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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 Tuesday, 14 July 2026
2 (10.00 am)
3 (Proceedings delayed)
4 (10.05 am)
5 MR MATTHEW HUNT & MR ROBIN NOBLE (continued)
6 Questions from THE TRIBUNAL (continued)
7 PROFESSOR SMITH: Good morning.
8 What we propose to do first this morning is look at
9 your respective analysis of the Post—Decision Period.
10 So this is sections 2.21 to 2.27 of the JES. So perhaps
11 if we put {I1/4/52} up just to show us where we are.
12 Now, I think we discussed 2.21 yesterday,
13 the changes in traffic and your different views about
14 who should be getting the credit for the traffic that
15 came from rival CSSs through the PLA, so unless there is
16 anything further that either of you want to say about
17 2.21, we could move on to 2.22.
18 MR HUNT: The only thing I might say, if that's okay, on
19 2.21 was just to bring alive the scale of the traffic .
20 So certainly around — I think I have the numbers right,
21 around the years 2023, '24, '25, we are looking at kind
22 of 40 billion clicks roughly, that order of magnitude,
23 on the — what we called yesterday the Remedy box, and
24 certainly by — and again, I think I have the numbers
25 right — by 2025, Google was making \$13 billion, again,

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1 that order of magnitude. So I just thought that was
2 helpful to have that in mind when we're looking at some
3 of the figures here, because they're very much smaller
4 figures, it's fair to say.
5 THE CHAIRMAN: Smaller than?
6 MR HUNT: Google's more than 40 billion clicks and
7 approximately kind of \$13 billion of revenue, again, if
8 I get — I can check in my report, but I think we're
9 talking 2024/2025, roughly, then Google's got that order
10 of magnitude of revenues through the — the Remedy box.
11 So it's just useful to have kind of those order of
12 magnitude of figures.
13 Again, according to my figures, and again, we've got
14 a problem with the years, we don't always have the right
15 data for the number of years, but according to some of
16 the data that I have, then Kelkoo's share roughly of
17 the Remedy box — and again, some of the years here
18 aren't quite right — but the order of magnitude of 10%
19 for the volumes going through the Remedy box. Now, that
20 uses some of the Kelkoo figures that I have, mixing that
21 with Google figures, so, again, I'm not entirely sure of
22 the exact consistency, but we're talking Kelkoo's at
23 least by 2025 — and again, the numbers aren't for that
24 year — but it's a major player, right? Yet the figures
25 that we see here are relatively small.

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1 THE CHAIRMAN: 20% of clicks, is it? Your 20% is?
2 MR HUNT: No, I mean, so again, the figures that I have for
3 kind of 2025 — and again, it changes over time as
4 Kelkoo's kind of traffic increased a lot, but by —
5 the figures I have from Kelkoo for its clicks in 2025
6 compared to Google's clicks on the Remedy box, Kelkoo
7 had more than 10%.
8 THE CHAIRMAN: 10%?
9 MR HUNT: More than 10%, yes. It was around 12%, the figure
10 that I calculated last week.
11 MR NOBLE: From my perspective, I don't think there is any
12 particular disagreement between myself and Mr Hunt about
13 the numbers, it's really a question, I think, as you
14 alluded to, of how one interprets, you know, what —
15 what do you allocate to whom and what do you take away
16 from those numbers as opposed to what the numbers are.
17 PROFESSOR SMITH: Fine, thank you.
18 Shall we move on then to issue 2.22, which is on
19 the next page {I1/4/53}, which is the issue of whether
20 the traffic from clicks on the PLAs is an effective
21 economic substitute for traffic for organic search
22 results for CSSs.
23 Mr Hunt, do you want to start on that?
24 MR HUNT: Yes, so, I mean, I think the — the evidence seems
25 to show that in terms of the propensity to purchase of

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1 consumers, then the — if you like, the consumers that
2 come through clicks on the Remedy box are similar to
3 consumers that come through organic search, okay? So
4 they're broadly, roughly, the same order of magnitude of
5 likely to ultimately purchase, so therefore, from
6 a merchant's perspective, that's — they're broadly
7 equivalent.
8 The difference is from a CSSs perspective they're
9 not equivalent at all, so in the example of, say,
10 self—service that we talked about yesterday, if a kind
11 of intermediary is taking roughly kind of 1% and its
12 gross margin is 1% which means it's paying 99% to
13 Google, then you can see how, economically, those two
14 things aren't equivalent from the intermediary's
15 perspective. It's paying, you know, an awful lot. It's
16 paying virtually the entire value of the click to Google
17 for the clicks through the Remedy box and, in contrast,
18 for organic search, it's not paying anything.
19 MS ROSE: On the propensity to purchase, the people who
20 click through on the Remedy box, you say it is similar
21 to organic search?
22 MR HUNT: Yes.
23 MS ROSE: So much better than those who click on other kinds
24 of sponsored links on advertising?
25 MR HUNT: On AdWords, actually, I don't have the figures off

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1 the top of my head on AdWords.
 2 MS ROSE: I think we have heard —
 3 MR HUNT: But they're — it's still — it's low figures,
 4 they're low single digit figures.
 5 MS ROSE: I think we have heard previously that in order it
 6 sort of goes organic search —
 7 MR HUNT: Yes.
 8 MS ROSE: — then merchant — then, you know, paid for.
 9 MR HUNT: Yes.
 10 MS ROSE: So I am curious as to why this type of sponsored
 11 link — and it is marked as a sponsored link on
 12 the Remedy box — you would have a higher propensity to
 13 purchase than on another advert on the SERP.
 14 MR HUNT: So, I mean, I can only speculate.
 15 MS ROSE: Yes, yes.
 16 MR HUNT: If you want me to speculate, I can speculate —
 17 MS ROSE: No —
 18 MR HUNT: — but I don't know for a fact why.
 19 MS ROSE: Okay.
 20 MR HUNT: It may well be we've seen that Google has evidence
 21 about the attractiveness of images for consumers.
 22 There's clear evidence for that, so it may well be
 23 because of that. It may well be because they have that
 24 additional information around pricing, delivery charges,
 25 potentially kind of ratings as well, so perhaps it may

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1 be the case that consumers — there's
 2 a contextualisation when they're clicking on a PLA
 3 that's different when they're clicking on, say, an
 4 AdWords link.
 5 MS ROSE: So is it more expensive for merchants to have
 6 something in a PLA than an AdWord?
 7 MR HUNT: I believe that's the case, yes.
 8 PROFESSOR SMITH: I think we heard from someone — I am
 9 sorry, I cannot now remember whom — or I have seen
 10 somewhere, that the bidding for AdWords is a different
 11 process, it is centred on keywords, whereas the bidding
 12 for PLAs centres on a product description and
 13 therefore —
 14 MR HUNT: That's right.
 15 PROFESSOR SMITH: — it scores much better and it is likely
 16 to score much better on relevancy.
 17 MS ROSE: Okay.
 18 MR HUNT: Well, I mean, I think there's different formats
 19 for choosing who wins in the auctions. I think that's
 20 right.
 21 PROFESSOR SMITH: But your key point is that most of
 22 the revenue is bid away in the auction process and goes
 23 to Google. Now, you said only 1% is left in
 24 the self-service model.
 25 MR HUNT: Yes.

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1 PROFESSOR SMITH: Can you remind us what sort of order of
 2 magnitude you are looking at as a percentage in
 3 the other models as well?
 4 MR HUNT: Do you mean the managed SERP?
 5 PROFESSOR SMITH: Yes.
 6 MR HUNT: So we have — well, I'll give orders of magnitude,
 7 because I assume that information's confidential, but
 8 the orders of magnitude we have are around kind of
 9 between 30 and sort of 50%, roughly that order of
 10 magnitude. But I think the really important thing to
 11 understand is quite how small the managed service is.
 12 So for Kelkoo, 99% of its traffic is self-service and
 13 less — and 1% is managed service, and the information
 14 that I have for Connexity, who is obviously no longer
 15 part of these proceedings but is the only other
 16 intermediary for whom I have information, up to
 17 November 2023, which is when I had the Connexity
 18 information, they had — their managed service volumes
 19 were lower than Kelkoo's. So managed service is, given
 20 the data I have available to me, very niche.
 21 Unsurprisingly, there's not that many merchants that
 22 want to pay a lot more when they can get something much
 23 cheaper.
 24 PROFESSOR SMITH: So your opinion is that the market has
 25 moved towards a self-service model?

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1 MR HUNT: There's imperfect information on that, but to
 2 the best of my understanding of the information
 3 available to me it looks like a very large part of
 4 the market is self-service.
 5 PROFESSOR SMITH: Thank you.
 6 Mr Noble?
 7 MR NOBLE: Just on that first point about how the market —
 8 you know, the operation of CSSs has evolved, I think
 9 it's worth maybe if we just briefly look at annex 13 of
 10 my report, although I should say, this screen has
 11 stopped working.
 12 MS ROSE: Yes, so has mine.
 13 MR NOBLE: So my — actually, I think I've got it printed
 14 out.
 15 MR HUNT: Yes, I have your annex, I'm sure.
 16 (Pause)
 17 (Off microphone discussion)
 18 THE CHAIRMAN: When you say it has stopped working, what is
 19 the reference?
 20 MR NOBLE: So it's in annex 13 of my report.
 21 THE CHAIRMAN: Have you got a reference?
 22 MR NOBLE: I don't, unfortunately.
 23 MR GREGORY: It is bundle I3, tab 2, page 109. {I3/2/109}
 24 (Pause)
 25 THE CHAIRMAN: {I3/2/109}.

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1 MR NOBLE: Yes, this is it. So if you scroll down — so
 2 what annex discusses is it tries to look at what
 3 commercial models have CSSs adopted, you know, in
 4 recent years during the Remedy period, and the way
 5 I analysed that was to look at I think it's the top 40
 6 merchants by volume.
 7 So if you scroll on to the next page {I3/2/110} and
 8 then keep going {I3/2/112}, you get to a table which —
 9 here we go. Now, I think some of the information here
 10 is confidential, so I won't read it out.
 11 THE CHAIRMAN: (Off microphone) When you say the top
 12 merchants by volume, you mean top CSSs?
 13 MR NOBLE: Sorry, sorry, yes, CSSs. Yes, so this is
 14 the top 40 CSSs ranked by the volume of traffic that
 15 they're receiving.
 16 PROFESSOR SMITH: This is table A13.1 —
 17 MR NOBLE: I've lost the screen again, but, yes, so
 18 this is —
 19 PROFESSOR SMITH: Well, since all the information in
 20 the table is confidential —
 21 MR NOBLE: I think I can summarise the information in
 22 the table.
 23 PROFESSOR SMITH: — the absence of the screen is not
 24 depriving you of anything.
 25 MR NOBLE: No, no, it's not. Essentially, because —

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1 THE CHAIRMAN: Just one moment.
 2 (Off microphone discussion)
 3 We are told there is a technical problem —
 4 MR NOBLE: Right.
 5 THE CHAIRMAN: — which needs, potentially, a replacement
 6 cable.
 7 MR NOBLE: Okay.
 8 THE CHAIRMAN: So I think we will rise for ten minutes.
 9 (10.20 am)
 10 (A short break)
 11 (10.26 am)
 12 PROFESSOR SMITH: Mr Noble.
 13 MR NOBLE: Yes, so during the brief interval I looked up
 14 the reference. So I think if we look at paragraph A13.7
 15 in that annex, so annex 13 of my report.
 16 THE CHAIRMAN: {I3/2/109}?
 17 MR NOBLE: Yes. I think it will be a couple of pages on.
 18 {I3/2/114}. Go up a couple of pages. {I3/2/113}.
 19 PROFESSOR SMITH: 113? 112?
 20 MR NOBLE: I think it's {I3/2/111}. So if we can go up one
 21 more. Yes, so you can see paragraph A13.7.
 22 So it's the last sentence, and so I describe
 23 the conclusion I reach from the research, and so
 24 the research is that I looked at the top 40 rival CSSs
 25 by traffic and then looked in the public domain at what

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1 appears to be their business model that they use.
 2 Obviously we don't have information directly from all of
 3 them, so we have to rely on what their websites say and
 4 what other sources say, and then the table goes through
 5 all the detail of where — you know, where did I — who
 6 did I look at, what sources have I used, etc. But the
 7 conclusion that I drew from that is that nine of the 40
 8 offer only a self—service model, as far as I can
 9 determine, nine only offer a managed service, and then
 10 13 offer both a self—service and a managed model, or
 11 a hybrid model, and so essentially they're a mix of
 12 the two.
 13 The reason that matters, I think, for this is
 14 the question here is about the extent to which PLAs are
 15 a good economic substitute, and I draw from the fact
 16 that you get a variety of models that they are a good
 17 enough substitute such that people can then essentially
 18 position their business in a way to take advantage of
 19 that, and some businesses will be perhaps better
 20 positioned to use their skills and their experiences to
 21 drive a managed model, others of them will prefer
 22 specialising, as we see, in a self—service model, and
 23 then yet others will be a mix of both.
 24 PROFESSOR SMITH: Do you have a sense of these 40 CSSs that
 25 you have looked at, how many of them offer what I might

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1 call a traditional CSS service and do they all do that
 2 or are some of them simply in the business of placing
 3 PLAs in the auction?
 4 MR NOBLE: To be a participant in the Remedy, they have to
 5 meet certain minimum criteria. So they have to have
 6 a standalone website, they have to have at least 50
 7 merchant offers. Now, to the best of my understanding,
 8 the vast majority of these significantly exceed those
 9 minimum standards. You know, they all have a standalone
 10 website, that's a one zero, but in terms of the numbers
 11 of merchants that they have, I think the majority of
 12 them have significantly more than that.
 13 THE CHAIRMAN: When they have ... Kelkoo have ... Do you
 14 know what proportion of them... ?
 15 MR NOBLE: No. No, unfortunately I don't know the answer to
 16 that. The data doesn't allow us to know that. You have
 17 to look from the CSS side to know the answer to that
 18 question, and so we only know it for, for example,
 19 Kelkoo and Ciao, who have provided data on that.
 20 PROFESSOR SMITH: Mr Hunt.
 21 MR HUNT: Can we go to — I think it might be helpful if we
 22 went to my first report, paragraph 373, or page 177.
 23 {I2/1/177}. So, sorry, down a page, please {I2/1/178}.
 24 So — actually, sorry, if you go to footnote 497 there,
 25 which says that — so if I may, I'll read that, which

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1 says:
 2 "The revenue and clicks split between the commercial
 3 models were requested but not provided by Google ...
 4 I understand that Google suggested relying instead on
 5 the claimants' own data."
 6 Which is the approach I adopted. As we discussed,
 7 the claimants' data shows, in the case of Kelkoo, that
 8 around kind of 99% by 2025 of its volumes were
 9 self—service.
 10 I think there's some other — so again, my
 11 understanding is that Google's own model is also
 12 self—service, which I think is quite relevant. So if
 13 I may, if we could go to {I2/1/110} of Hunt 1, footnote
 14 341, and footnote 341 says {I2/1/111}:
 15 "... [redacted]."
 16 NEW SPEAKER: (Off microphone) This is confidential.
 17 MR HUNT: Oh, sorry, apologies. Yes, sorry, you are quite
 18 right, apologies. So if everyone could — I'll leave
 19 people to read that.
 20 MS ROSE: Do you have any reason to dispute the table in
 21 Mr Noble's annex?
 22 MR HUNT: No, I don't.
 23 MS ROSE: So you accept then that there are a number of CSSs
 24 in the top 40 who have an exclusively managed model?
 25 MR HUNT: So, in all honesty, I haven't researched that, I

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1 haven't looked into that —
 2 MS ROSE: Okay, but you have no reason to disagree?
 3 MR HUNT: I have no reason to dispute that, but what I would
 4 say is all the data points it to — the data that either
 5 Mr Noble or I have available points to self—service
 6 being the vast majority of the volumes, which isn't
 7 a huge surprise given that for self—service —
 8 MS ROSE: That is surely inconsistent with the fact that
 9 nine — at least nine of the top 40 are exclusively
 10 managed.
 11 MR HUNT: Well, again, I — honestly, I haven't looked into
 12 that, so I can't tell you that and I can't tell you what
 13 their volumes are, so —
 14 MS ROSE: If they are in the top 40, and we saw that some of
 15 them are very near the top of the top 40.
 16 MR HUNT: Again, I haven't looked into that.
 17 MS ROSE: Yes. It is just that those two facts cannot both
 18 be true.
 19 MR HUNT: I mean, it depends — again, it depends what
 20 the skew is on the volumes of the top 40. So if the top
 21 few were a very large proportion of volumes —
 22 MS ROSE: But we saw —
 23 MR HUNT: — it might look quite different. I mean, we
 24 don't have those figures.
 25 MS ROSE: Yes, but I think Mr Noble has put them in order of

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1 size.
 2 MR NOBLE: Yes, I think that's right, yes, so we might pull
 3 up the table again.
 4 MR HUNT: So, I mean, I think it's — so we can go to that,
 5 but then some — can we go to Mr Noble's table, please?
 6 What's the reference for that?
 7 THE CHAIRMAN: {I3/2/112}. Are they by size?
 8 MR NOBLE: I believe they are. I will have to double—check.
 9 MS ROSE: He says "as ranked".
 10 MR NOBLE: Yes, I believe — I believe they are in size
 11 order. I'll have to check precisely the underlying data
 12 behind this to be 100% sure of that, which I can add to
 13 my homework list. I —
 14 THE CHAIRMAN: And Connexity?
 15 MR HUNT: We'd have to go down —
 16 MR NOBLE: Yes, can we scroll down —
 17 MR HUNT: — to the next page.
 18 So where is Kelkoo then?
 19 MS ROSE: Kelkoo is at the top of the next page {I3/2/113}.
 20 (Pause)
 21 MR HUNT: It is Connexity, yes, it's the second one
 22 {I3/2/115}.
 23 So all I can say is, for the data that I have
 24 available, Connexity's volumes are — managed volumes
 25 are lower than Kelkoo's managed volumes, and as we

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1 discussed, Kelkoo's managed volumes are around 1%. In
 2 fact I don't think that's from 2023, I think that's
 3 a 2025 figure.
 4 MS ROSE: But if it is right, as this table suggests, that
 5 two of the top five, which are bigger than Kelkoo, are
 6 running a managed model, then your conclusion that you
 7 cannot compete with a managed model cannot hold, can it?
 8 MR HUNT: So, I mean, again, it depends. I think we need to
 9 think about why merchants are using different models and
 10 the extent to which they may rely on a managed model
 11 versus a self—service model.
 12 Now, a self—service model understanding requires
 13 them to place the bids themselves, requires them to have
 14 their own sort of campaigns and to provide the feeds
 15 directly to Google. I imagine it may be the case that
 16 some — for some merchants, they don't want to do that,
 17 so it's easier to get a managed model. I don't —
 18 I honestly don't know the volumes that go through as
 19 the managed model, but you can understand I think why,
 20 if you have the opportunity to take the self—service
 21 model as a merchant and that costs you a lot less,
 22 there's an incentive to do that.
 23 MS ROSE: So what you are actually saying is there are
 24 different models that might work for different
 25 merchants?

