25 quoting (1) 155:14	R	raise (3) 112:14,16 133:24 raised (1) 152:14 raises (1) 115:2 ran (1) 26:17 range (2) 13:13 65:2 ranked (5) 7:16 52:7,7 73:19 123:14 ranking (14) 8:13,18,25 52:3,5,11,18 54:11 61:15,25 64:10,10 73:4 137:21 rankings (1) 58:1 rate (2) 20:5 24:19 rates (2) 45:6 54:8 rather (1) 6:22 13:11 21:12 25:14 28:23 82:10 91:5,6,7,10 135:1 rating (1) 16:22 ratings (2) 20:18,20	ratio (4) 107:21 110:15 113:8 119:14 rationalisation (2) 40:15 63:15 ratios (1) 119:16 reach (2) 39:25 118:7 reaches (1) 40:3 react (1) 21:8 read (5) 6:1 21:23 88:6 137:19 154:25 reading (1) 65:12 real (1) 66:18 realise (1) 9:4 realised (1) 4:14 reality (2) 87:5 147:20 really (24) 6:7 9:8 21:4 22:16 31:11 45:4 59:7 67:22,23 77:2 78:3 92:2 94:9 96:22 98:17 107:23 111:2 114:15 122:1 129:5 130:17 134:19 149:5 156:11 realm (1) 100:21 reason (15) 9:25 10:9 14:13 31:8 36:5 58:21 64:25 89:13 90:18 94:8 99:15,19 111:23 117:18 144:16 reasonable (1) 43:19 reasonably (2) 59:18 74:18 reasoning (1) 131:17 reasons (5) 35:25 55:7 135:25 136:4 158:7 rebalancing (1) 115:11 recall (2) 6:9 41:25 recalling (1) 14:14 receive (4) 18:22 22:4 30:14 70:3 received (1) 1:13 receiving (2) 70:2 90:10 recent (1) 91:18 recital (7) 21:21 53:4,5,11 54:14 55:6 137:2 recognise (1) 152:4 recognised (1) 45:8 recognises (1) 43:10 recollection (2) 41:19 45:3 record (7) 1:13 12:1 19:10 44:20 61:7 62:3 66:1 recording (2) 1:8,10 reduce (1) 103:17 reduced (3) 57:5 58:16 157:15 reduces (1) 115:2 reduction (2) 56:8 114:17 refer (4) 6:5 20:15 28:15 45:19 reference (11) 3:10 14:11 19:9,16 21:20 95:3,5 127:7,10 161:22 162:5 references (1) 161:16 referred (2) 18:5 69:13 referring (2) 32:25 156:4 refers (1) 68:21 refine (6) 17:20,24 21:1 105:7,19 158:6 refinement (1) 14:22 refinements (1) 30:18 refining (1) 31:3 reflect (2) 87:9,16 reflected (1) 122:24 reflecting (1) 21:19 reflects (2) 36:2 87:16 reframe (1) 107:8 regard (9) 12:15 29:9 33:1,22 40:8 41:22 44:16 71:21 72:8 regarded (3) 67:20 118:5,8 regards (8) 52:13 53:10 69:19 74:7 76:2 77:13 99:24 155:3 regime (1) 74:22 related (4) 9:23 47:6,8 49:5 relates (3) 22:7 37:14 126:8 relation (2) 153:2,4 relationship (7) 11:20 38:14,22 39:3,16 42:14 135:22
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relationships (5) 135:24 157:24 159:11,13 160:23 relative (9) 111:16,21 113:20 115:21,24 153:12 157:15 159:5 161:18 relatively (1) 44:11 relevance (7) 9:18 15:16 23:7,16 24:1 25:14 48:18 relevant (28) 7:7,18 8:13,14 10:4 11:6 14:2 15:18 21:4,15 25:20 27:8,9 29:8,11,15,16 35:7,12 36:19 37:8 40:12 62:24 68:4 73:21 104:10 125:17 130:17 relevelling (1) 115:1 reliability (1) 8:11 reliable (1) 91:8 reliking (1) 94:7 rely (1) 65:6 remainder (2) 78:8,9 remaining (1) 49:10 remains (2) 112:9 114:6 remedied (3) 108:10 126:11 127:2 remedies (1) 134:20 remedy (102) 33:8,21 67:14,16 68:2,10,16 69:17 70:16,17 72:7,14,15,23 73:10,13,20 74:22 76:2,12,20,22 77:17,19 78:2,3 79:8,19,25 80:20,21 81:4,5,10,11,13,14 82:1,4,5,8,19 83:4 84:20,21,25 85:5,6,15,17,19,22 86:20 102:5 103:23,25 104:8,9,12 105:6,16,19 106:6 107:2,5,14 108:3,7,7,16,18 109:12 114:7,11,17,23 115:1,4,8,10,17 116:17,18 117:13 119:5,8 120:6,18 124:21 125:5,10,13,25 127:17 