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1 MR HUNT: Yes, I think that must be right, yes.
 2 PROFESSOR SMITH: Shall we move on then to issue 2.23 in
 3 the JES? So that is {I1/4/54}, whether the available
 4 margin data is sufficient to draw inferences about CSSs'
 5 commercial viability under the shopping Remedy.
 6 Mr Hunt, do you want to go first?
 7 MR HUNT: Yes. So — so, again, as we've just discussed, we
 8 don't know precisely what the split of volumes are
 9 through self—service or managed service, but based on
 10 the data available to me, the — the — as I said,
 11 the vast majority of the volumes were self—service, and
 12 for those volumes the margin is very low. Again, I'm
 13 not entirely sure, I can't remember precisely what's
 14 confidential, but very low single digits. So if one's
 15 looking at the — a mix of self—service plus managed
 16 service, you still end up with a very low kind of
 17 margin, and then, you know, there's a question of does
 18 that allow you enough, if you like, revenues, enough
 19 profit to be able to kind of sustain the business, and
 20 I think there's other reasons why you don't think —
 21 I don't think there is, because, to be clear, these
 22 volumes are purely from an intermediary business,
 23 there's no volumes going to the standalone website. But
 24 just looking at this intermediary service on its own,
 25 there's essentially not a lot of profit there, there's

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1 a relatively small amount of money there, for some, but
 2 there's not a lot, and therefore, from my perspective,
 3 that doesn't provide — it doesn't seem that
 4 intermediaries are likely to get much kind of revenues
 5 or profit to be able to invest in and improve their
 6 businesses.
 7 As I said, there's — I think there's other reasons
 8 why I think there's serious problems for
 9 the intermediaries in any case through not getting
 10 volumes to their own websites, but I think on margins,
 11 there's enough in evidence that the margins are low.
 12 MS ROSE: But you get a higher margin if you chase the kinds
 13 of merchants that get value from a managed model?
 14 MR HUNT: Yes, that's undoubtedly the case. But then
 15 there's a serious question of how much — how much
 16 volume is available from those merchants, because if
 17 merchants can get something much cheaper by bringing
 18 something in—house, then they may well not want to —
 19 MS ROSE: Well, you can see that two of the top five CSSs
 20 are getting all their volume from the managed model.
 21 MR HUNT: Yes, taking Mr Noble's table as read, then, yes,
 22 I have to agree with that.
 23 PROFESSOR SMITH: So are you suggesting, Mr Hunt, that you
 24 think that intermediary business can only survive in
 25 the long run if they have got some other line of

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1 business as well to which this business could be, you
 2 know, a suitable add—on, but it is difficult to
 3 self—sustain on the —
 4 MR HUNT: Well, so —
 5 PROFESSOR SMITH: — on intermediary business.
 6 MR HUNT: I mean, I think that the intermediary business is
 7 a — as far as I can see, a very narrow business,
 8 the scope of that business is limited, and I've no doubt
 9 that intermediaries can carry on providing an
 10 intermediary service probably at relatively low margins.
 11 Clearly there's a whole range of them that do that. So,
 12 I mean, we've seen from the information available to
 13 Kelkoo that there's — I'm not sure how many
 14 intermediaries there are now, but at some point there's
 15 been at least 600 of them, so there's clearly an awful
 16 lot of intermediaries working on relatively low margins.
 17 So I have no — I'm not saying that you can't run an
 18 intermediary business doing that. That's not my —
 19 that's not what I'm saying. But what we don't see is
 20 material margins that — that, at least if we're
 21 thinking about a comparison shopping service that has
 22 the financial fire power to be able to invest in
 23 a business and to be able to drive a sort of
 24 self—sustaining business that's more than just an
 25 intermediary business, then I would expect margins to

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1 be, you know, materially higher than very low single
 2 digit.
 3 THE CHAIRMAN: If it is an intermediary business in this way
 4 and it can be sustainable, would you have an incentive
 5 to invest in improving the comparative shopping aspects
 6 of the business, your comparative shopping site and
 7 the functionalities and the things that were discussed
 8 yesterday about your site?
 9 MR HUNT: I don't think so, and the reason is — so, again,
 10 going back to some of the figures that we looked at
 11 yesterday, the volumes going through the standalone
 12 websites are very, very small, okay? So, you know, as
 13 far as I can see, as long as you meet the criteria to
 14 enable you to take part in the Remedy box, it's not
 15 clear why there's a material incentive to invest and
 16 innovate beyond that, because the potential for you to
 17 get volumes is low. We know that the "By [CSS]" links
 18 is less than 1% of the Remedy traffic, we know that
 19 organic traffic, there's virtually no organic traffic,
 20 there's very, very little, so consequently it was very
 21 difficult to see why you do have an incentive to invest
 22 in improving and developing your standalone website.
 23 MS ROSE: I mean, CSSs of course have always been an
 24 intermediary business, have they not?
 25 MR HUNT: Well, it depends what you mean by an intermediary

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1 business. So —
 2 MS ROSE: Well, they have always been an intermediary
 3 between consumers and merchants.
 4 MR HUNT: Yes, but not in such a narrow — when I'm using
 5 the term "intermediary" here, I'm meaning it in a very
 6 narrow, kind of marketing/advertising intermediary
 7 sense. CSSs —
 8 MS ROSE: (Overspeaking — inaudible).
 9 MR HUNT: — you're right that they're — there's two sides
 10 of the market and in some ways they're an interface
 11 between the two, yes.
 12 MS ROSE: Yes, and they have — traditionally, they —
 13 the niche they were in was the margin between what —
 14 the cost per click from the affiliate feeds and what
 15 they could get from — sorry, I am not putting this very
 16 well, but it was an arbitrage model originally.
 17 MR HUNT: Well, so, I mean, I think —
 18 MS ROSE: To which they could add value.
 19 MR HUNT: So, it's like, again, I think that's the key
 20 thing.
 21 MS ROSE: Yes.
 22 MR HUNT: I think you need to see CSSs as essentially
 23 providing a — if you like, you can call it an
 24 intermediary, but what they're doing is providing
 25 a service enabling consumers to compare products

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1 which —
 2 MS ROSE: Yes, or putting it another way, enabling merchants
 3 to get their products in front of the consumers who
 4 would be most likely to buy them.
 5 MR HUNT: Yes. Yes, that's right.
 6 MS ROSE: Now, is it a possibility that what you are
 7 actually seeing, particularly with the managed model, is
 8 an evolution of that original business model back in
 9 the early 2000s, 20/25 years ago, so that really what
 10 CSSs are now providing is means to refine the relevance
 11 of the feeds from merchants to maximise the chance of
 12 the merchant applying — appearing on the very valuable
 13 PLA slot?
 14 MR HUNT: I mean, clearly that must be the role that
 15 the market intermediary, its advertising intermediaries
 16 are playing. So, essentially, to the extent that they
 17 have scope to influence how the PLA appears within
 18 Google's Remedy box —
 19 MS ROSE: Or who gets on the PLA?
 20 MR HUNT: Yes —
 21 MS ROSE: Because with — particularly with the managed
 22 model, if you ask what service are they providing to
 23 the merchants, why are the merchants prepared to pay
 24 more for the managed model, as some clearly are —
 25 MR HUNT: Yes.

22

1 MS ROSE: — the answer is: they are providing the services
 2 that maximise the chance in quality terms of
 3 the merchant getting on the PLA.
 4 MR HUNT: Yes. I don't think it's just quality. So I think
 5 you're right, it's quality, but there's bidding, right?
 6 So —
 7 MS ROSE: Yes, of course, but we know it is a hybrid.
 8 MR HUNT: (Overspeaking — inaudible) — yes, that's correct.
 9 MS ROSE: So, I mean, could you not see that as effectively
 10 an evolution of what CSSs do? I mean, are we perhaps
 11 slightly stuck in a year 2004/year 2006 concept of what
 12 a CSS is as a freestanding website? Maybe that is just
 13 not where we are now.
 14 MR HUNT: It's clearly not where we are now —
 15 MS ROSE: Yes, but maybe that is just —
 16 MR HUNT: — but there's a question of how we got here.
 17 MS ROSE: Yes —
 18 MR HUNT: — so —
 19 MS ROSE: — but, I mean, what I am really asking you,
 20 I think, is: why does competition have to look like what
 21 competition looked like 20 years ago in this very
 22 fast-moving technological field?
 23 MR HUNT: So the way I see it is quite different. The way
 24 I see it is a question of we're looking here now, okay,
 25 after — if you take 2008 — almost 20 years after

23

1 abusive behaviour started, okay? So we're looking now
 2 and you're asking questions around, well, you know, why
 3 does the role of the CSS not have to be like this?
 4 Well, it is like that because of many, many decisions
 5 that were made over time that's led to where we are now.
 6 As far as I can see, the relevant question is —
 7 just focusing on the Decision Period, the relevant
 8 question is: what would have happened back in, say,
 9 2008, potentially beforehand on the Pre-Decision Period?
 10 I think that's a very, very different question. So
 11 we're looking at where the world evolved under abusive
 12 conduct.
 13 MS ROSE: I understand that, and I think trying to work out
 14 the answer to that question is one of the major
 15 challenges of this case.
 16 MR HUNT: Yes.
 17 MS ROSE: But what I am putting to you is a slightly
 18 different point, which is you cannot just attribute
 19 the current situation necessarily to past infringements,
 20 it may in part be a feature of the way that markets have
 21 moved — online markets have moved more generally, that
 22 people are taking more shortcuts, people are less
 23 interested in freestanding websites, click-through — we
 24 know that with the advent of AI summaries, click-through
 25 from Google is just falling off a cliff. You know, that

24

1 just may be the way the world is going.
 2 MR HUNT: So —
 3 MS ROSE: So the role of the CSS is effectively to maximise
 4 the efficiency, it is the connection between consumer
 5 and merchant.
 6 MR HUNT: So I don't see how we can, if we're just focusing
 7 on comparison shopping, take away and ignore what's
 8 happened as regards the abusive conduct for a long
 9 period of time. Let's look at other specialised kind of
 10 search markets, and what we don't see is that there's
 11 this very narrow intermediary role, okay?
 12 THE CHAIRMAN: So you are saying the other comparative
 13 shopping fields, like flights or —
 14 MR HUNT: Yes, and they are very different, so I'm not
 15 drawing strong direct analogies, because I accept that
 16 they're very different, but what we don't see is this
 17 very narrow role, okay? But we see that here, as far as
 18 I can see, in part because, from 2008, then rival CSSs
 19 didn't have a route to engage with consumers, weren't
 20 able to develop their websites and therefore have ended
 21 up taking a very, very narrow role; Google has taken all
 22 of the traffic through the Remedy box, as we've seen,
 23 the vast majority of volumes go through the Remedy box,
 24 and consumers over time have become habituated and used
 25 to engaging with that. That's what people are used to

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1 seeing when they go on to Google's website. So I can't
 2 see how, at this point in time in 2026, we can sort of
 3 say: well, isn't that the role that they would have
 4 naturally have taken — the CSSs would have taken
 5 anyway? That doesn't — with all due respect, that
 6 question doesn't make sense to me.
 7 PROFESSOR SMITH: Mr Noble, you may want to comment on
 8 the viability of CSSs.
 9 MR NOBLE: Well, yes, maybe if I just wind back to 2.23.
 10 I draw out a couple of key points in this debate. So
 11 I think the first one is, just to go back to the role of
 12 talking about margins, because, as I understand it,
 13 Mr Hunt's inference that he invites us to draw is that
 14 you can tell something about the viability of a business
 15 model from the margin that it earns and I think there's
 16 two points to make on that.
 17 The first one is, we have to be very clear what we
 18 mean when we say "the margin", because the 1% number is
 19 a — one way of expressing the margin that is earned by
 20 a CSS that's engaged in a self-service model. It's
 21 the way Mr Hunt's calculated it and it's also actually
 22 the way that — you know, I think there were some KPMG
 23 reports that counsel for Kelkoo highlighted. That's
 24 the way the KPMG reports that are provided to
 25 the Commission calculates it, and that is essentially

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1 saying what is the total amount of money that is
 2 essentially involved in a transaction from a merchant
 3 and then splitting that between some of it goes to
 4 the CSS, some of it pays for appearance on the SERP,
 5 paying for the PLA.
 6 The way, however, though, that is generally reported
 7 in the statutory accounts of Kelkoo and various other
 8 CSSs is not like that, and the reason for that is
 9 because they generally don't treat the bid cost, so
 10 the buying of the PLA, as a cost to them, they treat
 11 that as essentially an external activity. So they don't
 12 report that as revenue and they don't report it as
 13 a cost, because the merchant is essentially paying that
 14 and they're paying then a fee to Kelkoo, or to other
 15 intermediaries. Now, that's quite an important point,
 16 because it tells you something about risk and it tells
 17 you something about, you know, in a sense,
 18 the commercial model that someone's adopting. This is
 19 a very low risk model that you've got, because in
 20 a sense, almost you can't lose. Every time nothing is
 21 clicked on, well, you don't incur any cost, you don't
 22 incur any revenue. When something is clicked on, you in
 23 a sense just get some revenue. So effectively what you
 24 report in your statutory accounts is 100% gross margin.
 25 Now, I don't want to make too — too detailed

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1 a point on it, but I think it is important to recognise
 2 that that difference can mean that earning what on one
 3 calculation can seem like a very small margin can in
 4 fact be quite an attractive business, because you're not
 5 having to take the risk.
 6 Now, in a managed model they report things very
 7 differently and it looks in a sense there is no real
 8 difference, I think, between the way in which
 9 the statutory accounts of Kelkoo report things and
 10 the way KPMG would have reported them to the Commission,
 11 because both numbers include the PLA cost and the money
 12 that the CSS gets to keep, and I won't mention
 13 the percentages, but, you know, they're very different
 14 percentages. Again, you can think: well, why would that
 15 be a different percentage? To me, as an economist,
 16 well, the risk profile's very different. The merchant
 17 is paying you some money to go and get it some traffic
 18 so it can sell some things and you are then essentially
 19 an agent that goes and gets that traffic, you make
 20 decisions about, well, what are you bidding for, how are
 21 you going to bid for it, how much are you going to bid,
 22 etc. That is a fundamentally different risk profile
 23 that you have.
 24 So I do think that when you're looking at margins
 25 you can't just say, small is bad and big is good, you've

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1 got to think: well, what is this margin remunerating,
 2 you know, what risk is involved, what costs are
 3 involved?
 4 PROFESSOR SMITH: In the self-service model, effectively
 5 a CSS is selling just the fact that it has a licence to
 6 provide a channel.
 7 MR NOBLE: Yes, essentially, and so — and so —
 8 PROFESSOR SMITH: — to the bidding process.
 9 MR NOBLE: — and so there is — and so there's not
 10 necessarily a lot of difference between it and — and
 11 other — other offerings, and hence why you would expect
 12 that the margin is small on one calculation, but also
 13 that in a sense the —
 14 PROFESSOR SMITH: But also the margin is very close to
 15 100% —
 16 MR NOBLE: Yes, from their perspective it's 100%, yes
 17 exactly.
 18 PROFESSOR SMITH: But the 100% number is quite a small
 19 number.
 20 MR NOBLE: Yes, although I think the other point that
 21 I would make about margins is, again, when you look at
 22 a margin you have to think about almost, again, back
 23 to: what is the business model? There are lots of
 24 businesses that we see operating with nominally very low
 25 margins. Petrol retailing is one where the CMA has got

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1 upset and concerned about the fact that it observes,
 2 you know, margins that are greater than 10%, you know,
 3 it often takes things like that. I mean, that was
 4 the whole rationale behind why it was concerned about
 5 the margins that were being earned by motorway service
 6 areas. Now, there's a whole debate about whether those
 7 margins are warranted given the costs that those
 8 businesses have, but in a sense it was taking as
 9 a benchmark the kind of high street petrol retailers,
 10 which are often earning very low single digit margins.
 11 Now, why is that viable? That's viable because you have
 12 a potentially not very differentiated service that's
 13 relying on very high volumes to make it viable. But
 14 that can be a market outcome essentially and that can be
 15 a perfectly good market outcome that is in a sense
 16 the product of the features of that particular market.
 17 MR HUNT: So, broadly — so I agree with a lot of what
 18 Mr Noble said, but I think we need to say that
 19 the outcome is essentially very low degrees of
 20 differentiation, I agree very low risk, but low
 21 propensity to innovate, low propensity to be able to
 22 really do anything distinctive, hence very low reward.
 23 So I think the take away that I have of that very, very
 24 low margin is that it's consistent with what I just
 25 said.

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1 PROFESSOR SMITH: But if I understood your response to
 2 Ms Rose's question, you are saying the intermediaries
 3 ought — the presence of intermediaries may make
 4 the auction process work better from the perspective of
 5 both merchants and — of merchants and therefore of
 6 the consumers, even though they are not providing
 7 a traditional — or their ability to provide
 8 a traditional CSS service is not called on very much by
 9 these parties.
 10 MR HUNT: That — that's correct.
 11 MR NOBLE: I think the other — the other point I would just
 12 highlight, which I think we've largely covered, is this
 13 point about, from an economics perspective, economists
 14 often look at is there entry, you know, how many players
 15 are in a market to tell them something about
 16 the commercial viability of a particular area, and
 17 I think the third point that I make in this particular
 18 box is about that, you know, that I observed significant
 19 entry and we've talked already about annex 13 which
 20 talks about the variety of different business models
 21 that are available.
 22 PROFESSOR SMITH: In response to an earlier question, you
 23 have reminded me, that these entrants need to provide
 24 a — need to have a website that provides some kind
 25 of —

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1 MR NOBLE: Yes, precisely, yes.
 2 PROFESSOR SMITH: — comparison service, even though
 3 the website is not going to do a significant amount of
 4 business and therefore does not need to be
 5 a super-duper, super-attractive site.
 6 MR NOBLE: Certainly all participants in the Remedy have to
 7 meet certain criteria and, you know, website, certain
 8 functionality has to be there, you have to have 50 plus
 9 merchants, etc.
 10 MR HUNT: I think what we can take away is that there's
 11 very, very low barriers to entry, hence why we see
 12 hundreds and hundreds of entrants. Right? So I mean,
 13 that's just — I think, must logically be true.
 14 PROFESSOR SMITH: Thank you.
 15 Shall we move on to 2.24 in the JES, so that is on
 16 the bottom of {11/4/56} on the — well, what it says
 17 there on the screen, the level of competition being
 18 informed by two factors.
 19 Mr Noble, do you want to start on this one?
 20 MR NOBLE: Yes, I mean, I would say to some degree —
 21 PROFESSOR SMITH: Again, we have covered quite a lot of —
 22 MR NOBLE: Yes — yes, I was going to say I think we have
 23 covered most of this ground in the sense that, you know,
 24 yes, I think — I think there is agreement that,
 25 you know, self-service is more at the commodified end

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1 and, you know, there's — there's a very large number of
 2 participants.
 3 MR HUNT: Yes, I mean, again, that is my understanding. My
 4 understanding is that I believe that there were many —
 5 actually, prior to the start of the Remedy period,
 6 I think there were many advertising agencies that had
 7 relationships with merchants that have sort of developed
 8 and become, you know, technically kind of
 9 intermediary/CSSs, and clearly a whole host of them
 10 have, you know, now got access to the Remedy box and
 11 that's what we can see from these numbers, but they're
 12 essentially providing a very commoditised service and we
 13 can see that in the margin.
 14 PROFESSOR SMITH: Issue 2.25 at the foot of {11/4/57}, is
 15 about Kelkoo's "whole—business ... margins", and
 16 Mr Noble, you have drawn on publicly available data to
 17 provide your evidence on this, and even though it is
 18 publicly available data, I think we all need to be
 19 careful not to stray into confidential areas in
 20 discussing Kelkoo's business, but —
 21 MR NOBLE: Yes.
 22 PROFESSOR SMITH: But, Mr Noble, do you want to start by
 23 going over what you learned from this data about Kelkoo?
 24 MR NOBLE: Yes, so the reason that I highlighted this was
 25 because Mr Hunt set out in his annex A10 of his second

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1 report an analysis of publicly available data of some of
 2 those other intermediary sectors, you know, so travel
 3 and so on. Again, so, helpfully, we're, I think,
 4 dealing only with publicly available data when we're
 5 making this comparison, and Mr Hunt was highlighting
 6 that the, you know, significant margins were being
 7 earned by various players in those markets, 30/40/50%,
 8 again, all publicly available information, and I believe
 9 the conclusion he was drawing was that those were large
 10 numbers and that the numbers that were being earned by
 11 Kelkoo in various parts of its business were
 12 significantly smaller.
 13 Now, the point that I was making was that, well, if
 14 we're going to look at a whole business using public
 15 statutory accounts, which is a particular way of
 16 treating costs and revenues, then we should look at
 17 Kelkoo's public statutory accounts which has very
 18 similar ways of treating costs and revenues, and what
 19 I found was that actually you found fairly similar
 20 levels of gross margin when you looked at those accounts
 21 and, you know, the 44 to 47 here is not a confidential
 22 number, that's — you can look that up on
 23 Companies House. The — so in a sense, the conclusion
 24 I drew was there's not actually that big a difference at
 25 the gross margin level between what you see in these

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1 other benchmark sectors and — and Kelkoo's performance.
 2 I think the second point is, which goes actually to
 3 this debate we had earlier about, well, how is it people
 4 are reporting costs? You do see in various of
 5 the businesses — so we mentioned booking yesterday.
 6 Booking has different business models depending on quite
 7 what it's selling. You know, online travel agents
 8 generally have different business models. Now, one of
 9 those business models does involve essentially almost
 10 a pure booking service, where it provides the booking
 11 but then payment is taken by the hotel, you know, in
 12 a sense everything else is done by the hotel, it simply
 13 connects the user to the hotel and you don't pay Booking
 14 directly, you pay the hotel in person with your credit
 15 card and then the hotel pays an amount of money to
 16 Booking. Now, in that kind of instance, Booking
 17 recognises that as essentially 100% revenue, and
 18 the revenue — sorry, 100% margin, because the revenue
 19 it books is the revenue that it gets paid,
 20 the commission rate. It does not account for the cost
 21 of the hotel, because that is a transaction between me
 22 and the hotel, and it doesn't have a cost of goods sold,
 23 because it treats all the other costs that it has as
 24 essentially fixed, you know, the technical
 25 infrastructure, the servers, the website, the app, etc.,

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1 is treated as a fixed cost.
 2 The reason I highlight that is because I believe
 3 Mr Hunt raised a concern that: well, are these really
 4 comparable? I think my point was, well, they're as
 5 comparable as we can make them in the sense that you've
 6 got, on the one hand, Kelkoo, which has these two
 7 different business models, the managed and
 8 the self—service, and then you've got other businesses,
 9 like Booking, like online travel agents, like others,
 10 which, again, appear on their face to have also these
 11 two business models. Because there are instances where
 12 Booking and other travel agents, they do recognise
 13 the cost of the hotel; they may have block booked
 14 a whole series of hotel rooms, that's a cost for them
 15 because they have to pay for them whether or not they
 16 use them, and in that circumstance they're taking
 17 the risk. You know, and obviously if they can charge
 18 more for those hotel rooms, great, they make a bigger
 19 margin. There will be instances where they can't and
 20 they'll make a smaller margin or possibly even a loss on
 21 those. Again, so they will recognise the revenue very
 22 differently, they'll recognise the whole of the hotel
 23 room costs in that instance, including what you might
 24 call their commission. But is it — I mean, you might
 25 say it's not really a commission, it's sort of the risk

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1 margin that they take on that.
 2 Anyway, so zoom back out, essentially that —
 3 the reason that I'm highlighting that percentage is that
 4 when I looked at Mr Hunt's annex, I then immediately
 5 thought: well, let's just look at the statutory accounts
 6 of Kelkoo and I didn't see a lot of difference.
 7 PROFESSOR SMITH: Mr Hunt?
 8 MR HUNT: So, look, what was I trying to do in that annex?
 9 There's a very simple point that I was trying to
 10 substantiate, which I think is very important, which is
 11 that, to the extent that firms — that intermediary
 12 firms can differentiate, they can have kind of material
 13 margins. Okay? That — it was a relatively simple
 14 point and we can see that by looking at these other
 15 businesses. I'm not disputing the specific points that
 16 Mr Noble makes around exactly how we calculate different
 17 margins, but the key point is we look at these other
 18 industries and we see players or their comparison —
 19 they provide comparison services as well and they have,
 20 you know, material margins, okay? All I was saying was,
 21 well, actually, we can see that in those cases, with
 22 differentiation there's material margins.
 23 In contrast, when one looks specifically at
 24 the business, the intermediary business, the engaging
 25 with the Remedy box, what we see are very low margins

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1 consistent with a low level of differentiation.
 2 So I'm not sure I disagree with anything that
 3 Mr Noble said. What I'm saying is that what we can see
 4 is where there's material differentiation, you can see
 5 material margins, and where there isn't, you see very
 6 low margins, and we see very low margins for the narrow
 7 service that we're talking about that's being sort of
 8 badged as CSSs but from my perspective isn't consistent
 9 with this broader CSS business that we discussed
 10 yesterday when we were defining what a CSS is.
 11 PROFESSOR SMITH: Kelkoo's published margin is not
 12 informative?
 13 MR HUNT: Kelkoo's published margin, there's some complexity
 14 there, includes a number of different business lines.
 15 So it includes — yesterday, we talked about the
 16 publisher business, which is this kind of separate
 17 business that still uses the same inventory but it goes
 18 to publishers, and includes — so includes other types
 19 of business lines. It also includes a whole variety of
 20 different geographies. So I just think we just need to
 21 be extremely careful when we look at Kelkoo's kind of
 22 gross margins and taking away too much from that.
 23 So what I was trying to do was specifically look at
 24 Kelkoo's margins for this intermediary business and to
 25 compare with other broader comparison service kind of

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1 markets.
 2 MR NOBLE: I would just say, inevitably, looking at
 3 statutory accounts of big companies like this, it's
 4 always a mixed bag. I think the question is: do we
 5 think that the bags are so differently mixed that we
 6 can't draw anything from it? I mean, certainly the way
 7 I understand it, the — you know, Kelkoo operates in
 8 lots of different geographies, but so do online travel
 9 agents, so does Booking. You know, Kelkoo offers more
 10 than one business model and also has some business lines
 11 that are not, you know, as focused on in our discussion,
 12 but in a sense, so — so do people in online travel
 13 agents. You know, there are all sorts of different
 14 models that people offer in terms of pure agency, they
 15 offer — you know, they buy beds, they sometimes have
 16 options on them. So there's a whole host of those
 17 differences. Inevitably, you have to sort of take it in
 18 the round.
 19 But I think the comparison that I think was being
 20 drawn was that we have vertical markets which the
 21 commission has highlighted. It hasn't defined markets
 22 specifically for other verticals but it's alluded to
 23 the fact that comparison shopping is one vertical and it
 24 implies that there are other separate verticals that are
 25 individually separate markets, and I think essentially

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1 what we're doing when we're looking at these statutory
 2 accounts is we're looking at a player or comparing
 3 players that are active, that are clearly active in
 4 those markets, and we're saying are — are the — are
 5 the margins that these entities are earning, are they in
 6 the same ballpark as each other? The conclusion that
 7 I draw from this is, yes, they are. You know, there is
 8 not an obvious structural difference in the margins that
 9 are reported across — across those sectors based on
 10 what we've seen so far.
 11 MR HUNT: So, just to put a line under it, again, the reason
 12 I point to those margins is purely to substantiate
 13 the statement that differentiation can support viable
 14 margins. So, again, that's why I've looked at those
 15 other businesses.
 16 PROFESSOR SMITH: Thank you.
 17 I think that takes us on to issue 2.26. So I think
 18 issue 2.26 is one that we discussed at some length
 19 yesterday {11/4/59}, if I recall correctly.
 20 THE CHAIRMAN: Independent of how you define Google's CSS,
 21 which we know —
 22 (Simultaneous speakers — inaudible)
 23 — and the one definition produces one answer and
 24 the other definition produces the other answer.
 25 PROFESSOR SMITH: I am not sure that we want to rerun

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1 the discussion of levelling the playing field and
 2 raising its level or lowering its level at the same
 3 time.
 4 That takes us on to — the last question is 2.27
 5 {11/4/61}, and I am looking to the — whether
 6 the available evidence which we have been discussing is
 7 consistent with the effective competition rather than
 8 exclusionary effects, and I am looking for guidance on
 9 whether this is a legal question or one that we can get
 10 some useful comments on from our economic experts.
 11 MR NOBLE: I think, from an economic perspective, it's —
 12 THE CHAIRMAN: Let us just pause for a moment.
 13 MR NOBLE: Forgive me, sorry.
 14 PROFESSOR SMITH: (Overspeaking — inaudible) — because we
 15 want to make sure that issues of fact and law are really
 16 discussed in the right forum.
 17 Some of us are always interested.
 18 (Pause)
 19 The Chairman suggests that this is an issue of —
 20 THE CHAIRMAN: It follows from —
 21 PROFESSOR SMITH: — interpretation in law that —
 22 THE CHAIRMAN: It follows from your other answers I think.
 23 PROFESSOR SMITH: Yes. The information that you have
 24 provided here and your discussion of it is very helpful
 25 for us to make our — the Tribunal's own assessment of

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1 what the legal implications are for competition in
 2 the Post-Decision Period.
 3 We are now going to be moving on to discussion of
 4 counterfactuals.
 5 Chair, shall we — would this — this would be
 6 a natural point —
 7 THE CHAIRMAN: Yes, I think ...
 8 Professor Smith is suggesting we take a short break
 9 now and come back in ten minutes.
 10 (11.12 am)
 11 (A short break)
 12 (11.30 am)
 13 THE CHAIRMAN: We are going to move on to talk about
 14 counterfactuals, and just thinking about some
 15 parameters, everyone — it is — the premise, of course,
 16 the counterfactual has to be lawful, but that is
 17 a matter for us, not for economics. It has also got to
 18 be technically feasible, I think everyone would agree on
 19 that, but again, that is not an economic question and we
 20 have heard quite a bit of evidence about what can be
 21 done and problems that can occur and so on. It has got,
 22 I think you are agreed and I imagine it is common ground
 23 that it has got to be commercially rational for Google.
 24 Perhaps economics can help a bit on that, but it is not
 25 a pure economic question. It has got to give rise to

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1 effective competition in the counterfactual. That is
 2 something where I think you can help us and so that is
 3 really setting the sort of scope of what we can usefully
 4 discuss on the counterfactuals.
 5 We appreciate, Mr Noble, for you, it is a bit of
 6 a sort of intellectual gymnastic because your primary
 7 position is, well, the Remedy is lawful and restores
 8 effective competition and therefore this is all a bit
 9 irrelevant, but in order to help us looking at these
 10 things, we have to ask you to put that out of your mind
 11 for a moment. Assume that we are not satisfied with
 12 the Remedy as being the solution and therefore we have
 13 to look at these counterfactuals, but we understand that
 14 your starting position is, well, we do not need any of
 15 this because we have got the Remedy.
 16 So, on that basis, we want to just go through
 17 the various different potential counterfactuals we have
 18 got.
 19 PROFESSOR SMITH: Before we turn to the counterfactuals
 20 proposed by the Claimants, let me add one thing to what
 21 the Chair has just said about Google's position. If
 22 the Remedy is effective — if the Remedy is legal and
 23 effective, then naturally that is Google's proposed
 24 counterfactual.
 25 But, Mr Hunt, I understood you to say that you

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1 thought that there were ambiguities about Google's
 2 position about the counterfactual. Is that the case or
 3 are you happy with —
 4 MR HUNT: So —
 5 PROFESSOR SMITH: — simply the Remedy being Google's
 6 counterfactual?
 7 MR HUNT: So, again, so my — so, first of all, my
 8 understanding of Google's counterfactual is that the —
 9 in effect, I think, that the version of the Remedy box
 10 that was implemented in 2017 is the version that
 11 essentially goes all the way back to 2008. So I think
 12 it's worth noting that in that early version of
 13 the Remedy box the — there was very little take-up, if
 14 you look at the evidence, by sort of rival
 15 intermediaries in that very, very early period, just
 16 after kind of October 2017. It wasn't until Google
 17 implemented the spend match in June 2018 and then also
 18 made a number of changes that Mr Braendle talks about,
 19 I think in his third witness statement at paragraph 34,
 20 that makes the self-service option much easier, it was
 21 only after that that we see material take up by rival
 22 intermediaries.
 23 So thinking about that early period of
 24 the compliance mechanism, the Remedy, the criteria,
 25 I understand, for engaging in that Remedy box were

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1 actually very low. They didn't include at that point of
 2 time filtering. They didn't — so actually, you needed
 3 to have a website, but I think it was a very simple
 4 website. So I think there's a number of reasons to
 5 think that the — if you take that specific version of
 6 the Remedy box and take it all the way back to 2008,
 7 I think there's a number of issues that are raised by
 8 what are we actually saying, what does sort of
 9 competition kind of supposedly look like? So I think
 10 that's something that's worth noting first of all.
 11 Then, clearly, my analysis of the Decision Period
 12 and then the Post—Decision Period — also my analysis of
 13 the Post—Decision Period, I — I — from my perspective,
 14 I cannot see how the Remedy allows CSSs to have
 15 equivalent access to users. It doesn't allow them to
 16 have functionality of CSSs and as a result of that they
 17 have low margins. So that would apply equally back to
 18 2008, so that's my sort of concern with the Google
 19 Remedy box as a — in the counterfactual from
 20 the earlier period.

21 PROFESSOR SMITH: Thank you. Well, we will come to
 22 the difference between the earlier period and the later
 23 period in due course.

24 Mr Noble, do you want to respond to those issues?

25 MR NOBLE: I mean, I would just — I think the only point

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1 I would make, because I think the Chair summarised sort
 2 of my position on this, that I think the — from my
 3 perspective, once the Remedy comes into place, you do
 4 have equality of access and, intellectually, you have to
 5 distinguish between whether or not the — what you see
 6 is essentially the transition, so in a sense, you know,
 7 my conclusion is that once the Remedy is in place, you
 8 then transition to a competitive outcome. That doesn't
 9 happen instantly, there is a transitional path that you
 10 go on, and I think the points that Mr Hunt was alluding
 11 to are essentially to suggest there might be waypoints
 12 along that, that it might be the case that it wasn't
 13 until spend match, or it wasn't until certain changes to
 14 the interface were made that actually the Remedy was
 15 effective and therefore there's almost a continued level
 16 of infringement until that point, and then, after that,
 17 there's no longer an infringement.

18 Now, intellectually, I think you have to distinguish
 19 between what is essentially an overhang effect or
 20 a transition effect from moving from something where
 21 there is an infringement to something where there isn't,
 22 because it doesn't happen overnight, and something which
 23 is actually there is a continued infringement but it's
 24 a different kind of infringement than it was before.

25 PROFESSOR SMITH: So to put it simply, it is where

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1 the Remedy — it is the end point of the evolution of
 2 the Remedy that you would see as the appropriate
 3 counterfactual?
 4 MR NOBLE: Well, no, not necessarily.
 5 PROFESSOR SMITH: That is too simple, is it?
 6 MR NOBLE: No. No, I would say that the Remedy itself
 7 I think does achieve the — in my framework, the Remedy
 8 itself, once it is implemented, does achieve the —
 9 you know, essentially equality of opportunity, and one
 10 then sees a transitional path from something where CSSs
 11 aren't involved to something where they are heavily
 12 involved.

13 Now, Google does things along the way, and I think,
 14 as we discussed yesterday, you can expect — you can —
 15 there's a strong expectation about what the impact of
 16 those things is going to be. So when Google puts up
 17 the target margin that its own in-house business has to
 18 achieve, you would expect that it will lose volume and
 19 rivals will gain volume. That's what you see, when it,
 20 in a sense, gives free money to merchants to use rivals,
 21 you would expect people to use rivals more.

22 One way of interpreting that is that Google is
 23 seeking to accelerate the transition from one
 24 equilibrium to another rather than that those things are
 25 what mean the end of the infringement occurs, if you see

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1 what I mean.

2 MR HUNT: So if I may, I want to make two more points just
 3 around Google's kind of Remedy in the earlier period.

4 I think there's a material issue that under
 5 the Remedy then merchants, as we know, are charged.
 6 They had been charged from 2013, but from 2017 they're
 7 still charged, albeit it's intermediated by CSSs, and
 8 there's a material tension there because, actually, in
 9 2008, Google made a decision not to charge merchants
 10 specifically because it wanted to attract merchants, is
 11 my understanding of the factual record. So there's
 12 a fundamental tension there between the Remedy that was
 13 implemented by Google and what one would see there at
 14 the earlier point of time.