130:18 132:9,14 138:2 139:2,13 140:7,14 remedying (1) 108:15 remember (4) 41:14 49:21 135:20 161:16 remind (1) 162:11 reminding (1) 92:18 remove (2) 112:20 113:25 removed (1) 68:9 removing (5) 96:4 109:1,8,17 112:8 renamed (1) 23:25 rental (1) 13:4 repeat (1) 1:4 replace (1) 55:11 replaceable (1) 57:4 replaced (1) 55:5 replacing (1) 137:20 report (21) 2:19 3:3 4:4,8,10,12 5:12,13 14:9 20:16 50:14 68:22 69:13 71:17 78:9 100:24 101:5 116:15 118:7 137:18 146:3 reports (10) 1:24 2:3,14 3:20 5:16,24 19:15 64:1 91:25 125:6 reproduces (1) 156:19 require (1) 18:10 requirement (1) 76:11 requirements (2) 18:6 157:24 reruns (1) 31:12 respect (1) 19:13 respective (1) 1:17 respond (3) 7:7 13:18 66:9 responding (2) 50:25 93:1 response (11) 7:8,25 9:7,22 15:12,17 73:18 93:25 99:22 112:24 156:14 responses (2) 8:13 11:22 rest (2) 42:15 78:2 restore (1) 136:15 restored (3) 125:11,14	132:14 restricting (1) 46:4 restriction (1) 157:2 result (12) 8:23 22:23 23:10 31:13,17 65:14 79:4 92:25 107:25 111:8 145:22 155:16 resulted (1) 113:16 results (52) 7:15 8:6,12,12,25 9:5,6 10:15,16,21 11:8,19,21,22 12:4,6 21:1,25 23:14 25:16,17,20 27:8,9 30:1,5,10,14,15 31:18 32:13 33:16 43:25 44:9 45:13 48:8 52:6 53:25 54:17 55:12 64:4,11 78:20 79:11 93:24 107:20 112:22 120:5,14 132:24 156:13,13 resume (3) 67:7 161:25 162:10 retail (1) 10:8 retailer (4) 10:1 39:17 41:12 70:20 retailers (9) 32:16 37:17,19,19,22,25 38:12 39:2,13 retain (1) 139:12 retained (1) 136:5 retains (1) 140:16 returned (1) 38:23 returns (2) 38:19,23 reveal (1) 100:10 revenue (3) 18:21,23 25:21 revenues (10) 46:24 47:1 60:13 77:25 86:12 116:9,10 156:17 160:13,25 reverse (3) 115:6 134:24 135:4 review (4) 43:24,24 71:18 113:1 reviews (5) 17:5,9 20:18,22 103:1 rewards (1) 50:24 rid (2) 122:5,12 righthand (1) 116:19 rightmove (2) 146:14,15 ripple (4) 62:23 63:19 64:13,14 rise (1) 114:18 risk (2) 49:9 50:23 rival (16) 42:16 109:3,5 114:12,14 115:2 116:8 118:14,16 135:7,14 136:3 139:5,21 140:8 141:10 rivalry (1) 50:20 rivals (5) 114:2,5,18 136:8 140:17 robin (5) 4:1,2 6:23 163:5,7 robustly (1) 150:13 role (7) 30:8 39:4,5 69:22 71:9 75:8,9 roles (1) 71:8 room (1) 2:6 rose (125) 25:22 26:2,6,13,19,25 27:3,16 29:1,4,13,20 33:1,18,21 34:2,20,22,25 35:4,21 38:8 41:1 61:9 64:13,21,25 65:4,15 66:10,15 78:4,12,14,20,24 79:11,25 80:3,8,10,15,25 81:2,16,24 82:1 83:5,16,22,24 84:1,6,9,23 85:14,24 86:6,10,16,18,22,25 87:5,9,18,22 88:3,5,10,19,23 89:5,7,13,17 95:4,24 96:22 97:7,12,23 98:13,16 100:6,18 101:15,17 131:23 135:14,17 140:22 141:2,16,24 142:3,5,7,12,14,16,19,22,25 143:5 144:3 146:14,20 147:2,4,7,12,15,18,22 148:6,12,16,18,20,24	152:17,22,25 161:22 roughly (1) 85:18 round (2) 56:14 132:7 route (2) 49:20 72:7 routes (2) 44:12 47:23 rules (3) 120:9,15,16 run (1) 92:21 running (1) 9:4 <div>S</div> sale (1) 131:11 sales (2) 51:5 143:10 same (51) 2:8 5:8 8:23 24:4 32:6 36:19 37:8 40:2 42:12 43:21,22 48:19 51:10,19,23 54:19 57:16 58:6,6,12 61:11 67:23 68:5,6,20,24 69:1 70:14 75:8,9 93:7,8 95:10,23 111:14,18 112:9,10 117:23 118:1 119:1 122:21 123:11 128:18,22 129:23 135:11 136:3 137:14 152:22 153:3 saw (2) 5:12 134:8 saying (23) 10:18 13:12 14:19 21:14 33:24,25 35:16 36:25 41:4 47:17 82:17 95:16 96:12 108:6,11,15 139:4,18,20 142:9 143:1 148:25 149:3 scale (1) 155:15 scarce (1) 63:16 scenarios (1) 124:2 scores (1) 70:12 screen (6) 2:1,16 21:22 45:14 95:14 120:11 scroll (3) 83:20,20 137:4 search (122) 7:1,3,7,17,22 8:5,19,22 9:2,6,7,9,13,15 10:15,19,23 11:4,13,18,21,22,25 12:4,11,14,15,16,18,23 15:6,21 17:20,24 18:15 21:12,16,24 22:1 23:9,13 26:19,20,24 27:4,7,9,12 29:5 30:1,10,13,18,22 31:4,12,20,25 32:19,20 43:10,11,21 44:17,23 45:12 48:8 52:4,12 53:25 54:16,17 55:4,11,12 58:2 60:16 61:24 62:23 63:7,13,24 64:2,2 65:1,4,7,10 67:24 69:14,19 73:18 79:6,7,11,18 82:1 88:9 89:22 93:24 104:3 106:9,9 112:24 119:13 120:4,12 139:19 148:24 149:21,23 150:2 151:4,7,23 154:16 155:13,15,20 156:12 160:20,21 searches (3) 52:5 84:14,15 searching (3) 31:17 62:18 153:18 second (28) 3:3 9:23 25:18 32:3 48:3 69:20,25 92:9 95:22 100:2,24 101:5,6 120:2 121:6,8 122:20,25 123:5 130:24 143:14,16 144:20 145:1,7,8 146:3 155:7 see (81) 2:22 3:5 5:6 7:14 8:21 10:12 13:16 22:5 27:11 32:14 33:4,12 35:13,19 40:19 41:2 45:23 46:23 53:16 54:14 55:13 61:2,7,7 62:10 65:25 67:5 74:5 77:8,24 87:13 88:20 93:24,25 95:18,23 97:18 100:25 102:21 105:13 106:8 108:23 109:4,23 110:10,13,21,22 111:1,4 113:7 116:22 118:15	119:15 123:16,17 126:12 127:25 128:10,18 130:9,12 133:14 140:3 141:14,15 143:18,25 146:2,6,25 148:9,11,21,23 149:19 152:12 153:9 156:3 158:2,4 seeing (6) 21:8 65:13 94:14,19 133:10 146:21 seek (1) 52:14 seeking (3) 63:21 89:23,25 seeks (1) 7:7 seem (1) 33:13 seems (2) 67:1 83:17 seen (7) 19:9,13,16 42:9 45:23 87:24 88:25 sees (3) 30:1 73:12 155:20 select (1) 104:9 selected (4) 23:7,16 73:3 77:9 selecting (1) 8:13 selection (9) 8:25 22:17 68:15 69:11,12,20 70:4 73:19 154:6 selfimposed (1) 120:15 selfpreferencing (5) 89:19 108:19 109:2 112:1 153:22 selfservice (12) 70:22 71:13 73:8,15 74:4 75:4 119:20 121:2 123:17 133:12,13,23 selfstanding (2) 124:19 156:2 sell (4) 49:22 122:2 128:10 145:20 seller (1) 41:13 sellers (2) 37:16,16 selling (3) 65:2 110:23 144:15 sells (3) 44:3 119:2,3 send (1) 150:15 sends (2) 38:18 62:17 sense (104) 10:10 16:17 19:10 24:17 28:11,20,22 29:11 30:17 31:1,3,4 35:15,18 36:25 41:5 44:6 45:7,17 46:4 49:15 57:2,7,17 59:8,9,15,21 62:21 63:10,19 65:3,6,16,18,20 68:4 69:23 70:9 71:7 72:22 73:25 75:21 76:18 78:21 82:20 88:20,21 90:23 91:10,11,13 92:13 93:6,15,23 94:6 99:8,25 100:14,16,21 104:1 105:5 107:11,16 111:5,23 112:4,23 113:11 114:1 116:2 118:22 119:2,11 120:16 122:15 123:4 125:13,18,22 126:5 130:21 132:22 133:3,8,12,17 134:11 144:13,17,23 145:19 149:13 150:6,17,24 152:12 154:17 158:13,17 159:2 161:10 sensible (1) 136:21 sent (1) 99:20 sentence (1) 155:7 separate (8) 12:3 24:4 34:16 69:3 119:24 132:4 133:20 156:25 separately (1) 11:12 sequence (1) 91:1 series (6) 7:15 13:18 15:10 31:6 44:8 118:12 serious (1) 140:19 seriously (1) 149:9 serp (39) 23:9 28:16,20,22 41:24 44:10 45:13 46:6 52:3 78:16,17,21 79:4 83:17,18 89:14 92:10 104:2 107:12 116:1 119:3 121:20,22,25 122:1 124:13 125:23 141:7 142:22,23 144:19 148:7 150:22 155:24 156:13	158:12,14,21 159:5 serves (1) 43:11 service (43) 21:5,10 31:24,25 32:2,7,11,18,22 33:15 39:6 41:17 44:23 55:3,24 56:5,9,21 64:12 71:1,2,3 72:15 73:16 74:7,9,19 