15 Then the second point I think that's worth making
 16 is, where we see that we've ended up in 2017 — and this
 17 goes a bit to what Ms Rose was saying and what we were
 18 talking about — essentially we've ended up in
 19 a situation where there's users are used to having
 20 the PLA format and they've been used to that for
 21 many years. In fact, from 2008, they're used to seeing
 22 similar formats, then from 2013, the formats changed
 23 slightly, but essentially they're paid, and we see that
 24 going into 2017. So I think looking at and
 25 understanding what Google implemented as the Remedy and

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1 then just assuming that all of that, we can just port
 2 all of that back in time, we have what I call a path
 3 dependency issue, but in essence what that means is that
 4 Google's behaviour, and clearly anti-competitive
 5 behaviour during the Decision Period, has shaped where
 6 we've ended up and I think therefore there's material
 7 issues with taking where we've ended up and porting that
 8 back in time.
 9 PROFESSOR SMITH: Can I ask then what consideration we
 10 should give to the fact that Google switched from
 11 a church/state division before 2012 to a monetised model
 12 after 2012, and the post-2017 Remedy is one that
 13 operates in a monetised world where the church/state
 14 division has at least changed if not disappeared? So
 15 is it sensible then to think of a Remedy for
 16 the pre-2012 part of the Decision Period in which Google
 17 is operating a monetised box rather than a non-monetised
 18 box?
 19 MR NOBLE: Yes, so we know factually Google did operate its
 20 standalone CSS and its box on a free — free basis to
 21 merchants during that period, and I think the question
 22 we have to ask ourselves is: what's different in
 23 a counterfactual? I think there are two incentives at
 24 play for Google that are important to take into account
 25 in that.

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1 One is that Google — and you see this in
 2 the documents — Google expected to enhance its position
 3 in general search by having good quality comparison
 4 search in a sense as, you know, a route to that. It
 5 wanted shopping starts, essentially, is what we're
 6 talking about. It wanted shopping starts from
 7 general search and it anticipated being able to monetise
 8 that because, essentially, it makes general search more
 9 attractive.
 10 So the way I rationalise that is, what's going on
 11 is, in the Commission's general search market, Google is
 12 seeking to push out the demand curve so that there is
 13 more volume going through its general search engine,
 14 because there's more volume going through its general
 15 search engine, it achieves more AdWord sales, it makes
 16 more money. That, I think, would be the same in
 17 the factual — or very similar in the factual and
 18 the counterfactual, because, you know, Google operates
 19 a general search engine in the factual and
 20 the counterfactual and it has AdWords in the factual and
 21 the counterfactual.
 22 I think what's different between the factual and
 23 the counterfactual is that Google was, as the Commission
 24 found, in the factual, self-preferencing its CSS, and so
 25 one incentive that it would have to make it free is that

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1 it's investing in its CSS, and you see that in
 2 the documentary record as well. It wanted to build up
 3 the viability of its CSS, and one of the differentiators
 4 that it had was it was free, and you see that in various
 5 slide decks where it talks about that. Now, obviously
 6 that — that is quite different in the counterfactual,
 7 because it's not self-preferencing, because it's not
 8 engaging in the infringement, and so that sort of
 9 investment incentive, as it were, wouldn't be there, or
 10 would be very strongly attenuated, because to the extent
 11 that it invests in anyone, it has to invest in rivals to
 12 the same or, you know, the equivalent degree that it
 13 invests in itself, and, you know, if it has a small
 14 share, then it's mostly investing in rival CSSs'
 15 businesses.

16 So the conclusion I drew, taking into account those
 17 factors, is that there is therefore a significantly
 18 attenuated incentive on Google to make it free and
 19 therefore it seems plausible to me that what Google
 20 would have done is monetised from the beginning or not
 21 — if not right from the beginning then at an earlier
 22 period than it did in fact monetise.

23 THE CHAIRMAN: It would still need to build — it is not
 24 inconsistent, is it, that Google needs to build up its
 25 own CSS as a CSS service as well as enabling its CSS —

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1 other CSSs to compete with it?
 2 MR NOBLE: Yes, although —
 3 THE CHAIRMAN: It would have — it will have the commercial
 4 incentive to build up its own CSS to be an effective
 5 CSS —
 6 MR NOBLE: Yes.
 7 THE CHAIRMAN: — and it has the legal obligation to allow
 8 that to compete with others.
 9 MR NOBLE: Yes, although it then has almost a complicated
 10 problem to solve, because if it chooses for its own
 11 standalone CSS that that will continue to be free, in
 12 order to be compliant, you know, in this — in this sort
 13 of hypothetical scenario, we're assuming what it's also
 14 doing is therefore having a free box of some sort on
 15 the — on the SERP and that — you know, and of course
 16 it can access that box, it doesn't charge merchants, it
 17 doesn't need any money to access that box, so it can get
 18 in there on relevance terms, rival CSSs can also get in
 19 there on relevance terms. But that's what I mean by
 20 investing, because essentially, the freeness of the box
 21 on the SERP is a form of investment, because we know
 22 there's cannibalisation, that's very clear from
 23 the documents, and Google was thinking about, well, how
 24 big is that cannibalisation, and of course in
 25 the factual world, all of the cannibalisation, it gets

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1 all the benefit of that, because all the traffic that
2 goes through the box goes to it.

3 In the counterfactual world, I would presume
4 a significant portion of the traffic would go to other
5 people, and in a sense, I mean, quite how much we don't
6 know, but, you know, there's all the debate about, well,
7 if Froogle's not very good, then you would think
8 actually quite a lot of the traffic would go to other
9 people; if Froogle is very good, then a bit less, Google
10 would get more off it. But it's unambiguously the case
11 that Google would not get 100% of the traffic and
12 therefore that reduces the sort of investment incentive,
13 as it were.

14 Does that help?

15 PROFESSOR SMITH: Mr Hunt?

16 MR HUNT: So I think we need to put ourselves back into
17 that — you know, the time period at the start of 2008
18 and think about what was going on at that point of time.

19 So my understanding of the documentary evidence is
20 that Google was concerned that product search was
21 happening elsewhere and was very keen to draw users to
22 Google, and in part that's because it wanted therefore
23 to present these, you know, specialised shopping results
24 on its — on the webpage of the SERP, the General Search
25 results page, and — but it had a problem, it had

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1 a problem that, as you said, the documentary evidence
2 was there that Froogle wasn't very good at that point of
3 time, that it was providing poor quality results and in
4 part that was because it didn't have good merchant
5 relationships, it wasn't getting the feeds, the product
6 feeds from merchants, is my understanding, that enabled
7 it to provide essentially good results to consumers. So
8 it had a challenge, and the way it chose to meet that
9 challenge was by investing in its own CSS, but also
10 taking all of that space for itself, providing it free
11 to merchants and therefore kind of, if you like,
12 enticing, getting merchants to join them and therefore
13 improving the quality of its CSS.

14 So clearly that behaviour is abusive, so we need to
15 think, in the counterfactual, when you've got this
16 tension, so it's not in the later situations where you
17 see, I think that you could reasonably say that at
18 a later point of time Google has material market power.
19 If you believe the Google documents, actually at that
20 point of time, it wanted to compete, it wanted to draw
21 users to Google, so it needed to offer something
22 attractive to users. Therefore it seems to me that at
23 that point of time when there were comparison shopping
24 sites that had more extensive relationships with
25 merchants that had better quality results, and if you

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1 believe that, and again, you have the factual
2 information on that, so — but if that's the case, it
3 would seem to me that Google has quite a strong
4 incentive, if it's treating its own CSS equally to rival
5 CSSs, to provide access to those CSSs to the SERP to
6 have attractive results to be able to draw users to
7 the search engine results page, okay?

8 Now —

9 MS ROSE: You are saying that it is a sort of shortcut for
10 Google. Instead of having to have its own free CSS to
11 kind of attract merchants, it can instead attract — it
12 can instead attract users onto the SERP by piggybacking
13 on the fact that other CSSs already have built up good
14 relationships with merchants?

15 MR HUNT: Yes, and have also developed over time an
16 understanding of how to match queries with results. So
17 CSSs had had several years where they developed their
18 services.

19 Now, that's not to say Google can't have its own CSS
20 competing with those rival CSSs and invest in that.
21 Sure, it can certainly do that. So the scenarios that
22 perhaps we're going to talk through might envisage
23 different ways that Google could compete as a CSS with
24 rival CSSs but with the aim of having an attractive
25 search engine results page to draw users in. So that's,

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1 you know, broadly the way that we've thought about it,
2 or that I've thought about it.

3 Then there's the specific question of charging.
4 You know, it seems to me that Google, in the scenario
5 that we've discussed, may well have an incentive to
6 still provide access for free. The Claimants have
7 raised — and I think it's a good point — the Claimants
8 have raised a potential issue with that, that, well,
9 doesn't Google provide access for free but then the CSSs
10 sell access to the merchants and they charge
11 the merchants and therefore there's a tension there
12 because Google chose to provide access to the merchants
13 for free? I agree with that, I think that's a good
14 point.

15 So I think what we would envisage — and this partly
16 goes back to what we started to discuss yesterday with
17 Ms Rose around charging, so you'd imagine that you'd
18 have CSSs would be charging merchants, I imagine Google
19 would also be, therefore, charging merchants, and again,
20 it might raise other concerns around anti-competitive
21 behaviour if Google was to provide it for free, right,
22 to merchants? So you'd imagine there's a situation of
23 competition between CSSs where merchants are being
24 charged. But presumably Google would be able to compete
25 quite fiercely and set relatively lower charges for

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1 merchants, and that would have an impact on the rival —
 2 what the rival CSSs would be able to charge merchants as
 3 well, because they're both competing for merchants and
 4 competing for users.
 5 So, you know, broadly the way that I've thought
 6 about it is this idea of trying to think about what
 7 competition looks like in that earlier period, which has
 8 — is set out in the way that I've broadly sketched, but
 9 I can go into further detail if that's helpful.
 10 PROFESSOR SMITH: Do you agree with Mr Noble that there are
 11 counter — there are forces that pull in both directions
 12 if you pose the question just as a temporal question: at
 13 what point in time would you expect Google to have moved
 14 to a monetised model? It is not obvious that it would
 15 be later than 2012 or earlier than 2012, is it?
 16 MR HUNT: We don't know. We don't know precisely, okay?
 17 That's true. But what we do know is, in 2008, Google
 18 was very keen to drive users to the SERP. Google,
 19 exactly as Mr Noble has said, was very aware that
 20 providing this space for free cannibalised its AdWords
 21 revenues, so it led to lower AdWords revenues. But
 22 actually — and this is consistent with what we see as
 23 competition — it decided to do that because at least it
 24 was thinking about monetisation options, but one of them
 25 was actually just driving more revenues to — or, sorry,

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1 more volumes to the SERP and therefore, if you get more
 2 volumes, you can offset the cannibalisation by selling
 3 more volumes, okay? So that was clearly part of the way
 4 that Google was thinking about it. It's not clear to
 5 me, at least thinking about it in that same way, you
 6 can't think about that as the CSSs competing, that
 7 drives more volumes, more users onto the SERP and
 8 actually Google can then monetise that through more
 9 advertising. So that's also very plausible.
 10 PROFESSOR SMITH: I think there has been a very helpful
 11 discussion pointing out how even quite simple questions
 12 about the counterfactual turned out to be quite
 13 complicated questions for us to struggle with.
 14 Can we turn to the counterfactuals proposed by
 15 the Claimants, and perhaps if we can, just to keep us
 16 anchored, turn to {12/1/42}, which is I think where your
 17 discussion, Mr Hunt, of the counterfactuals starts.
 18 What I suggest is that you, Mr Hunt, take us through
 19 the counterfactual scenarios one by one, and as we go
 20 through them one by one, Mr Noble, you might respond
 21 with comments. There are 1, 2, 3, 3a and 3b, and
 22 the Tribunal may have variants on 3 (inaudible) for
 23 discussion.
 24 So I would like you to concentrate on us getting
 25 efficiently through this discussion.

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1 MR NOBLE: Yes.
 2 PROFESSOR SMITH: We obviously need to consider things
 3 properly, but the more efficiently we can do it,
 4 the better.
 5 So do you want to start with scenario 1: no
 6 algorithms, no box, no promotion or demotion?
 7 MR HUNT: Yes.
 8 So, you know, it's very clear that Google needs to
 9 make a number of different — so, first of all, shall I
 10 deal — I'll just deal with competition on the merits.
 11 As far as I can see, removing both of the behaviours
 12 very clearly just removes the abuse. So just, you know,
 13 let's bank that, and I think that's very clear.
 14 Then moving to thinking about commercial
 15 rationality. Now, Google clearly has a number of
 16 different trade-offs to make, right? That's
 17 the reality. It may decide that it's so concerned about
 18 providing access to rival CSSs and the concerns that
 19 that will drive revenues to CSSs rather than to it by
 20 having a box that it chooses not to have a box and
 21 chooses to allow CSSs to appear in the organic results,
 22 knowing that it can potentially make the SERP attractive
 23 because users will go on to the SERP and be able to
 24 click on the organic results, and that — it will be
 25 able to monetise it through AdWords, okay? So that's

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1 broadly the idea in scenario 1, that Google would make
 2 that decision, think about the trade-offs, and then
 3 potentially decide not to have a box.
 4 I think I've noted that the evidence from Google
 5 seems to be that they were aware that consumers valued
 6 kind of visual images and that consumers engaged with
 7 that, so, with that in mind, it seems to me that
 8 scenario 1 may be less realistic compared to some of
 9 the other scenarios, because actually having visual
 10 imagery is potentially more attractive to draw users
 11 into the SERP.
 12 THE CHAIRMAN: But, of course, Google has to compete as —
 13 even though it is in a strong position, it wants to
 14 maintain that as a general search engine —
 15 MR HUNT: Yes.
 16 THE CHAIRMAN: — as against other general search engines —
 17 MR HUNT: Yes, that's right.
 18 THE CHAIRMAN: — at the other level of competition?
 19 MR HUNT: Yes, and certainly at this point of time, kind of
 20 in 2008, the evidence seems to be that Google is very
 21 concerned about drawing people into General Search.
 22 I think it's quite different at later points in time,
 23 I should say, and more recent points of time, but back
 24 in 2008, that's the situation we're in.
 25 PROFESSOR SMITH: Mr Noble.

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1 MR NOBLE: I guess, keeping it very brief, I mean, I would
2 say, on this scenario, I think the conclusions that I've
3 reached are that Google wanted to have its algorithm,
4 because it was concerned about spam; if it couldn't have
5 its algorithm then almost the next best alternative, if
6 it can't have the one it had, it would want a modified
7 one, it wouldn't want to get rid of it.

8 In terms of a box, I think — without going over
9 the ground again, I think the — you know, it was
10 concerned about driving engagement with the SERP, it
11 thought the best way to do that was to have a box, and
12 therefore having a box is better than no box, but of
13 course it has to be a good box.

14 PROFESSOR SMITH: Okay.

15 Shall we move on then to scenario 2, and we do have
16 an image that perhaps is helpful to our discussion. It
17 is in {A1/3/15}.

18 So we have got, again, no algorithms or a suitably
19 modified algorithm, Mr Hunt, but with a box.

20 MR HUNT: Yes. Yes, so there's this one. I think there's
21 also the page above it as well {A1/3/14} are — oh, no,
22 maybe it's the page below. Sorry, I'm — {A1/3/16}.

23 Yes, this one, yes.
24 So all it's trying to show is there's different
25 plausible ways that Google could bring images onto

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1 the search engine results page. The one that we can see
2 on the screen here has images, but it — but it
3 maintains the kind of sequential kind of results that we
4 can see and for some of the results you see images.
5 That's the slide that we can see here.

6 Then the other example on the previous slide
7 {A1/3/15}, then, again, it's still envisaged to be
8 organic search results, these are not specialised —
9 there's not a separate index of product ads on
10 a separate database, it's all organic results. But
11 because Google goes and crawls the webpages of CSSs, it
12 gathers information from those webpages and it can
13 potentially bring that information into — that can
14 include — I understand, again, these are sort of
15 technical details that are precisely outside my kind of
16 expertise, but I understand you can have images on —
17 there's richer content that you can add to webpages for
18 when they're scraping, and that essentially Google would
19 be able to provide that richer content and may be able
20 to tell, for example, where it has specialised search
21 results from scraping, it could present them in
22 different formats. One of them — one of these
23 envisaged here is — you know, looks more like a box,
24 but the idea is it's still organic search results, just
25 presented in a different way, and essentially the idea

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1 is that Google would have freedom as long as it was
2 choosing to order the results by relevance.

3 MS ROSE: Is the box in scenario 2 only CSSs?

4 MR HUNT: Yes, I believe so. I believe that's correct. But
5 actually, I mean, I think, in principle, I can't see any
6 reason why it couldn't be merchants as well.

7 MS ROSE: If it is organic search results, let us say
8 the top five organic search results included two CSSs,
9 a merchant and a review site like Which?. Could you
10 have a box?

11 MR HUNT: I mean, technically, I genuinely don't know what's
12 feasible in terms of a box, so I just can't respond
13 directly to that —

14 MS ROSE: But just —

15 MR HUNT: But in principle, yes.

16 MS ROSE: Just thinking about competition, is it different
17 if you are looking not just at CSSs, but also at other
18 categories of users who are looking to get prominent
19 positions on the SERP, like merchants?

20 MR HUNT: So, to be clear, all — all this is just
21 considering that Google's providing — is engaging in
22 organic search —

23 MS ROSE: Yes.

24 MR HUNT: — just that the organic search has this imagery
25 that website owners can choose to associate with their

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1 webpages and that Google — and again, exactly
2 technically how this works, I'm not precisely clear, but
3 then Google can choose to put or allow the webpage
4 owners to put that onto the results page and I believe
5 then that it can choose how — Google can choose how it
6 shows that imagery. But it's essentially an organic —
7 it's an enhanced organic search.

8 PROFESSOR SMITH: Mr Noble, how do you respond to this?

9 MR NOBLE: I mean, I think the points I made before about
10 scenario 1 apply, so I won't repeat them.

11 The only extra point that I would add on top of what
12 we've just discussed is the enhanced display formats and
13 the point that I make in the joint statement is about
14 the fact that these occupy premium space on the SERP,
15 you can see that very clearly here on this particular
16 diagram, and I think the understanding of this scenario
17 is that those have to be provided for free, and I think
18 that's the point that I take issue with is it's not
19 clear to me why that would be a commercially rational
20 outcome for Google, that it's providing what is
21 essentially free, premium space which you would
22 anticipate will have a cannibalisation effect and — so
23 it's not clear to me why that would be a rational
24 outcome.

25 PROFESSOR SMITH: Mr Hunt?

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1 MR HUNT: So I think we already discussed the sort of
 2 cannibalisation issue and I think we're both aware of
 3 it. Google clearly did provide the space for free
 4 actually knowing that there was cannibalisation, and in
 5 part it did that because it wanted to drive, as we said,
 6 greater volumes, draw in more users. So I think there's
 7 a potential rationale for it to offer this sort of
 8 service, because more users will be using Google and it
 9 can — and therefore more users are using Google and it
 10 can monetise that through AdWords.
 11 PROFESSOR SMITH: But, as Mr Noble pointed out, this option
 12 compared with option 1, users occupy more expensive real
 13 estate or gives away more expensive real estate for
 14 free.
 15 MR HUNT: Sure, but the rationale of doing that is that
 16 Google would want to draw more users from other places
 17 on the web where users can engage in product search,
 18 okay? So they're — so I agree that that's correct, but
 19 that might be the rationale why Google would do that.
 20 I mean, as I said, actually, Google did provide access
 21 to that space for free in 2008 to that valuable real
 22 estate.
 23 THE CHAIRMAN: So it was making a trade off?
 24 MR HUNT: It's making trade-offs, exactly, that's right.
 25 That's exactly right.