75:5,11 76:5 86:3 89:22 90:1 93:11 103:11 121:5,6 130:13 135:13 139:8 143:9,24 145:13 services (47) 6:17 12:22 21:25 22:3 28:21,23 32:23 33:5 37:21 38:6 39:9,23 52:6 53:6,8,13,15,24 54:3,6,9,11,18,24,25 55:4,9 56:19 76:3 81:9,23 82:7 83:2,8 84:16,17 85:5,21 90:14 106:20 137:13 139:22 146:2,4,17 152:19 155:10 serving (1) 77:7 set (21) 14:10 24:25 32:13 50:13 54:2 55:7,10 95:1 120:9 121:6 132:9,21 133:1 134:17,19 136:6,12 138:17,19 139:1 154:9 sets (1) 133:6 setting (2) 132:17 138:10 several (3) 26:18 80:19 155:15 severely (1) 58:22 shall (5) 1:4 101:4 106:11 151:24,25 share (30) 45:1,4 50:22 51:8,10 79:21 82:19 111:16,21,23 113:19 114:3,18,18 115:2,3,21 116:3,7 118:2,15 120:10,13 121:1 134:10 136:5 139:10,16 140:2 150:5 shared (1) 27:6 shares (2) 118:10,13 sharp (1) 10:24 shopping (177) 12:21 13:5,9,9 15:1,2,7 19:14,15,17 21:25 22:2,19,20,22 23:2,3,10,19,25 24:5,5,6,8,9 25:23,24 26:1,14 28:4 30:15 31:13,17,24 32:2,7,11,18,22,23 33:5,15 37:21 38:6 39:5,9,23 42:12,15 43:11,12,15,16 44:16,20,21,23 45:22,25 46:11,19,22,25 47:1,2,3,11,21,24 48:5,6,9,10,18,24 49:24 53:6,13,23 54:3,6,9,11,18,23,25 55:3,4,9,20,24 56:5,9,19,20 58:9,17,20,22 60:12 68:4,9 69:3,4,16 70:2 71:1,2,3 73:25 74:9,19,23,23 75:1 77:22,24 78:6,18 79:1,2,3,12 81:9,23 82:6,7 83:2,8,14 84:16,17,22 85:1,5,9,21 86:2,12,14,23 87:1,3,22 88:1,3,11,13,15 89:1,2 90:10,14 93:11 96:1,10 101:15 104:2 113:13 117:24 124:19,24 129:4,25 130:1 137:12 139:7,18,20,22,24 155:25 156:1,2,7 160:17,21 shoppingcom (1) 153:5 shoppings (3) 97:3,5 98:2 short (4) 67:9 107:24 136:24 146:3 shout (15) 27:13 31:21 39:13 65:1 67:19 89:14 95:9 118:5,8 137:4,12 139:23 140:13 141:12	shouldnt (1) 131:18 show (16) 13:25 79:2,19,20 80:4,4,10 98:8 106:21 112:25 116:16 118:12 120:9,10 134:19 154:6 showing (2) 23:15 80:1 shown (10) 22:22 25:17 56:12,15,16 81:4,13,14 90:13 142:6 shows (4) 79:20 80:8 101:10 118:10 side (23) 20:10 28:13,13 38:6 41:6 43:8 48:16 49:2,4,6,7 57:8 71:12 116:19 143:23 150:12,19 151:3,9,12,22 159:10,11 sides (6) 38:7 43:3 49:5,13 150:12 155:8 sigma (1) 84:17 sign (2) 141:9 150:6 signal (1) 134:8 signalling (1) 43:16 signals (4) 9:14 97:4 112:19,21 signature (9) 2:25 3:8,18 39:14 146:22 4:16,17,20,22 5:6,8 significance (4) 49:18,25 68:16 138:1 significant (17) 54:13 56:17 61:7 86:19 89:2 103:24 112:25 115:7 147:8,11 149:11 150:10 155:14 156:8,9,15 157:22 significantly (4) 57:5 68:3 92:12 158:8 similar (12) 8:22 26:3,5 43:20 114:5 123:13 123:4,8 131:2,3 140:10,15 similarities (1) 159:9 simpler (1) 154:17 simplest (1) 67:16 simultaneous (3) 82:24 89:9 139:17 since (3) 42:3 48:12 114:10 single (5) 52:18 84:21 98:19 150:25 152:7 singlesided (1) 149:22 singular (1) 63:6 sir (2) 23:1 139:23 sit (2) 2:12 28:12 site (26) 15:17 17:12 19:8 20:3,17 22:19,20 24:5,5,5 25:23 38:3 43:24,24 46:25 55:21 56:7 58:9,20 68:9 69:4 100:10 110:16,17,18 156:2 sites (27) 12:22 15:1,2,7 17:14 19:17 25:24 47:11,21 48:24 52:13,14,18 56:20 58:17,23 62:14,19 82:6 83:16 84:3 85:15 90:10 96:4 110:19 113:1 157:6 situation (6) 57:16 87:14 110:21 111:20 112:5 145:10 size (4) 17:22 27:15 37:18 57:7 skeleton (1) 30:7 skyscanner (1) 153:5 slide (3) 97:17,24 127:15 slides (2) 95:1 127:10 slightly (1) 6:18,21 8:20 23:5 47:9,9 74:15 94:19 103:21 143:20,23 slot (2) 24:18 121:8 slots (4) 24:2 26:11 142:8,9 small (7) 37:18 77:15,18 104:21 114:12 147:15 156:25 smaller (3) 37:19 39:1 57:7 smith (28) 41:14,25 42:3,11 43:7 44:14 45:21 48:12 49:17 50:6,10 84:12 85:2,4,8 91:3 92:18 95:14 96:14 105:8 132:13	114:9,21,25 115:6,14 134:24 153:15 societally (1) 65:20 sold (1) 41:8 solution (2) 115:19,19 somebody (8) 11:2 43:21 120:3 122:1,16,17 144:18 154:15 someone (5) 10:7 77:6 82:18 144:10 154:2 someones (1) 127:9 something (37) 18:18 23:5 24:10,15 27:24 29:6 33:18 45:14 56:13 63:25 71:14 73:19 77:2 78:25 82:18 91:22 96:11 100:10 101:24 119:24 122:1,3 123:20,25 126:8 129:16 132:24 142:21 147:4 148:15,22 153:10 158:23,25 159:19,20,24 sometimes (5) 7:16 8:1,23,23 81:6 somewhat (4) 37:20 38:4 39:14 146:22 somewhere (1) 96:23 sony (2) 128:9 129:15 sophisticated (1) 35:2 sort (53) 6:25 7:4 18:11 19:5,14 20:12 22:24 24:11 26:19,20 30:16 32:1,14,21,24 33:6,9,12 39:21 44:10 48:11 58:5 61:18 65:7,13 68:1 74:17,18 75:10 76:8 79:13 82:3 84:17 91:14,25 105:15 112:14,15 116:9 126:13 131:7,15 132:8 133:10 138:4 140:9 143:25 145:19 146:13,18 151:24 158:11 159:21 sorts (3) 19:5 39:14 65:24 sought (1) 117:22 sounds (1) 36:21 source (4) 16:8 58:4 60:18 151:24 sources (7) 55:8 90:22 150:23 158:10,16,19 159:5 143:4,6 144:19 speakers (3) 82:24 89:9 139:17 speaking (4) 30:8 60:9 64:8 157:11 specialised (6) 12:22 21:24 26:24 155:13,15,19 specific (21) 13:12 14:23 24:19 32:20 33:17 47:22 68:7,8 95:21 109:12 110:25 111:2 128:4,8,11 129:22 130:4,6 152:7 156:21 160:21 specifically (13) 15:6 16:13 37:24 54:23 55:1 113:22 129:15 146:16 152:11 154:21 155:3,12,18 specifies (1) 76:15 specify (1) 128:7 speed (2) 7:25 15:12 spencers (2) 38:11 88:14 spend (4) 125:7 134:7,12,21 spoke (1) 99:9 sponsored (1) 22:23 sports (1) 148:22 spots (3) 64:21 141:16,19 squeeze (2) 134:25 135:4 squeezing (2) 135:1,2 stables (2) 100:3 161:24 stack (1) 18:11 stage (2) 34:16 44:5 stages (1) 125:9 stand (2) 109:1,6 standalone (40) 19:17 26:1 28:3,17 33:4,10 46:24 68:9 69:3 76:10,10,17
--	--	--	--	---	---	--

77:13,16,17,21 78:1 86:2,13 96:10 103:3,16 106:13,14 107:12 108:2 110:11,14,16,17,18,19 111:9 113:17 114:3,4 117:25 119:4,6 156:17 standing (2) 128:25 138:6 star (2) 16:22 20:20 stars (2) 17:5 20:21 start (16) 6:19,25 37:1 42:22 55:15,20,23 87:22 88:11,15 114:4 129:5,24 135:21 137:4 138:3 started (5) 23:22 35:17 88:3,4 135:20 starting (2) 37:5 88:8 statement (18) 2:22 3,6,14,21 4,5,25 5,2,25 7,9 25:1 28:15,25 29:18 42:1,18 47:6 154:21,24 static (1) 122:4 station (5) 9:15,17,19,25 10:12 stations (2) 9:2,5 statistic (1) 77:23 statistics (3) 45:19 94:4,16 stay (1) 119:21 step (5) 50:11 63:12 79:17 156:11,12 stepping (2) 27:20 32:1 steps (1) 59:19 sticking (1) 43:7 still (13) 11:3,6 71:7 83:14 84:12 107:18 122:11 124:13 135:17 141:13 145:12 155:4,23 stock (2) 16:16,18 stop (1) 31:21 straight (2) 117:13 155:25 strategy (1) 98:16 straying (1) 136:11 streamed (1) 1:7 street (3) 9:3,21 10:6 stress (2) 35:15 37:2 strict (1) 158:17 strictly (4) 1:9 35:10 49:11 157:11 strike (1) 54:25 strong (7) 30:3 37:4 44:15 116:8 136:2,3 149:16 structure (1) 130:18 structured (2) 35:13 115:17 structures (1) 135:9 studied (1) 152:11 style (4) 161:12,14,20,21 subcategory (1) 26:21 subject (3) 24:16 120:16 149:17 subparagraphs (1) 137:10 subpart (1) 76:17 subpreferencing (1) 61:22 subservice (1) 71:20 subset (1) 46:6 substantial (1) 134:10 substantially (2) 133:23 149:18 substitutability (5) 27:22 35:9 40:9,11 158:14 substitute (8) 35:23 36:15 37:5,7 41:16,20 59:8 67:24 substitutes (2) 28:12 158:17 substituting (1) 28:23 substitution (6) 28:8 42:6,9,19 43:8 48:16 succeed (1) 50:21 success (3) 51:4,9 134:8 successfully (1) 7:2 sufficient (4) 28:6 35:22 40:9,13 sufficiently (1) 41:22 suggest (3) 21:15 22:1 44:21 suggestion (1) 54:22 suggestions (1) 22:3 sum (4) 52:8 61:19 64:23 84:16 summarise (1) 54:2	summarised (1) 40:5 summary (3) 7:25 13:21 51:13 superior (2) 50:22 51:6 supplier (3) 9:1 48:16 153:19 supply (1) 49:13 support (1) 149:2 supported (1) 54:1 supposedly (1) 71:2 sure (34) 11:5 14:22 25:19 49:15 50:5 59:3 62:13,16 64:7,9 66:17 67:6 69:15 84:11 86:21 90:3 95:4 105:20 108:6,15 109:15 112:15 114:20 124:10 127:20 134:25 135:5 142:24 147:21,24 148:13 152:1 153:14 156:21 surefire (1) 134:10 surely (3) 105:8 142:25 148:7 surmount (1) 59:16 surmountable (4) 59:9,13,19 60:6 surplus (7) 138:10,12,24 140:11,12,13 145:2 surprise (3) 121:4,11 146:8 survey (2) 88:1,7 suspect (1) 153:17 swathe (1) 71:19 swedish (1) 1:15 swerve (1) 98:16 switch (3) 135:12 136:7 158:18 sworn (2) 1:18 2:9 system (2) 52:14 139:10 systems (1) 151:16	84:18 89:17 99:16 105:1 108:23 109:23 121:18 123:14 130:22 131:8 132:16 140:16 144:17 156:8,13 159:23 territory (2) 133:3,5 test (2) 37:2 61:18 testing (2) 28:5 35:16 text (5) 10:25 20:22 31:18 92:17 93:3 textbased (1) 93:25 thank (9) 3:24,25 4:24 5:11,19,23 50:10 52:1 161:3 thats (91) 4:5 12:19,24 14:7,8 18:25 26:8,9,17 46:7 65:14 66:16 68:25 69:18,25 70:22 71:12 73:1 74:19 76:11 78:22 79:13,23 80:2,9,11,20 81:10,12,12,18,19,19 82:2,11,13,25 85:1 86:21 87:4,8,15 88:6 89:4,12 91:4,17 92:17 94:15 96:3 98:21 101:22 102:14 104:4,12,20 105:12,20 107:23 111:25 112:6 115:3 119:3 122:15,18 123:20 125:3 127:13 128:1,24 130:6 132:24 133:10 135:5 136:17 138:12 141:14 143:24,25 144:20 145:15 147:21 149:23 152:13 153:11 158:23,25 160:11,16,25 161:9 themselves (2) 15:9 99:14 theoretical (2) 138:7 147:3 theory (1) 138:13 thereby (1) 49:19 therefore (19) 9:21 20:5 27:1 37:8 44:18 71:7 73:20 78:2 85:20 106:19,20 111:12 121:12 131:3 133:23,24 151:1,2 153:21 therein (1) 5:16 theres (49) 18:25 20:11 31:7 34:5 62:1 68:21,22 77:4,14 79:17 83:15 89:23 90:17,21 94:21 95:6,17 96:19 99:23 101:10 103:8,13 104:14 108:13 109:7 116:8 118:12 121:17,19,23 123:24,25 126:24 133:20 136:4 139:4 140:17 142:6 146:3,6,7 147:10 149:25 150:2 157:18 159:9,22 160:12 161:17 theyd (1) 97:5 theyll (1) 80:22 theyre (18) 71:24 74:4 76:5,18 77:10 89:23,25 99:2 129:4 130:13 131:2,19 133:9 139:21 142:20 145:5 159:25 160:1 theyve (9) 72:1 139:10,13,13 140:6,7,14 146:4 160:20 thing (16) 17:7 27:23 36:17 37:5 65:23 69:15 93:7 94:13 110:5 113:25 121:22 122:20 127:8 152:22 153:3 154:25 thinking (17) 11:16 51:12 64:1,13 72:11 113:10 115:16,17 120:6,7 124:3 127:8 128:2,25 129:9 134:18 139:2 thinks (1) 31:16 third (12) 