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1 PROFESSOR SMITH: Mr Noble, when you say this would not be
 2 commercially rational for Google, commercial rationality
 3 always has to be against a background of choosing among
 4 legal options?
 5 MR NOBLE: Yes, and the — in this world, I'm assuming that
 6 Google isn't engaging in any form of self-preferencing,
 7 and so if it's providing something for free, it's
 8 providing something free both to itself and to other
 9 people, and I think that's what engages the — sort of
 10 that investment point that I was making is that when you
 11 are engaging in self-preferencing, all the investment
 12 effect goes to you, and what you're not, then
 13 the investment effect goes some to you, but lots to
 14 other people too. I think that in a sense unambiguously
 15 makes it less commercially rational than it was in
 16 the factual to have had a box that was free.
 17 MR HUNT: What I would say, though, is if you look — and
 18 again, I'm not — you can go to the factual records in
 19 all of the documents, but there's a 24 October 2008
 20 document where Google clearly explains the rationale,
 21 this cannibalisation issue that it was very aware of,
 22 and sets out, explains how, if it drove increased
 23 traffic, then it essentially becomes profitable to give
 24 away this space, you know, give away space for free,
 25 because it gets more volumes, okay? So I think it's

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1 well worth you kind of looking at some of that
 2 documentation. I'm sure you have done.
 3 PROFESSOR SMITH: Thank you.
 4 Shall we move on then to scenario 3a, which is on
 5 page 17 of this document {A1/3/17}. Good, okay.
 6 Mr Hunt?
 7 MR HUNT: Okay. So, again, so 3a, the idea is that Google
 8 could provide — again, we can use
 9 the terminology "tiles", but as you can see here,
 10 there's whatever, there's five and a half tiles, okay,
 11 that we can see that Google's provided at the top of
 12 the search engine results page.
 13 THE CHAIRMAN: Sorry to interrupt. Just to be clear, it is
 14 a carousel, so you can scroll along.
 15 MR HUNT: This is shown as a carousel, yes. Yes, that's
 16 correct.
 17 THE CHAIRMAN: Yes, I assume there could be potentially —
 18 MR HUNT: Yes, there could be potentially more, and I think
 19 the idea is that CSSs would be able to kind of appear,
 20 if you like, as a tile and the idea is that when you
 21 clicked on this, you know, tile, you would then go to
 22 the CSS standalone webpage and the idea being that it
 23 would be somewhat similar to the catalogue variant of —
 24 of the Product Universal, where, when a user clicked on
 25 a tile, they went through to Google's standalone

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1 webpage. So that was — that's the idea behind this and
 2 that was specifically in my instructions.
 3 So, at least in principle, to the extent that
 4 Google's CSS is just competing with rival CSSs to appear
 5 as a different tile here and have its standalone
 6 website, I think this could clearly enable kind of
 7 competition on the merits.
 8 Then there's a question of essentially how
 9 attractive that is for users. Does it provide users
 10 with a good experience to help Google in the situation
 11 that it was in back in 2008 when it wanted to draw
 12 users? Clearly that's a question that we have to sort
 13 of navigate, the imperfect factual evidence for that,
 14 but at least in principle it could do. It would allow
 15 different CSSs to develop their own kind of websites to
 16 try to provide a better way of presenting product
 17 offers, to potentially provide other information that
 18 users might find helpful for kind of navigating their
 19 sort of decision-making on products. So at least in
 20 principle it has — you can imagine that there could be
 21 material competition between different CSSs on various
 22 different dimensions which could potentially provide
 23 better outcomes for users as well as for merchants.
 24 PROFESSOR SMITH: But just as — it strikes me, just as in
 25 the current situation, the product box drives out

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1 organic search results —
 2 MR HUNT: Yes.
 3 PROFESSOR SMITH: — this one would drive out — would
 4 disadvantage merchants in the sense that merchants who
 5 do not get into the — who are not admitted into
 6 the box, the box is only for CSSs, merchants'
 7 opportunity to gain customers directly from the organic
 8 search results would be greatly diminished here; is that
 9 correct?
 10 MR HUNT: I mean, look, it's certainly the case that
 11 the evidence is that users engage more with what they
 12 see at the top of the SERP. You'd imagine that they're
 13 going to engage much more with this kind of, you know,
 14 box, kind of broader box or carousel than they would do
 15 with kind of some of the organic results further down,
 16 so, yes, look, I imagine that would lead to an outcome
 17 where merchants end up paying CSSs for leads, for
 18 traffic, and would get less free organic search. So
 19 I think that's true. But the reality is if CSSs do
 20 a better job at providing, if you like, qualified users,
 21 then that may well make sense for merchants, they may be
 22 able to get access to kind of more valuable traffic and,
 23 you know, again, so obviously we don't know precisely,
 24 but I think that that's certainly feasible.
 25 PROFESSOR SMITH: Mr Noble?

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1 MR NOBLE: Yes, just two very brief points, trying to keep
 2 the emphasis on brevity. I think that one thing that is
 3 very similar about — so the first point is there's one
 4 thing that's very similar about this box and the Remedy,
 5 which is that it's being charged for, and so in that
 6 sense, my — the point I made about scenario 2 falls
 7 away, because this is a paid—for box, it's premium space
 8 on the SERP, money is — money is being paid for that
 9 space.
 10 I think the second point is then: well, what's
 11 the design of the box? This is really the debate
 12 about: are you having direct to merchant links in
 13 the box or are you having direct CSS links in the box?
 14 That's what then triggers in a sense the CLA versus PLA
 15 debate, and we touched on that yesterday, and
 16 the conclusion that I've reached based on my analysis is
 17 that Google had evidence and strong reasons to prefer
 18 PLAs. Obviously you'll have to take a view on that, and
 19 I've provided my thoughts on how one might evaluate
 20 the competing evidence on that.
 21 MS ROSE: Is this option significantly different from
 22 the CLA option under the Remedy?
 23 MR NOBLE: My understanding is it's very similar to a CLA
 24 structure.
 25 MR HUNT: I think it's fair to say the structure may be

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1 somewhat similar, or at least visually somewhat similar,
 2 but actually there's some real differences sort of
 3 behind that in terms of the way CLAs actually work.
 4 So — and so, for example, CLAs — my understanding is,
 5 the way CLAs work, essentially they piggyback off PLAs,
 6 so essentially you associate different PLAs with a CLA
 7 and that's how kind of they work. So I think there's —
 8 I think, technically, different from how CLAs kind of
 9 would work is my understanding.
 10 Also we need to also be really, really careful when
 11 we're looking at — again, you know, we can only go into
 12 this if you think this is helpful, I know you've heard
 13 a lot of evidence on it, but the situation in sort of
 14 2019, when we're looking at how users engage with CLAs
 15 versus PLAs, I think is very much framed by many,
 16 many years of users being habituated with what they're
 17 saying and also the quality of the CLA results which, to
 18 be clear, was clearly very poor and there's various
 19 reasons for that. So I think we need to be extremely
 20 careful with drawing too direct analogies with CLA.
 21 MS ROSE: Can I just ask, would your position be that there
 22 would be effective competition if you had the Remedy box
 23 as it is now, but the default tab was CLA rather than
 24 PLA?
 25 MR HUNT: Okay, so, I mean, there's questions precisely

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1 about how CLA works, okay? So this, I think, is
 2 envisaged more that you would go through directly on to
 3 a CLA webpage which would have — or, sorry, go through
 4 directly onto the CSS' webpage which could, for example
 5 — again, going back to the shopping funnel — could
 6 show different things depending on the particular query.
 7 Okay? So my understanding is that I don't think that
 8 CLAs work quite like that, so —
 9 MS ROSE: There is a problem with privacy, apparently.
 10 MR HUNT: There's a problem with privacy. I think there's
 11 ways that CLAs actually technically work which is that
 12 they, as I say, piggyback off PLAs is my understanding.
 13 So this isn't envisaged to be precisely the same as
 14 CLAs, it's envisaged to be kind of somewhat different.
 15 PROFESSOR SMITH: When you say this is not the same as CLAs,
 16 you — I understand that there is not an auction
 17 underlying, these spaces are not auctioned?
 18 MR HUNT: So, again, I mean, frankly, that is somewhat
 19 opened I think, and it could have changed over time. So
 20 you could envisage a situation early on, if — back in
 21 2008, if Google wanted to just essentially attract,
 22 you know, CSSs, attract kind of — kind of merchants
 23 because it wants to attract users, it could initially
 24 have started to provide this for free and then at some
 25 point of time transitioned to charging, and there's

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1 different plausible ways that they could charge, right?
 2 You know, auctions are plausible, in my view, but
 3 there's other possibilities as well.
 4 THE CHAIRMAN: But from the user perspective, visually and
 5 functionally, it's very similar to the CLA option, is it
 6 not? Going back to Ms Rose's question, if we go —
 7 we've got page {A1/3/17}. If we go back to {A1/3/12} of
 8 this document, we have got I think the CLA option of
 9 the Remedy. Obviously this is a different product
 10 because it is coffee makers, not Adidas shoes.
 11 MR HUNT: So I think the idea is that there will be richer
 12 information. So if you go back to the page that we were
 13 look — here, you can see there's no information about
 14 prices, there's no information about the number of
 15 merchants, the numbers of offers.
 16 THE CHAIRMAN: Yes.
 17 MR HUNT: So I think the idea is that there would be — you
 18 know, it's somewhat similar, I concur with that, but the
 19 idea was it would have richer information to enable
 20 consumers to make decisions.
 21 THE CHAIRMAN: Yes.
 22 PROFESSOR SMITH: Yes, Mr Noble?
 23 MR NOBLE: Yes, I was just — I mean, I don't want to repeat
 24 what I said before about PLAs versus CLAs. Obviously
 25 one has to look carefully at the evidence on that and

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1 reach a view about that and I've reached my view, which
 2 is that, you know, the PLAs do seem to have
 3 a significant advantage over CLAs by an order of
 4 magnitude, apparently, based on the experimental
 5 analysis done by Google.
 6 I think the other dimension to add —
 7 THE CHAIRMAN: In competition — in terms of effective
 8 competition between CSSs, I take your point about
 9 whether it is — is it so attractive to users, and that
 10 might affect the commercial rationality. But in
 11 competition terms and if the premium space is charged
 12 for, would this work in establishing competition on
 13 the merits between CSSs?
 14 MR NOBLE: Between CSSs, I think you have equivalence of
 15 access, and so, yes, you would — you would reach that
 16 conclusion. I think there are two further points to
 17 take into account in that.
 18 One is that if the box is a poor box, you know,
 19 a poor quality box, and obviously that's a question of
 20 fact, whether it is a good or a bad box, but there's
 21 then — yes, you might have achieved equivalence of
 22 access for CSSs, but you might then be having a negative
 23 effect on Google's ability to compete in the general
 24 search market. That's one factor to take into account.
 25 I think there's also another factor which is related

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1 to the way in which the whole page is calculated —
 2 I think Mr Braendle referred to this — which is that
 3 you can end up in a scenario where, because of the way
 4 Google's whole page auction works, that if you have a —
 5 and this is a poorly performing — poorly financially
 6 performing box, whether they're CLAs or something like
 7 it, if the box bids low relative to AdWords, for
 8 example, then you can end up in a situation where, yes,
 9 you do have a box, but it doesn't appear very often. So
 10 it's not that the box disappears, because it probably
 11 will appear some of the time, but the trigger rate would
 12 fall quite substantially, and then, yes, you have got
 13 equivalence of competition but you've then ended up with
 14 not very much volume.
 15 PROFESSOR SMITH: So most of the time it would look like
 16 scenario 1, in fact?
 17 MS ROSE: Paid links —
 18 MR NOBLE: Well, I don't know, because I think you'd still
 19 have the algorithm unchanged in this scenario.
 20 MS ROSE: Yes, this scenario envisages Algorithm A and Panda
 21 both functioning.
 22 MR NOBLE: Yes, yes, exactly. So, yes, I don't think it's
 23 the same as scenario 1 because you've got
 24 the algorithms.
 25 MS ROSE: So you are saying that you would get the CSSs in

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1 the box if the bid was right —
 2 MR NOBLE: Yes.
 3 MS ROSE: — but if not, then what you would get would be
 4 AdWords linking probably to merchants —
 5 MR NOBLE: Yes, or —
 6 MS ROSE: — or in some cases bid for by CSSs —
 7 MR NOBLE: Yes, potentially, yes.
 8 MS ROSE: — on behalf of merchants, and then organic
 9 results that would not contain many CSSs because of
 10 the operation of the algorithm?
 11 MR NOBLE: Yes. Yes, correct.
 12 MR HUNT: Could I — I'm concerned that we might not be
 13 thinking about this in quite the right way.
 14 Now, I don't understand precisely how the whole page
 15 auction works because there's not enough information in
 16 the evidence, but loosely my understanding is
 17 essentially there's a tradeoff such that if Google would
 18 make more revenue from AdWords they would show AdWords
 19 results rather than the box.
 20 Now, it's worth just thinking about that for
 21 a second and thinking about the nature of a kind of
 22 whole page auction, which is essentially — now, I know
 23 that they talk about it as long term, but as
 24 I understand it, that seems to be quite a short-term
 25 issue: I tradeoff this for that, right? I am trading

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1 this off for this.

2 Now, again, yesterday we started talking — or we

3 talked some — a little bit about the idea of kind of

4 what can monopolists do or firms that have market power

5 with firms that have less market power. Now, let's just

6 think about kind of pricing. When a firm has market

7 power, if it's not worried about losing users, it can

8 try and extract as much as possible from the user. So

9 we talked yesterday about third degree price

10 discrimination, i.e. if I'm a monopolist, a pure

11 monopolist, I can try and work out the particular value

12 of each different user, I can set my price there and

13 I can extract all of that value, okay?

14 Now, again, whilst I don't understand all of

15 the details of the whole page auction, I'm slightly

16 concerned that actually that's more predicated on

17 a situation where a firm has market power and is able to

18 set things in the way it wants to set them to extract

19 value and not worry about losing users, which would be

20 more like a monopolist, whereas actually the situation

21 that we were in back in 2008 that we described — that

22 we discussed was actually that Google really wanted to

23 keep the users, it was worried about losing the users.

24 So I'm not sure this idea of the whole page auction

25 makes sense back in 2008, because actually — so

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1 according to Mr Noble, then Google would choose not to

2 show the imagery at the top because it wants to make

3 more money from AdWords. But that would be then

4 a problem because then it might lose users and so it

5 would lose in volumes. So the reason it wants to show

6 the attractive imagery and to get users on to

7 the webpage is to drive volumes.

8 So I just think we need to be really careful with

9 thinking about the whole page auction in the way that

10 Mr Noble has set out, because I'm not sure that that

11 makes sense back in 2008. As a matter of fact, actually

12 there wasn't a whole page auction, I don't believe, in

13 2008, but it makes much more sense when you're — when

14 you have material market power and you're therefore just

15 trying to maximise how much revenue can I extract from

16 this page, rather than thinking about a world of

17 competition, and back in 2008 we're thinking about

18 a world of competition.

19 PROFESSOR SMITH: So —

20 MS ROSE: What do you envisage would make sense in 2008 in

21 terms of charging for the premium box?

22 MR HUNT: Well, so, again, there's a question of whether or

23 not Google actually would start off charging. They

24 might choose not to start off charging. Then, at some

25 point of time, it seems inevitable to me that if I were

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1 in Google's shoes and I was giving access to that space,

2 at some point of time I start to get more market power,

3 I'm going to charge for that. So I do think charging

4 makes sense. I'm not entirely sure at what point of

5 time it makes sense, I must be clear —

6 MS ROSE: But you are not suggesting a different kind of

7 charging from the whole page auction, or are you?

8 MR HUNT: Yes, I mean, I — so I think we need to be

9 careful, so we need to think about what's the sort of

10 competitive tension on Google. So probably, at later

11 points of time, that may well kind of make sense. To

12 the extent that Google has market power and is seeking

13 to extract the market power, that's right. But I think

14 they always need to make sure that the SERP is

15 sufficiently attractive. So possibly it could be

16 the whole page auction at a later point of time and it

17 could be an auction kind of methodology. It's

18 conceivable. It's certainly potentially realistic,

19 I just don't know at what point of time.

20 PROFESSOR SMITH: So when we're looking at this, you are

21 saying we could start off by thinking of it in

22 the Product Universal era, where the box attracts

23 customers but it is free —

24 MR HUNT: Yes.

25 PROFESSOR SMITH: — and you are saying — it seems to me

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1 you are saying you do not have a firm view in that world

2 at what point would Google decide that it wished to

3 switch to a monetised way of filling the box?

4 MR HUNT: Yes, that's right, I don't have enough evidence to

5 know at precisely what point in time that would happen.

6 MS ROSE: So this is like the Product Universal catalogue

7 option but with other CSSs?

8 MR HUNT: Yes. Yes, that's the way it's envisaged.

9 PROFESSOR SMITH: Mr Noble.

10 MR NOBLE: I would just make two points, one of which comes

11 with a caveat, which is, what I haven't done is done

12 a dominance assessment, but I just highlight that

13 the Commission has done a dominance assessment and it

14 has determined that Google has a dominant position in

15 general search, and so I think we do have to bear that

16 in mind, you know, if that's regarded as a sort of

17 binding finding, that that tells you something about

18 somebody's market power in general search, and so,

19 you know, that tells you something about the — in

20 a sense, the quality of the monetisation options that

21 someone that has a dominant position has in that

22 circumstance. So you can draw an inference from that,

23 which is, well, they might not — you know, you don't

24 have to use a whole page auction, there's lots of ways

25 of doing things, that's a — that's a solution to

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1 a problem of how you allocate space dynamically on
2 a page; there are other solutions to that problem. But
3 in a sense, the incentive is that you want to make money
4 from your general search offering whilst at the same
5 time remaining competitive.

6 The second thing is that even — even someone who is
7 dominant, even a monopolist, they have — they have
8 commercial incentives, you know, that somebody that is
9 dominant in a — in a product, they can still want to
10 increase the volume associated with that, because
11 they'll make even more money than they were making
12 before, and so in a sense it's just — I think it's
13 worth bearing in mind both of those points when thinking
14 about this.