15:21 99:4,15,21 100:17 111:11,12 113:4 115:22 126:2 138:13 142:23 thirdly (1) 8:11 thirdparty (8) 37:15,16 108:2,20,24 110:18 124:20,25	though (2) 88:10 92:22 thought (2) 29:14 40:16 thoughts (1) 144:6 three (8) 86:6 91:14 92:2 93:2,8,15 95:19 98:24 throw (1) 122:7 through (86) 14:18,25 18:22 23:4 30:22 33:16 34:12,15,17 35:15,24 36:24 44:10 46:21 48:5,7,8,10 49:19,21,22,23,24 51:5 59:19 63:1 69:4 72:3 77:17 78:2 81:5,10,11 82:1,2,2,4,5,20 84:19 85:17,19,22 86:4,20 87:2 93:10 96:9 97:21 98:1,4 99:17 102:5,9,11,15,19 103:19 104:14,15 114:7,11,23 115:4,8,22 116:1 117:13 119:3 121:14 123:22 126:23 128:4,13,19,21,21 130:5 131:11 155:9 156:1 158:24 159:1,2 160:24 161:14 thrust (1) 90:17 tick (1) 150:18 tile (5) 73:13 117:12 128:3,17 144:10 tiles (8) 116:17 127:18,19 128:17 141:18,21 142:14,17 tilted (1) 112:12 time (26) 21:10 24:4 32:6 36:8,13 45:15 56:15 66:1,3,20 79:22 90:7,9,13 91:19,20 92:24 96:5 98:3 99:7 111:18 114:19 118:25 119:20 135:11 147:24 times (6) 33:8 66:7,11,12 80:19 90:14 tiny (2) 95:4 133:6 together (3) 9:14 13:2 67:5 told (10) 52:24 53:4,19 55:18 57:4,5 78:5 86:22 91:17 93:3 tomorrow (2) 161:25 162:10 tonic (1) 28:13 too (5) 49:9 77:6 93:16 126:17 136:11 took (3) 36:24 81:7 93:10 tool (1) 134:20 topic (1) 52:2 total (14) 47:21 48:8 79:5 80:6,13 81:7,8,8,9,11,18 82:5 113:6 144:14 towards (1) 111:25 tradeoffs (4) 64:6 65:8,21 89:24 traffic (123) 20:2,4 22:4 41:21,24 47:20,22,23 48:5,7,9 54:13,17 55:3,4,8,11,21,25 56:4,7,8 58:3,4 60:14,16 77:15,16,20 78:6,6 80:13 81:7,8,8,9,11,19,22 82:4,5,6,7,20 83:24 84:2,4,15,16,17,19,22,25 85:1,17,18 86:19 87:2,5,6,20 101:10,20 102:4,15,19 103:3,6,8,13,17,19,25 104:21 106:8 107:5,11 108:4,23 109:24 110:11,13,15 111:9 113:6,16 114:6,10,12,23,25 115:8,22 116:1,16,23,24,25 117:5,11,15 118:5,5,6 119:7 126:23 150:22,23 156:21 157:12,13,14,17,20 158:3,11,14,14,16,19 159:5 160:15,24 train (5) 36:10,11,14,15,18 trains (1) 36:7	transcript (1) 7:14 transition (1) 111:13 translation (1) 1:14 travel (7) 36:13 146:18 151:12,12,17 152:19 154:14 treated (5) 34:23 85:1 102:14,18 124:20 treating (4) 89:20 107:4 117:4 119:23 treatment (2) 125:19 137:21 trend (2) 66:10 111:3 trespassing (1) 29:10 trial (2) 1:6 5:14 tribunal (7) 6:11,13,24 41:11 90:23 91:14 163:8 trigger (1) 54:8 true (8) 3:21 5:16 31:5 47:17 77:22 151:20,21 160:25 truism (2) 63:8 144:23 truth (3) 2:23 3:6 90:5 try (13) 6:4,8 12:5 25:19 36:24 37:2 63:21 65:16 114:9 116:9,11 154:18 161:24 trying (18) 10:4,13 29:11 36:21 64:4 66:21 96:19 118:9 122:2,4 128:13 129:20 134:19,22 135:5,10 136:7 150:15 tuesday (1) 162:17 turn (2) 41:18 52:2 turns (4) 14:23 21:18 49:16 96:15 tv (5) 129:15,15,16,16,24 tvs (2) 129:19,21 twosided (11) 19:22 41:2 43:1 49:12,12 57:9 71:12,23,25 103:5 151:14 type (7) 20:25 30:12,23,24 31:10 43:21 154:17 typed (3) 30:19 44:7 45:8 types (5) 43:6 66:2 77:5 129:19,21 typically (9) 28:2,4 30:2,4 37:16,18 39:1 41:7 133:15	unit (22) 19:15 22:20,22 23:3,10,25 24:9 42:12 43:11,12,15,16 46:19,19,22 47:1,2,24 48:5 68:4 86:14 139:25 units (1) 22:19 universal (9) 22:17 23:6,15 55:19 56:1,4 101:1,11 139:24 universally (1) 11:9 universe (1) 46:3 unless (2) 1:7 102:1 unlevelness (1) 111:7 unlikely (1) 