15 PROFESSOR SMITH: Thank you.

16 Can we move on to scenario 3b, which is on
17 {A1/3/19}.

18 Okay. Mr Hunt?

19 MR HUNT: So what's envisaged here is, again, there's, if
20 you like, competition, you know, to appear in the box,
21 but it's more envisaged that, if you like, a CSS will
22 win the box, okay? Here, on this diagram, this is just,
23 you know, a specific mock-up, but the idea is — I think
24 it's the idea — that Idealo, that kind of, if you like,
25 is the further left-hand kind of box, but there's other

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1 tabs here for kind of Google Shopping to Kelkoo and for
2 others, so the idea being that you essentially could win
3 a box, it's up to you, as a CSS that wins the box, what
4 you wish to present to users, so at least in principle
5 — I understand there's technological issues behind it,
6 I know you've heard quite a lot about sandboxes, but at
7 least in principle, as a CSS, you could choose to show
8 direct links to merchants, or you could choose to have
9 links to your webpage, and actually, in this way, as
10 CSSs, you control — at least this is the way it's
11 envisaged, is that you control that space, you can
12 control what you show to users, and at least in
13 principle this scenario could allow material competition
14 between CSSs on various different dimensions and could
15 allow that competition to end up determining what it's
16 better to present users with, whether it's better to
17 present users with links direct to merchants or whether
18 users find more useful, for certain types of queries, to
19 go through on to the comparison shopping pages and get
20 more information.

21 So that's — and then Google would be using
22 essentially sort of relevance, I think in particular
23 primarily to determine which of the CSSs, where they
24 would come in these tabs, who would obviously get
25 the more attractive left-most tab which would sort of be

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1 the default tab, but payment certainly could be
2 envisaged, and again there's a question about what sort
3 of time, there's questions about when this would be
4 feasible and when kind of different payment options may
5 be feasible as well.

6 PROFESSOR SMITH: So it would take a kind of relevance, but
7 might be doing that within an auction?

8 MR HUNT: Yes.

9 PROFESSOR SMITH: Or might be —

10 MR HUNT: Yes, I think an auction is a feasible way that
11 Google could seek to monetise this.

12 PROFESSOR SMITH: Although, on the face of it, you are
13 setting Google a bit of a challenge here that it is
14 trying to make a relevance judgment about something that
15 is more complicated than a product offer.

16 MR HUNT: There's no doubt, but what I presume is that
17 Google would be — depending how users engage with what
18 they're shown by different CSSs, Google would presumably
19 get very valuable information that would help it to
20 determine — again, technically —

21 MS ROSE: Similar to Algorithm A.

22 MR HUNT: Possibly. Algorithm A, or possibly other
23 algorithms. Again, technically, that's not my area.

24 PROFESSOR SMITH: Mr Noble, how do you respond to this?

25 MR NOBLE: I mean, I think, again, a lot of what I've said

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1 before kind of applies here equally, so I won't —
2 I won't go over the same ground again.

3 I think the two additional points to highlight are,
4 one, the discussion we had yesterday about almost
5 whether the differences from an auction for this would
6 be very different from the auction for PLAs. I think my
7 — my conclusion on that is it's not very obvious to me
8 that you would end up with materially different outcomes
9 in those kinds of scenarios because you're just in
10 a sense grouping things together and if you've got a lot
11 of people — I mean, the key reason why you get people
12 bidding high and all bidding very similarly, you know,
13 in a PLA auction is that if — you know, a lot of people
14 can offer the same thing and they're not — the quality
15 difference isn't very large, if you — if you have
16 the same dynamics here, if you've got a vibrant,
17 vigorous CSS market where you've got a lot of CSSs all
18 offering vibrant, vigorous, high quality offerings, then
19 you would expect the bids to be high and you would
20 expect them to be similar, and so you would expect that
21 it's a premium bit of space, they pay a premium price
22 for it, and the second price auction means they pay
23 the price that the next best person would have paid —
24 in this example it's Google Shopping, but it could have
25 been any of them — therefore, you know, from an auction

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1 perspective, it's not obvious that the monetary flows
2 are really that different, they're kind of lumpier than
3 they were before, but, you know, in terms of aggregates,
4 I'm not sure I would expect them to be very different.

5 I think there's then all the debates around whether
6 it's commercially rational for Google to essentially
7 delegate control of a significant part of the premium
8 space to rivals, and obviously you've heard a lot of
9 factual evidence about whether that is rational, whether
10 it's not. I mean, the conclusion I reached was that it
11 did not seem like a rational or attractive outcome for
12 Google.

13 PROFESSOR SMITH: Is that consideration different if what
14 you are looking at is a shopping box with CLAs in? If
15 Google does CLAs, is it then handing over control over
16 its space?

17 MR NOBLE: No, I don't think it is in the same way, because
18 it's essentially — I mean, the way I — the key —
19 the key differences here — and I think there are other
20 examples of this — is that the CSS almost designs
21 the interior of this box, because I think there are
22 other images where actually the presentation is actually
23 quite different. Here, you've got four little pictures
24 on the left with some buttons on the right. If
25 I recall, some of the other images have something that

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1 looks a bit more like a series of PLAs lined up against
2 each other, and that presentational choice, I think, is
3 essentially being delegated to the CSS in this model,
4 and of course by delegating that to a third party, then
5 Google is essentially delegating part of, you know,
6 the design of its SERP page to third parties and so one
7 has to think about the commercial rationality of that
8 and also the potential impacts that you might see in
9 the general search market that might flow from that.

10 MS ROSE: There is a tension, is there, between
11 the competitive benefits of CSSs being able to
12 differentiate their offering on the SERP and
13 the commercial rationality of Google permitting them to
14 do that?

15 MR NOBLE: Yes, it's certainly, you know — yes, no, I agree
16 that in terms of I think it's unambiguously the case
17 that in a sense, if they — if Google offers them this
18 real estate and they can do what — what they will
19 with it, then obviously they can have an opportunity to
20 do all sorts of things with it and that may allow them
21 to differentiate, yes.

22 MR HUNT: So, if I may, I think there's two key points to be
23 made on differentiation.

24 So, firstly, again, in the — certainly in
25 the earlier period, we're envisaging that Google wants

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1 to attract, you know, traffic, it wants to attract
2 users, so differentiation, which allows competition,
3 which allows the potential to provide better offering to
4 consumers, and presumably the CSSs that were better able
5 to do that would appear more often, would make Google's
6 SERP more attractive.

7 Then, secondly, actually, that differentiation is
8 critically important when we're thinking about auctions
9 and the outcome of auctions, because where there is
10 differentiation, we'd expect to see material differences
11 in valuation of the CSS that most values the slot with
12 the second most CSS that values the slot, if we assume
13 that Google would apply a second price auction.

14 So, I mean, I think differentiation is a really key
15 point.

16 MS ROSE: What is your response to the point Mr Noble makes
17 about the commercial rationality or lack thereof of
18 Google delegating control of the best spot on the SERP?

19 MR HUNT: Well, I mean, there's no doubt they would be
20 delegating sort of control, it's giving up part of its
21 space, I mean, that's — you know, that's sort of
22 logically correct. But what's the rationality for it?
23 The rationality would be that Google is trying to
24 attract users and the evidence is that certainly in
25 the early part of the Decision Period that Google was

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1 very keen to draw more users that wanted to engage(?) in
2 product search onto the — onto its general search
3 results page or general search service. So
4 consequently — again, it's a question of trade-offs.
5 If that was so important to Google, it may have chosen
6 to allow access to that space because it saw a bigger
7 benefit from getting more traffic.

8 MS ROSE: So what — why would it be better for Google than
9 3a?

10 MR HUNT: I mean, I think in part it depends how well
11 consumers engage with it. If — if it allows a better
12 service and that allows more users to come to Google,
13 you can see, if the volume increases more, that it
14 actually might be better for Google to offer something
15 like this than it would with 3a, and I think that would
16 — that would depend on how users engaged with it, how
17 attractive it was for users, and how useful as well
18 the — from a merchant perspective as well, to
19 the extent that it helps qualify users and therefore
20 the users that end up as merchants are more like — have
21 a greater propensity to purchase and that drives greater
22 value, that might lead to greater bidding by CSSs. So,
23 I mean, I think — I think we need to think about that
24 sort of carefully, both about attracting users but
25 actually also on the side of merchants as well. So,

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1 again, we don't know precisely what would have happened,
2 but there are plausible scenarios in which it would make
3 sense for Google to offer this.

4 MS ROSE: One of the things we heard in terms of
5 the technical challenge presented by 3b was in relation
6 to latency and privacy issues, and it was suggested that
7 those issues would be significantly mitigated by having
8 an IPA — what has been called the sandbox option —
9 where merchants effectively submit — or, sorry,
10 the CSSs submit a feed and that goes into Google's
11 system, so Google is not having to connect with
12 the merchants' own system in order to have the results
13 displayed.

14 Now, one of the points that was made in relation to
15 that was that Google would, in that situation, have its
16 own dynamic feed and then be receiving into its system
17 from CSSs their feeds. Do you think that would be
18 a problem for competition?

19 MR HUNT: Sorry, I'm just trying to understand technically
20 the — what you're saying and the implications. It's
21 not —

22 MS ROSE: So the implication —

23 MR HUNT: — it's not obvious to me —

24 MS ROSE: — the implication is that Google's shopping feed
25 would be of a superior quality in terms of relevance

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1 and, I guess, topicality and dynamism by comparison with
2 the CSS —

3 MR HUNT: Sorry, let me see if I've understood this
4 correctly —

5 MS ROSE: — (overspeaking — inaudible) same package.

6 MR HUNT: — is it because Google is getting all the live
7 information —

8 MS ROSE: I think that is —

9 MR HUNT: — whereas CSSs have —

10 MS ROSE: — have to submit it —

11 MR HUNT: — they can only update it from time to time?

12 MS ROSE: I think that was the point, yes.

13 MR HUNT: Well —

14 MS ROSE: Is that a problem for competition?

15 MR HUNT: I mean, in all honesty, that's — it would be more
16 an empirical question, it depends how often
17 the information changes. So if information changes very
18 regularly on the merchants' pages, that could be
19 a problem, okay? If it doesn't, and let's say CSSs were
20 able to update several times a day — again, I can't
21 tell you whether that's technically feasible or not, but
22 if they are able to update that information and it leads
23 to, I don't know, 99.9% of outcomes being — when users
24 click on a result, being correct, maybe it wouldn't have
25 a material impact on competition. But, in all honesty,

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1 I don't have enough information to be able to give you
2 clear response.

3 PROFESSOR SMITH: But the evidence from Google is that
4 latency in particular is very important, users are very
5 sensitive to what seem, when you spell it out, very,
6 very small numbers indeed about how many milliseconds it
7 takes to respond. So, in general, this kind of model
8 might have, even with an API interface, would have some
9 latency costs?

10 MR HUNT: Yes, so my understanding is that latency is
11 important. It's incredibly clear from — from
12 the evidence base. But it's one factor and it's
13 a trade-off, right? I mean, it depends how useful
14 I think the results that are provided to consumers are
15 for how much they're willing to tolerate latency and
16 therefore how much Google is willing to tolerate
17 latency. I think there's an example from Mr Stables
18 around how, when Google has got these AI overviews, it
19 takes kind of longer for the AI overviews to appear on
20 the SERP but Google's willing to kind of trade off that
21 latency because it sees value in that. So, again, at
22 least, you know, in principle, that same trade-off could
23 apply here, but again, I can't tell you precisely how
24 that — how that would actually play out because I don't
25 have any information, but there's clearly the same issue

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1 of trading off latency for how valuable the results are
2 for consumers, for users.

3 PROFESSOR SMITH: Clearly, we do not yet know how shopping
4 in an AI world will work, but effectively, as we all
5 know, in many of these online situations, time is
6 the price that customers pay and they are quite
7 price-sensitive to the time price.

8 MR NOBLE: Yes, and I mean, the only observation I'd add
9 there is that one — you can infer from the fact that
10 AI offerings typically provide you with quicker versions
11 and thinking versions that, as you say, time matters.
12 Some people are comfortable to have queries answered
13 more simply but much quicker, and ultimately it's an
14 empirical question about: well, how much does it matter?

15 PROFESSOR SMITH: I suppose we have been talking about
16 the comparison between these scenarios and the PLA and
17 CLA models. We could look at comparisons with —

18 I mean, in the past we have seen a PLA display that
19 included a CLA CSS tile, if I remember the terminology
20 correctly. Do you have — do either of you have views
21 about whether that is a possible variant of scenario 3?

22 Mr Hunt?

23 MR HUNT: Sorry, so to be clear, are we talking about
24 the example that we went through yesterday of
25 the PLACSS? Is it that?

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1 PROFESSOR SMITH: Yes, so the — yes, we did talk about it
 2 yesterday —
 3 MR HUNT: Yes.
 4 PROFESSOR SMITH: — because I remembered that you, like
 5 I am, are a bit colour-blind, and ... but it was
 6 the tile that was picked out by — was it by a different
 7 colour?
 8 MR HUNT: Yes, that's right. So, as I said yesterday,
 9 I don't think that that is a plausible scenario here,
 10 because, again, for the reasons I set out yesterday,
 11 the CSS is not able to provide information to a user
 12 that's actually helpful for them, and I went through
 13 the example both if you look more at the top of
 14 the shopping funnel and then lower down the shopping
 15 funnel and I explained why I didn't think the CSS could
 16 provide something that was useful for a user, so I don't
 17 think that that's a useful analogy.
 18 THE CHAIRMAN: If one goes to the 3a example on {A1/3/17}
 19 where you have a slightly richer tile than in the CLA in
 20 the Remedy box, as you have pointed out, you have got
 21 price information and number of results and so on, so
 22 there is a little more there. But if that — if the box
 23 had a mixture, as it were, of tiles of this sort and PLA
 24 tiles, so it was both PLAs and this, what one might
 25 call, enriched version of a CLA so that you would have

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1 some particular shoe people could click on and buy
 2 straight to the merchant, but other users might prefer
 3 to go and look at these alternatives and go to a CSS,
 4 are you saying you do not think that could work
 5 competitively, putting them together?
 6 MR HUNT: I mean, I think it depends precisely how
 7 the configuration — or could depend precisely how
 8 the configuration was set up.
 9 THE CHAIRMAN: Yes, I mean, there are details to be worked
 10 out, but is it inherently something that could prevent
 11 competition working effectively?
 12 MR HUNT: So, again, I think, here, it may well be an issue
 13 that could change over time, actually. So I think,
 14 again, if we go back into early 2008, I could envisage
 15 a situation where in fact there could be some kind of
 16 additional, if you like, PLA-like type tiles that could
 17 appear and could compete with CSSs. I mean, I think
 18 that's — that's plausible. That's entirely plausible.
 19 You could see how much users engaged with the —
 20 you know, the different tiles, the different options
 21 that were shown to them, and that could have affected
 22 Google's behaviour. So, for example, if users
 23 particularly liked and found helpful, you know, CLA-like
 24 links on to comparison shopping results, then presumably
 25 Google would have quite a strong incentive to keep

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1 showing those. So I think — I think it is plausible to
 2 think about that.
 3 THE CHAIRMAN: And vice versa, if users went more for
 4 the instant purchase through to the merchant, then there
 5 would be less CSS —
 6 MR HUNT: Yes, I mean, I think in principle that —
 7 THE CHAIRMAN: — the choice would be made by the users and
 8 Google would get information from continual user
 9 choices?
 10 MR HUNT: I mean, that's right. I think that by the time
 11 one starts thinking about charging, it becomes more,
 12 I think, trickier to — I think it's clearer when it's
 13 just based on relevance. When you start to think about
 14 having an auction, then I think it starts to become more
 15 complex, because I think actually then Google is
 16 essentially providing a service that starts to look —
 17 well, when the amount that merchants pay is affecting —
 18 or amount that merchants or CSSs pay is affecting where
 19 they appear, then I think there starts to become
 20 a tension there, because Google's starting to provide
 21 a service that looks more like kind of this ranking of
 22 results depending on payment. It actually starts
 23 increasingly looking more like a CSS-like service,
 24 because in essence CSSs do provide essentially a ranking
 25 of these merchant results.

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1 So I think there starts to become a tension over
 2 time the more that that goes in that direction.
 3 THE CHAIRMAN: Mr Noble?
 4 MR NOBLE: I mean, just — just, I mean, in principle,
 5 I think, as I've described, you know, from
 6 the competition on the merits perspective, I think PLAs,
 7 in my conceptualisation, you know, the Remedy as — as
 8 put in place does achieve competition on the merits.
 9 I think, you know, then adding in CLAs or PLAs/CSSs,
 10 enriched CLAs, in a sense, as long as they're on
 11 a non-discriminatory sort of open access basis, then,
 12 again, you can sort of, to some degree, mix and match.
 13 You know, I think those would all tick the box in terms
 14 of, you know, the key feature is they're open to
 15 everybody on the same terms.
 16 You know, and obviously then — then you get into
 17 the debate: well, how are you bidding for this, and does
 18 bidding somehow mean you move away from that conclusion
 19 that somehow there's some inherent advantage or
 20 disadvantage to one format. I think my conclusion on
 21 that is that there's no obvious advantage or
 22 disadvantage to any particular format because the — on
 23 the auction part, because it really comes down to
 24 the performance on the SERP, you know, that, in a sense,
 25 one format may perform very well and one very badly,

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1 which is what I infer from the PLA/CLA, but that's not
2 — that's not a truism. You know, that's — they could
3 have performed very well.

4 I think, you know, the example Mr Braendle gave I
5 thought was a very interesting one where he talked about
6 almost a thought experiment which is where you've got
7 a CSS and it's incredibly good. Let's imagine it's
8 just, you know, incredibly good at converting people
9 that come on to its website into people that then go and
10 buy something on a merchant. Let's say they're 100%
11 effective. Every single person that is on their website
12 clicks on at least one button and buys something and
13 that all those merchants, they love this traffic,
14 they're very happy to pay for it, it's great traffic,
15 they all pay £1 per click for that. Now, in a sense,
16 what that means is that the CSS, if it gets a click into
17 its website, in my hypothetical example where it always
18 converts somebody, it knows it's going to earn £1 from
19 these merchants. That means it's got £1 that it can go
20 and spend to buy a click.

21 Now, if the merchants — you know, maybe the same
22 merchants — are then using a self-service model with
23 other CSSs to bid for PLAs, and we've got the PLAs sort
24 of fighting against — sort of bidding against the —
25 this — this CLA in this auction, it might be the case

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1 that the PLA is only 50% effective at getting a sale and
2 so people are willing to bid up to 50p, and let's say
3 they all bid 50p, that means then the clearing price is
4 approximately 50p. So you've got a whole load of PLAs
5 that are bidding at 50p and you've got this CLA bidding
6 at £50, well, it's going to win, it's going to rank
7 highly, I mean, subject to the quality of these being
8 broadly equivalent. In that scenario, then actually you
9 might get a world in which, if lots of CSSs can do this,
10 they're all — but is incredibly high a conversion rate,
11 the CLAs start to crowd out the PLAs. But that's really
12 a market-driven outcome and it will be driven by factors
13 like how much do consumers like PLAs, how much do they
14 like CLAs, it will be driven by factors like how
15 effective CSSs are at converting incoming clicks to
16 their website into outbound, high intent purchaser —
17 you know, merchant traffic, which then converts into,
18 well, how much are the merchants willing to pay to
19 the CSS to get that traffic in the first place.

20 Now, in a sense, as an economist, I think, well,
21 those are all market outcomes and so let us see what
22 the data says. There's no in-principle reason why one
23 is inherently better or worse than another, so we must
24 therefore look at the empirics, and of course then that
25 brings us back to, well, what empirics do we have, how

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1 do we rank those empirics, how do we then, you know,
2 draw conclusions from them.

3 PROFESSOR SMITH: I have got one more area to cover. Shall
4 we — which is the pre-decision counterfactual. Shall
5 we try and do that now —

6 THE CHAIRMAN: Yes —

7 PROFESSOR SMITH: — and — take lunch a little bit later?

8 THE CHAIRMAN: Yes.

9 PROFESSOR SMITH: Can we look then at the Pre-Decision
10 Period counterfactuals? I think the most useful
11 reference is to the JES, annex 3 {11/5/26}. Perhaps if
12 we can enlarge the — or if we can focus in on figure
13 A3.1, it will be helpful. So which one of you wishes
14 to — Mr Hunt, do you want — do you want to give us
15 your views on these counterfactuals?

16 MR HUNT: So what I would say is, in the Pre-Decision Period
17 it would be helpful if we could set out what are
18 the assumptions that we should start with, because I've
19 got to say, I've not analysed the question of abuse in
20 the Pre-Decision Period. So when I've assessed
21 the different scenarios, I've done that, as I've set out
22 in my expert report, purely from the perspective of
23 discrimination and under the assumption that actually
24 the OneBox — because Algorithm A didn't apply to
25 the OneBox, that actually the OneBox appearing in

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1 a higher position was discriminatory compared to CSSs.

2 Can I just check, are they appropriate assumptions
3 to make for the purpose of going through these
4 scenarios?

5 THE CHAIRMAN: Well, I think it is difficult, because we
6 ruled that the self-preferencing of the OneBox is not
7 open to Foundem for the Pre-Decision Period, so it
8 really becomes an allegation, I think, of exclusionary
9 conduct particularly based on the algorithms in
10 the Pre-Decision Period.

11 MR HUNT: Okay.

12 THE CHAIRMAN: But the algorithms did not apply to Froogle,
13 but not Froogle's preferential positioning, and that
14 the algorithms just lowered — demoted CSSs off
15 the SERP.

16 MR HUNT: Okay. So — so just to be clear what I should
17 assume for this is, should I be assuming that the OneBox
18 stays where it is, as it was, or not? Is that — is
19 that the assumption I should make?

20 THE CHAIRMAN: That is the assumption, yes.

21 MR HUNT: Okay. Then what does — so just to be clear, then
22 removal of the anti-competitive conduct means
23 essentially modifying or removing Algorithm A; is that
24 correct?

25 THE CHAIRMAN: That is right.

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1 MR HUNT: Okay.
 2 MS ROSE: (Off microphone — inaudible).
 3 THE CHAIRMAN: Or appeals as a way of exempting.
 4 MR HUNT: Or appeals, yes. Okay, fine. So one second
 5 then —
 6 PROFESSOR SMITH: So I think that is the top — is that not
 7 the top left — hand box?
 8 MR HUNT: Yes, so — so to be clear — sorry, I'm just
 9 trying to be clear about which of the one — given where
 10 you've reached —
 11 PROFESSOR SMITH: (Overspeaking — inaudible).
 12 MR HUNT: — (inaudible) the ones that are relevant.
 13 PROFESSOR SMITH: Mr Hunt —
 14 MR MCGURK: I think the anti-competitive conduct also could
 15 mean applying Algorithm A equally to the CSSs, and that
 16 was left out of account and I think that is important to
 17 be factored in. I am so sorry to rise.
 18 THE CHAIRMAN: Yes, so Algorithm A — or applying Algorithm
 19 A also to Froogle, to Google's CSS.
 20 MS ROSE: And all other CSSs.
 21 THE CHAIRMAN: Yes.
 22 MS ROSE: I think it is a self-answering question for me —
 23 THE CHAIRMAN: I mean, I think —
 24 MS ROSE: — it is not helpful, for me, to go further.
 25 THE CHAIRMAN: You do one or the other.

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1 But the counterfactual is somewhat obvious for
 2 the Pre-Decision Period when we are not concerned with
 3 the OneBox. I think that —
 4 MS ROSE: Can I just ask one final question about
 5 the counterfactual for the infringing period on
 6 the basis of the scenario 3a and 3b?
 7 MR HUNT: Yes.
 8 MS ROSE: It is right, I think, that you do not assume that
 9 Algorithm A and Panda do not apply in your scenarios 3a
 10 and 3b; is that right?
 11 MR HUNT: As I was instructed those scenarios do assume that
 12 there's still Panda and Algorithm A, that's correct.
 13 MS ROSE: Okay.
 14 MR HUNT: But there's no reason why, at least in principle,
 15 you couldn't envisage those scenarios with Algorithm A
 16 and Panda removed or modified as well, obviously just
 17 logically.
 18 THE CHAIRMAN: We just had one thing we wanted to clarify
 19 from your evidence, Mr Noble, before we took the short
 20 break. If we go to your table A13.1, which is
 21 {A3/2/109} [sic], you remember that is your appendix
 22 table?
 23 MR NOBLE: Yes, this is the table with the CSS —
 24 THE CHAIRMAN: Exactly.
 25 MR NOBLE: — business models, yes.

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1 THE CHAIRMAN: A3/2/109.
 2 (Pause)
 3 Sorry, it is {I3/2/109}. My apologies, I3,
 4 I misspoke.
 5 {I3/2/112}. That is it, yes. We can take it there.
 6 It is 112. Thank you.
 7 We are a little — we just wanted you to consider,
 8 when you say they are ranked by size, whether you are
 9 quite sure about that. We had some concerns that this
 10 may not be by size and that the top two are — may not
 11 be actually anything like the largest. Are you sure of
 12 that, or would you like to check?
 13 MR NOBLE: No, I'm not. I was taking that as a piece of
 14 homework. I need to be sure — if you scroll down to
 15 the very bottom of the table there's a — I need to go
 16 and look at the data file that underlies it to be
 17 absolutely certain —
 18 THE CHAIRMAN: If you could just check that.
 19 PROFESSOR SMITH: So it might be that the top 40 are the top
 20 40 by UK ranking but that table is not ranked?
 21 MR NOBLE: Yes. I'm certain that they are the top 40 by —
 22 by traffic, but what I'm uncertain about is precisely
 23 the rank order, yes.
 24 THE CHAIRMAN: Yes, if you could just look into that, and
 25 obviously you may need to speak to someone.

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1 MR NOBLE: Yes.
 2 MR HUNT: Yes, and can I just check, so is this — and
 3 did — is the information about the ranking by kind of
 4 intermediary CSS, is that traffic information in
 5 the Google files? I don't know if actually —
 6 THE CHAIRMAN: It says it is based on public data —
 7 MR HUNT: No, so I think this is —
 8 THE CHAIRMAN: — and Google post-decision —
 9 MR NOBLE: Yes, so —
 10 MR HUNT: Is that the traffic?
 11 MR NOBLE: Yes, so.
 12 MR HUNT: Is that the traffic?
 13 MR NOBLE: Yes, the Shopping Unit data is the traffic data
 14 and then the public information is what's in the table,
 15 and you've got a whole load of footnotes that then
 16 explain what all of those — those sources are.
 17 THE CHAIRMAN: So the public information as to whether they
 18 are self-service or managed?
 19 MR NOBLE: Yes.
 20 THE CHAIRMAN: The question of which are the biggest is from
 21 the traffic —
 22 MR NOBLE: Yes.
 23 THE CHAIRMAN: — data and so that will tell you?
 24 MR NOBLE: Yes.
 25 THE CHAIRMAN: So you will have, therefore, traffic volumes?

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1 MR NOBLE: Yes, yes, because we know — I mean, that —
 2 I think the charts I referred to that show you how
 3 Google's shares changed relative to rival CSSs, it's
 4 drawn from the same datasets as this.
 5 THE CHAIRMAN: Yes. I mean, it might be helpful to have, as
 6 well as clarification of that, if there is another
 7 column with the — with — it is done by volume, is it?
 8 MR NOBLE: Yes.
 9 THE CHAIRMAN: Of having the volumes?
 10 MR NOBLE: Yes, I mean, we could provide another table with
 11 — with —
 12 MS ROSE: In order.
 13 MR NOBLE: In order and with — and with the volumes —
 14 THE CHAIRMAN: With volumes, yes.
 15 MR NOBLE: — that are associated with them —
 16 THE CHAIRMAN: I think that would be helpful —
 17 MR NOBLE: Yes, okay.
 18 THE CHAIRMAN: — if you could do that.
 19 MR NOBLE: Yes.
 20 THE CHAIRMAN: Both counsel have jumped up.
 21 MR JOWELL: One other point about this table, of course, is
 22 that it does not include GSE, which I think it might be
 23 useful, if one was going to provide a table of
 24 the volumes, that it should include the single largest.
 25 THE CHAIRMAN: If you have that information.

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1 Yes, Mr Pickford.
 2 MR PICKFORD: Thank you, sir.
 3 So I quite understand why the Tribunal wants to get
 4 some clarity on that and check that what the title says
 5 is correct, and you have suggested that Mr Noble might
 6 get clarification. I just want to make very sure that
 7 we do not do anything that breaches purdah and so I just
 8 wanted to canvass briefly with the Tribunal how you
 9 would like us to go about doing that. Because
 10 ordinarily we would not talk to him at all. It is
 11 possible that those behind me could, for instance, send
 12 him an email which says — because he was naturally
 13 assisted by his team and so the team can say, "We can
 14 tell you this", that would be one way of doing it. We
 15 could provide that directly to the Tribunal.
 16 I am in your hands, I just want to make sure that
 17 whatever we do —
 18 THE CHAIRMAN: It is quite right that you raise that.
 19 If you are in touch with the members of the team who
 20 have assisted Mr Noble, you can speak to them —
 21 MR PICKFORD: Yes.
 22 THE CHAIRMAN: — and they can email the Tribunal —
 23 MR PICKFORD: Yes.
 24 THE CHAIRMAN: — and everyone else, and Mr Noble himself
 25 does not have to be involved, it is just getting some of

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1 the data that is behind this and adding GSE.
 2 MR PICKFORD: Quite. That sounds like a very sensible way
 3 forward. Thank you.
 4 (Off microphone discussion)
 5 THE CHAIRMAN: Yes, so — if it only comes next week, I do
 6 not think that is going to cause a problem.
 7 MR PICKFORD: Thank you.
 8 THE CHAIRMAN: It is really just clarifying something that
 9 Mr Noble was not quite sure of.
 10 MR HUNT: Would it be possible for Mr Noble's team to
 11 provide us with the actual — sort of the code that they
 12 used to calculate that, just so that my team can check
 13 that we are agreed that this faithfully reflects
 14 the data?
 15 THE CHAIRMAN: Well, it can be provided to the — to the
 16 Alix team. Yes, I do not think that should be
 17 a problem. I assume that it is accurately calculated,
 18 but if the source — if it has not already been provided
 19 to AlixPartners, they can do that.
 20 Very well, I think that concludes our questioning
 21 and the concurrent evidence. We will come back at 2.05.
 22 You remain, of course, in purdah, but as I said, you
 23 can have lunch together.
 24 (1.08 pm)
 25 (The short adjournment)

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1 (2.05 pm)
 2 (Proceedings delayed)
 3 (2.10 pm)
 4 THE CHAIRMAN: Can we ask counsel. The concurrent evidence
 5 is concluded. We think that it is appropriate we move
 6 into any supplementary cross-examination you may wish to
 7 make each of the experts of the other party that the two
 8 experts, both Mr Hunt and Mr Noble should remain in
 9 purdah, because otherwise there is a disadvantage to
 10 counsel who — to one side. How long, in terms of
 11 cross-examination, do you envisage?
 12 MR PICKFORD: I think we have got a good day.
 13 THE CHAIRMAN: One day?
 14 MR PICKFORD: I mean, it might be a little bit more than
 15 that —
 16 THE CHAIRMAN: Well, I do not think it should be more —
 17 MR PICKFORD: — but in the order of.
 18 THE CHAIRMAN: The expectation with concurrent evidence is
 19 that it substantially reduces the cross-examination so
 20 that you do not traverse in detail areas that we have
 21 covered. You may have supplementary questions about it,
 22 but that we do not start going through everything again.
 23 MR PICKFORD: I do understand that. I have, I think, in
 24 order to put my client's case properly, the issue that
 25 there are some areas that I am going to have to go over

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1 again, because our perspective and the way that one puts
 2 cross—examination questions is a little different to
 3 the way that the Tribunal, for very good reasons,
 4 conducted the concurrent evidence. So, to forewarn
 5 the Tribunal, I am going to have to cover territory
 6 again, because I need to put my case the best that I can
 7 to Mr Hunt.
 8 Now, I hear what you say about a day, but that is my
 9 position.
 10 THE CHAIRMAN: Well, I think we — let me ask Mr Jowell.
 11 MR JOWELL: Well, we intended to be much shorter and
 12 certainly not more than half a day, possibly as little
 13 as an hour.
 14 THE CHAIRMAN: Yes.
 15 Mr West, I do not know how long —
 16 MR WEST: It depends partly on what Mr Jowell asks, but
 17 I suspect probably an hour at the maximum.
 18 Could I just ask, is it necessary, in view of
 19 the hot tub, for the parties to put their full case to
 20 the experts?
 21 THE CHAIRMAN: No.
 22 MR WEST: No.
 23 THE CHAIRMAN: Absolutely not.
 24 Well, Mr Pickford, we are not going to give you more
 25 than a day.

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1 MR PICKFORD: Understood.
 2 THE CHAIRMAN: We will — a bit concerned by what you said.
 3 We have understood, we hope, by this stage your case and
 4 we have put various aspects that we wish to explore or
 5 concern us to the two experts. I am not going to sort
 6 of go further now, but you can expect that if you do
 7 start going over matters again effectively seeking to
 8 put things a different way in the hope of getting
 9 different answers, that is not something that we are
 10 going to allow, because we have had answers to many of
 11 the questions from the experts with an opportunity to
 12 discuss it and it is not the purpose now of
 13 supplementary cross—examination to have another go
 14 hoping that you might get an answer that you like rather
 15 better.
 16 I will not say any more than that.
 17 MR PICKFORD: Thank you, sir.
 18 THE CHAIRMAN: On that basis, I think it is ...
 19 (Off microphone discussion)
 20 So we should conclude at the end of Wednesday on
 21 this basis. Good.
 22 I think then it is ... just one moment.
 23 (Off microphone discussion)
 24 (Pause)
 25 (Off microphone — inaudible) — so Mr Hunt, if you

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1 stay in the witness box and Mr Pickford will be asking
 2 you some questions.
 3 MR HUNT: Thank you.
 4 THE CHAIRMAN: Yes, Mr Pickford.
 5 MR MATTHEW HUNT (continued)
 6 Cross—examination by MR PICKFORD
 7 MR PICKFORD: Thank you, sir.
 8 Good afternoon, Mr Hunt.
 9 I think it is common ground, is it not, that you
 10 believe that identifying what constitutes a CSS and
 11 relatedly what constitutes Google's CSS in
 12 the Post—Decision Period is a central issue for
 13 assessing whether Google's post—decision conduct
 14 restricts the ability of rival CSSs to compete on
 15 the merits?
 16 A. Yes.
 17 Q. Do you accept that if your client loses on that issue,
 18 your conclusion that there is a departure from
 19 competition on the merits in the Post—Decision Period no
 20 longer holds?
 21 A. So, can I just be clear what the question is? Is that
 22 if the determination is that the scope of a CSS is GSE's
 23 scope and the scope of rival intermediaries, that that
 24 means that that — that the case is sort of lost? Is
 25 that the question?

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1 Q. In essence, yes.
 2 A. Yes. In which case, yes.
 3 Q. Now, I would like to conduct a thought experiment to
 4 understand one aspect of your position a little more, if
 5 I may.
 6 So imagine that Google has no GSE, no standalone
 7 shopping website and no relationships with merchants,
 8 okay? So we are in a world now where the Remedy box is
 9 populated solely by ads placed by third—party CSSs, such
 10 as Kelkoo and Connexity, etc.
 11 You have got that so far?
 12 A. Yes, so, sorry, just to be clear, there's always a —
 13 always an intermediary between Google and any merchants
 14 and you've completely removed Google's standalone
 15 website?
 16 Q. That is right. So it is basically exactly like
 17 the Remedy world, but the difference is we have just
 18 taken Google entirely out of — Google's CSS entirely
 19 out of that picture so it no longer —
 20 A. Google's standalone website?
 21 Q. Yes, it no longer has a standalone website, it does not
 22 have GSE any more. That is just removed, okay?
 23 A. Yes.
 24 Q. So if you want to get into the box, you are going to
 25 have to go via a rival CSS, such as Kelkoo or Connexity,

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1 etc, okay?
 2 A. Okay.
 3 Q. Do you say that such a box of shopping results would be
 4 a CSS?
 5 A. So — and to be clear, so my understanding is we still
 6 have PLAs, those PLAs are intermediated by what we're
 7 then terming CSSs, but apart from that, the Remedy box
 8 looks the same; is that right?
 9 Q. That is correct.
 10 A. Yes, then I would still say that that's Google's CSS,
 11 correct.
 12 Q. Now, often in your reports, you are careful to say that
 13 the Remedy box is part of Google's CSS, but given what
 14 you have told me about the hypothetical that I have put
 15 to you, what I understand is the logic of your answer
 16 must be that the Remedy box of itself is a CSS and
 17 the reason why you are saying "part of", which is
 18 perfectly fair, is because there is also a standalone
 19 CSS. So is that a fair summary of why you put it that
 20 way in your report?
 21 A. Yes, so in the scenario you just gave me, then I would
 22 say that it is still Google's CSS —
 23 Q. Yes.
 24 A. — and ... would you like me to elaborate on why I think
 25 that's the case?