148:6 unofficial (2) 1:10,10 unsuccessful (1) 55:25 until (1) 162:16 updates (1) 62:11 uphill (1) 112:2 uptodate (3) 16:14 32:8 34:8 urge (1) 49:10 usage (2) 101:12 154:4 used (6) 49:14 89:3 91:24 112:12 128:19 155:5 useful (21) 7:18 11:19 16:17 17:11 61:17 62:17 64:4,11 66:5,8 128:13 129:11,20,24 130:7,10,13 131:20,23 154:12 161:22 usefulness (1) 11:23 user (43) 7:8,15 8:6 11:6,17,24 13:9,20 15:18,22 17:20 20:2,17 22:12 27:7 30:22 32:10 39:16 44:7 49:7 66:4,17,19,22 68:6,12 72:18 73:15,22 74:10 90:1,7 102:1 104:8 107:23 117:12 151:22 157:21 158:21,22 159:24,24 160:9 users (69) 11:18,24 12:17 13:13 17:20 18:22 19:22 20:8,9,11,16,21,24 21:5,7,8,13,15 22:2 32:4,12,17 33:16 34:1,5,6 35:10 37:21 39:15,20 43:4 49:1,2 51:6 60:18 64:3,4 66:1,9,11,19 72:16 78:15 79:3 80:22 90:1,4,4,9,11 94:5 103:12 104:9 105:25 106:20 116:11 124:14 130:14 131:19 143:10 148:14 150:1 151:4,8,10 156:11 158:4 160:4,5 uses (2) 9:13 28:9 using (10) 21:5 27:25 39:21 46:11 69:20 99:12 134:15,20 149:13 158:20 usually (3) 23:14 51:21 93:3	104:24,25 112:19 118:15 120:3,8 125:4,9 133:15 137:10 156:3 161:10 vary (3) 17:2 18:1,2 vast (7) 102:11 116:22 117:2 123:18,18,18 124:12 vcap (1) 120:9 version (8) 4:14,16,20,21 23:23 26:20 93:20 125:10 versions (2) 129:23 161:11 versus (8) 30:1 31:4 47:25 76:10 90:25 91:15 107:22 144:15 vertical (5) 26:19,24 28:3 116:20 152:21 vertically (1) 118:24 verticals (3) 155:13,16,20 via (6) 14:16 47:23 71:13 119:4 122:3 134:23 viewed (2) 17:9 46:6 views (3) 52:19 76:1 86:14 virtually (1) 54:19 visibility (1) 54:6 visually (2) 68:5,14 visvis (3) 62:6 89:20 114:14 volume (3) 22:4 61:8 157:20 volumes (5) 103:24 110:11 116:10 157:8,17
W						
waded (1) 48:12						
wanting (3) 11:24 121:24						
123:3						
wants (9) 10:1 42:20 62:18						
87:19 120:11 121:22,22						
122:1 131:8						
warning (1) 1:5						
wary (1) 29:10						
wasnt (4) 56:15 100:23						
111:2 133:24						
way (64) 4:15 8:8,18,20 9:8						
10:19,22 12:9 17:17,17						
22:25 24:13 25:2,3,22,23						
32:22 35:13 37:13						
40:17,22 41:3 44:25						
52:14,18 56:14 58:6,12,19						
61:11 65:14 66:15,16 70:7						
72:6 76:19 92:1,12						
93:9,23,25 94:12						
102:14,18 107:23 108:17						
109:15 111:6 115:16						
120:1,24 122:12 125:25						
131:2 134:10 135:6,8						
136:6,17 140:8 144:12						
153:8 160:18 162:9						
ways (13) 16:4 17:15 62:13						
65:10,12,12 71:11,22 89:1						
124:4 135:10 141:8 143:22						
web (4) 39:11 128:4						
159:21,24						
webmaster (2) 62:8,10						
website (50) 18:10						
26:1,14,15 28:3,17,18 30:4						
35:5,20 38:15 41:21						
76:10,10,15,17,18 78:1						
85:16 86:13 96:1,3 97:3,6						
98:2 99:11 103:17						
106:13,14 107:12 108:2,2						
111:9 113:17 114:3,4						
119:4,6 120:9 122:9						
153:22 156:17 157:9						
158:6,25 159:14,15						
160:6,6,7						
websites (24) 33:10 35:22						
38:13 62:11,12,17 63:17						
72:2 77:13,16,17,21 86:20						
88:11 97:22 103:3,14						
106:18,18 108:3,4						
110:12,14 159:17						
week (1) 1:4						
weight (1) 17:23						
wellknown (1) 38:12						
went (9) 33:4 61:21 62:4						
96:9 97:2,17 98:4 126:23						

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