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1 Q. No, we are going to come on to that. At the moment,
 2 I am just trying to get sort of some clear parameters of
 3 what your case is, what your case is not.
 4 A. Okay.
 5 Q. So just to confirm then, you agree that, in essence,
 6 your point about the CSS is that when it appears on
 7 the SERP — sorry, your point about the Remedy box is
 8 that when it appears on the SERP, it is in essence
 9 Google's CSS?
 10 A. In the scenario you gave me, it does become Google's
 11 CSS, yes.
 12 Q. Yes, okay, so let us extrapolate back from that. I am
 13 seeking to infer something from my hypothetical
 14 scenario, because if in my hypothetical scenario, when
 15 there is no standalone Google CSS at all, okay, and even
 16 in that world you say, and consistently with your logic,
 17 well, in that world, the presentation of the box is
 18 still Google's CSS?
 19 A. Yes.
 20 Q. So what I am inferring from that is that actually your
 21 logic as to why it is a CSS and therefore why, when you
 22 say that Google's SERP, when it appears on the page, it
 23 is part of a CSS, it is bound up with what we are seeing
 24 on the page and it is not dependent on the fact that
 25 there is a separate CSS there, because even if we take

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1 the separate CSS away, you still say Google's CSS is on
 2 the page. So what I am trying to get at is that when
 3 you say it is part of Google's CSS —
 4 A. So — so I understand —
 5 Q. Yes.
 6 A. — what you have just said, to be clear, is without
 7 the standalone Google website —
 8 Q. Yes.
 9 A. — then it is still — what Google presents is still
 10 a CSS, then, yes, I would say it is.
 11 Q. Okay.
 12 Let us now take a different example, now with
 13 the standalone website.
 14 A. Okay.
 15 Q. Okay?
 16 Do you say that that is Google's CSS?
 17 A. Sorry, when you say "with", what do you mean?
 18 Q. I beg your pardon. We are back in just the Remedy box
 19 world now. So forget about my abstraction when
 20 I removed Google's CSS from the equation, we are simply
 21 back in the Remedy box world.
 22 A. Yes.
 23 Q. Do you say that the Remedy box is in essence Google's
 24 CSS?
 25 THE CHAIRMAN: I am not clear. Are you saying this is

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1 the actual situation?
 2 MR PICKFORD: The actual situation, yes.
 3 THE CHAIRMAN: Is your question is the Remedy box, in
 4 isolation from Google's standalone Google Shopping
 5 Europe site, Google's CSS?
 6 MR PICKFORD: Yes, is it a Google CSS. It does not have to
 7 be the unique CSS, obviously, because in that world
 8 there is something else there.
 9 THE CHAIRMAN: You mean does Google have two CSSs? Is that
 10 your question?
 11 MR PICKFORD: Well, I mean, that would be one way of
 12 considering it.
 13 THE CHAIRMAN: Well, I am not clear what the question is.
 14 MR PICKFORD: Okay, maybe I will put it this way.
 15 In opening, your client's counsel said
 16 {Day1MT1/115:25}:
 17 " ... from [a user] point of view ... "
 18 He was comparing the Shopping Unit to the Remedy
 19 box, and he says:
 20 " ... they each serve the same function as the former
 21 Shopping Unit ... we say it looks like a comparison
 22 shopping service, it operates like a comparison shopping
 23 service ... it obtains income from merchants for
 24 operating as a comparison shopping service. Just like
 25 if it looks like a duck ... it walks like a duck and it

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1 quacks like a duck, it probably is a duck, so it is ..."

2 So he is referring there to the Remedy box:

3 " ... probably a comparison shopping service."

4 I am trying to get at, do you agree with that

5 analysis?

6 A. I mean, I think it's worth going back to your

7 hypothetical scenario, because I think that's

8 the easiest way of dealing with it. I'm not sure it's

9 helpful to talk about the standalone website —

10 Q. Okay, I do not want to go back to that because I have

11 asked a question about that.

12 So just do you agree with what your counsel said,

13 that in the real world, the Remedy box is a CSS?

14 A. Well, do I think — I'm not — I'm still not entirely

15 sure what the question is.

16 THE CHAIRMAN: When you say "your counsel" —

17 MR PICKFORD: I beg your pardon, your client's counsel.

18 THE CHAIRMAN: — Mr Hunt is —

19 MR PICKFORD: I beg your pardon.

20 THE CHAIRMAN: — here as an independent expert, he is

21 not —

22 MR PICKFORD: Quite.

23 THE CHAIRMAN: — the client of Mr Jowell.

24 MR PICKFORD: I beg your pardon, I meant your client's

25 counsel. I ...

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1 A. So, to be clear, shall I express what my views are and

2 then we can interpret it kind of in the right way?

3 THE CHAIRMAN: Yes, I think ...

4 A. So if we take the Remedy box itself, what we have are

5 kind of intermediated via CSSs or whatever we want to

6 call them, then PLAs arrive to Google, product feeds

7 arrive to Google, okay? Google runs an auction and

8 determines which of the PLAs are — what's the order of

9 PLAs. Google also determines how those PLAs are

10 presented to consumers and thereby enables consumers to

11 compare different products and at the same time

12 indirectly has a relationship with merchants, because it

13 gets the merchant feeds. So, from my perspective, it

14 has — technologically, it has a database, the feeds,

15 it's matching queries to that database, it's extracting

16 value from the merchants and it's enabling product

17 comparison. So from my perspective, yes, I think that's

18 a CSS.

19 MR PICKFORD: Thank you.

20 Now, on your case, if the links in a box of product

21 results go to CSSs and not to merchants, then Google is

22 not providing a CSS on its page?

23 A. Sorry, can you say that again?

24 Q. Yes, of course.

25 So let us imagine a box of product results —

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1 A. When you say "product results", what do you mean?

2 Q. Right, let us — so to crystallise it, let us imagine

3 the counterfactuals 2 and 3a that you consider in your

4 report.

5 A. Yes.

6 Q. Okay? So if it helps, let us go to counterfactual 2.

7 It is at {12/1/209}. Can we bring that up, please?

8 Let us hone in on figure 11.2, please.

9 Okay, so this is a box, there are products in it, so

10 it is a box of product results, but the links go to CSSs

11 not to merchants. Now, I am assuming that you would say

12 that is not a CSS on the page?

13 A. So, to be clear, there's some material differences

14 between this and what we have just discussed.

15 Q. Yes, no, so the first thing is, if you could answer my

16 question —

17 A. So what is your question? Could you say it again,

18 please?

19 Q. My question is: if we imagine a box of product results

20 that looks like this in your scenario 2, yes, and as in

21 your scenario 2 the links do not go to merchants, they

22 go to CSSs, that is what you are considering in your

23 figure 11.2, yes?

24 A. That's what I've been instructed to consider in that —

25 Q. Yes, that is what — exactly —

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1 A. — yes, correct.

2 Q. — because you have been instructed to do it.

3 A. Yes, that's correct.

4 Q. But you are considering it?

5 A. Yes, correct.

6 Q. Now, I infer that you would accept that that box, that

7 presentation of that box on the page, does not amount to

8 Google providing its CSS on the page?

9 A. Well, so to be clear, I mean, I think it's really

10 important to go back to what is a CSS —

11 Q. Yes.

12 A. — okay? As I've said, a CSS provides an important

13 function of enabling consumers to make product

14 comparisons, but also, on the other side, having

15 relationships with merchants to determine what's

16 provided and there's a technological aspect of that in

17 terms of getting product feeds and having a database

18 that has product feeds by which you're choosing which of

19 those product feeds to provide. All of those elements

20 go together as a part of a CSS.

21 What I'm looking at here is a set of organic search

22 results. Now, you say they're product results, they are

23 product results, but they're from organic search.

24 They're enhanced organic search results presented to

25 consumers. So do I think that that is a CSS? No,

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1 I don't think it's a CSS.
 2 Q. Thank you.
 3 Okay, could we look at figure 11.4, which is on
 4 {I2/1/212}. Maybe if we could enlarge that somewhat.
 5 Thank you.
 6 So, same question, but different scenario. We are
 7 now looking at scenario 3a that you were instructed to
 8 consider, and these are going to be paid for, are they
 9 not, in this world?
 10 A. They can —
 11 Q. They can be, yes.
 12 A. — they can be paid for, yes, as the scenarios have
 13 found, that's right.
 14 Q. Do you accept that those, the presentation of a box that
 15 looks like that, is not — is that a CSS or is it not
 16 a CSS?
 17 A. So, to be clear, each of these tiles goes through, when
 18 you click on it, to a CSS webpage.
 19 Q. Yes, so that is not my question. My question is —
 20 A. So I don't think that this here in and of itself is
 21 a CSS. I don't, no. I don't think that is. I think
 22 that Google's acting as a gateway, it's got a gateway
 23 function providing links to CSS webpages, but Google, in
 24 presenting this, is not in itself acting as a CSS. It's
 25 not, through these boxes, enabling consumers to make

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1 comparisons to specific merchant product offers and it's
 2 not engaging directly with the merchants to put those
 3 into a database to provide that service to consumers.
 4 That's not the function that Google's fulfilling through
 5 this, no.
 6 Q. Okay.
 7 Now, considering the features of a CSS, the ability
 8 to implement advanced filtering tools is likely to be
 9 central to a comparison shopping experience, is it not?
 10 A. I mean, I think what's essential is enabling consumers
 11 to compare results. What we see is where CSSs have
 12 the — their control of their own website, they provide
 13 those sorts of features that help enable consumers to
 14 compare product offers on — so, but the — what I think
 15 is inherent is enabling that comparison for consumers.
 16 Q. Okay, well, could you answer also my question, which
 17 is: the ability to implement advanced filtering tools is
 18 likely to be central —
 19 THE CHAIRMAN: Well, I mean, we did ask these questions. We
 20 asked specifically — Ms Rose asked, "Is it an essential
 21 feature"? We asked — we went through the features with
 22 both experts of what is a CSS.
 23 MR PICKFORD: Yes.
 24 THE CHAIRMAN: It is quite fair you can ask about
 25 the counterfactuals and what is essential, what is

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1 the governing criteria. We went through that in
 2 the first part of the hot tub and I really do not think
 3 it is appropriate to go over that again, and —
 4 MR PICKFORD: Well —
 5 THE CHAIRMAN: Including this specific question.
 6 MR PICKFORD: Sorry?
 7 THE CHAIRMAN: Including this specific question whether
 8 filtering is an essential feature.
 9 MR PICKFORD: Well, the difficulty I have, sir, is that
 10 Mr Hunt gave an answer to the Tribunal. I would like
 11 to — I was going to take him to his report where I say
 12 he gives a different answer and I would like to be able
 13 in my closing submissions to hold Mr Hunt to what he
 14 said in his report and I do not want it to be said,
 15 "Well, you never put that to him", and actually he
 16 modified his position in evidence when he gave evidence
 17 to the Tribunal in the concurrent — in the box.
 18 THE CHAIRMAN: Well, if you want to put something in
 19 the report and say, you know, "Is that still your view",
 20 or, "Can you reconcile it with the answer you gave", you
 21 can do that. But ultimately, what is a CSS, to a large
 22 part, is determined by the Decision, but — and you may
 23 recall a lot of submissions about that at
 24 the Preliminary Issues Trial —
 25 MR PICKFORD: Indeed, sir, and let us —

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1 THE CHAIRMAN: — and we have a decision on that, whether
 2 Mr Hunt agrees it or not, or whether Mr Noble agrees it
 3 or not.
 4 But if you want — there is something specific in
 5 Mr Hunt's report you want to put to him, then you can do
 6 that, but let us then go there.
 7 MR PICKFORD: Okay, well, you were not willing to agree with
 8 me when I put the proposition to you before. Let us now
 9 go, please, to your first report, paragraph 292(b).
 10 THE CHAIRMAN: So that is at {I2/1/136}.
 11 MR PICKFORD: That is correct. Thank you.
 12 Then could we go over the page to {I2/1/137}.
 13 You see the sentence beginning:
 14 "This may include a range of features ..."
 15 So this is you talking about what CSSs may do; do
 16 you see that?
 17 A. Yes.
 18 Q. You say:
 19 "This may include a range of features which could
 20 differ across CSSs, but often include the ability to
 21 implement advanced filtering tools, display
 22 comprehensive price information, and offer value-added
 23 features such as reviews and buying guides. These
 24 elements are likely to be central to
 25 the comparison shopping experience and enable CSSs to

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1 compete on quality and relevance."
 2 So I am going to put it to you again, do you now
 3 agree with me that the ability to implement advanced
 4 filtering tools is likely to be central to
 5 the comparison shopping experience, yes or no?
 6 A. I think if CSSs are provided with freedom to provide
 7 these services, then I think — I think it absolutely
 8 is. You know, it's a central — a central optionality
 9 of the services that CSSs that — can provide to their
 10 consumers. Clearly, as we look on standalone CSS
 11 websites, many of them choose to — in fact, to engage
 12 in Google's Remedy box, they have to provide filtering
 13 options. But the — I mean, it's — so I think that
 14 where CSSs have the freedom, yes, I think, yes, I'd
 15 imagine that they will want to provide that service,
 16 that's right, that element of the service.
 17 Q. The same goes for comprehensive price information. That
 18 is also central to the comparison shopping experience?
 19 A. So, yes, CSSs, given freedom and ability to compete with
 20 each other, I think they will want to provide good
 21 information to consumers on that.
 22 Q. Value added features, such as reviews and buying guides,
 23 that is also central to the comparison shopping
 24 experience? That is what you say here.
 25 A. Again, where comparison shopping services have freedom

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1 to be able to provide those elements of the service,
 2 I agree that they will be, you know, potential important
 3 elements by which CSSs can differentiate themselves from
 4 each other when they're competing with each other, and
 5 that's the — that's the purpose of these paragraphs, to
 6 try to bring alive how CSSs would compete with each
 7 other if they weren't encumbered by anti-competitive
 8 behaviour. That's the purpose of these paragraphs.
 9 Q. It is common ground, is it not, that the Remedy box does
 10 not have any of these? It does not have advanced
 11 filtering, it does not have the ability to find the best
 12 price offers, it does not have product reviews and
 13 buying guides; that is — do you agree with that?
 14 A. I agree with it, but Google is not encumbered by having
 15 to compete with rivals, so Google could choose which
 16 elements of a service to provide and choose to provide
 17 a cut down service because it doesn't have to compete
 18 with other CSSs that are choosing to provide those
 19 elements of the service.
 20 Q. Now, if I could take you please to the joint expert
 21 statement at 2.17. It is at {I1/4/47}.
 22 Now, you say there — I will just find the relevant
 23 bit. Towards the bottom of the page —
 24 A. Yes.
 25 Q. — you say that you:

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1 " ... do not need to identify precisely which
 2 functions Google performs as a general search engine and
 3 what infrastructure it uses for that."
 4 You see that?
 5 A. Yes, I do, yes.
 6 Q. But does not your case here depend on distinguishing
 7 whether or not the Remedy box is or is not part of
 8 Google's general search results? So surely as regards
 9 the boundary between what is part of general search and
 10 what is Google's CSS, you do need to identify which
 11 functions Google performs as a general search engine as
 12 part of your own analysis, surely?
 13 A. But you do need to be clear about what — you know, this
 14 sentence is in response to a specific issue which is
 15 essentially around kind of what Google's search engine
 16 should be remunerated for, and I'm saying that from my
 17 evidence and my analysis, I don't need to determine
 18 precisely what elements of Google's search it needs to
 19 be remunerated for. I don't think that that's necessary
 20 in my analysis. That's what this sentence means.
 21 Q. I see, but you would agree that in a different context
 22 of determining whether what is on the box is properly
 23 part of the CSS market or whether it is part of Google's
 24 general search service, you do need to engage in that
 25 detailed understanding of what Google's search does as

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1 opposed to what a CSS does?
 2 A. In that different context, I mean, I think it's
 3 important to try to understand what is Google's CSS,
 4 yes, so therefore it's important to determine, you know,
 5 by — by sort of, logically, what's different from
 6 Google's CSS to what's — and what's, you know, Google's
 7 search, yes, I agree with that.
 8 Q. Now, I would just like to next move on to some points
 9 which I hope we can cover off relatively easy, it is
 10 just background to make sure we are in the same place.
 11 A. Sure.
 12 Q. So you understand — and this was covered to some
 13 extent, but I just want to be clear about your answers
 14 — that general search services provide both generic
 15 results and specialised results? That was covered at
 16 the beginning in the Chair's questions yesterday.
 17 A. No, no, I don't agree with that.
 18 Q. You do not agree with that?
 19 A. No, I don't agree with that and I didn't say that.
 20 So, to be clear, I think general search is — as to,
 21 you know, to my understanding, is where a search engine
 22 goes out and indexes the web, crawls the web, creates an
 23 index of it and provides organic search results in
 24 response to a query, and there's a — a search engine
 25 results page and on that results page the — a general

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1 search provider may also provide other results, and in
 2 the case — and in this case, it can choose to provide
 3 specialised search results. That doesn't mean
 4 the specialised search results, to my understanding, are
 5 part of Google's general search function. So they're
 6 presented on the page, but that doesn't make them part
 7 of Google's general search, you know, service.
 8 Q. Now, you understand that when Google is providing its
 9 general search service, one of the things that it does
 10 as part of that service, because it needs to be
 11 monetised, is to provide ads?
 12 A. Yes.
 13 Q. So that is part of a general search service, ads are?
 14 A. Yeah, I mean, that's how a general search service
 15 remunerates itself, yes, I agree. Albeit the ads are
 16 separate from the general search results, obviously.
 17 Q. It is separate from the organic search results —
 18 A. Yes.
 19 Q. — but they are part of the general service otherwise
 20 there is no monetisable service —
 21 A. Well, is it part of the service or is it — again,
 22 I think — maybe we're splitting hairs. I agree there
 23 are AdWords provided and it's on the general search kind
 24 of results page.
 25 Q. Yes, well, are you going back on this, because you did

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1 initially agree with me that they are part of
 2 the service, and I now think you might be going back on
 3 that?
 4 A. Well, in terms of — I mean, again, I've not done
 5 analysis of this, but trying to think about it from
 6 a user perspective, I think there's a difference as
 7 a user between organic search results and AdWords —
 8 Q. Absolutely.
 9 A. — but clearly a general search service provider needs
 10 to monetise their service and they do that via AdWords.
 11 Technically, is that part of the service? I suppose it
 12 is —
 13 THE CHAIRMAN: (Overspeaking — inaudible).
 14 A. — I suppose it is, but it is not something I have
 15 really thought about, yes.
 16 THE CHAIRMAN: It is inherent in the business of general
 17 search —
 18 A. Yes. Yes, I agree.
 19 THE CHAIRMAN: — to show ads on your search results page.
 20 A. Correct.
 21 THE CHAIRMAN: Whether one technically says that is part of
 22 the search service or not, but it is part of what they
 23 do in general search.
 24 A. I agree. I agree with that, yes.
 25 MR PICKFORD: I think we can both agree that general search

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1 does not inherently exclude product search, does it? It
 2 is not general across most categories but not product?
 3 A. Yes, no, I think that's right, product search is part of
 4 general search.
 5 Q. Now, can we agree on these points, if Google, when it is
 6 competing in the general search market, is going to show
 7 product-related ads at all on its SERP —
 8 A. Mm.
 9 Q. — it is going to have to decide on the format of how it
 10 wants those ads to appear?
 11 A. Yes.
 12 Q. It is going to have to decide whether it wants to show
 13 ads at all in response to a given query?
 14 A. Yes.
 15 Q. It is going to have to set the triggering and ranking of
 16 ads based on bid level, ad quality, relevance, other
 17 factors?
 18 A. Yes, I suppose so.
 19 Q. Yes.
 20 It is going to have to decide ultimately which ads
 21 should and should not appear?
 22 A. Yes.
 23 Q. It is going to have to process relevant data feeds to
 24 enable that to happen?
 25 A. Yes, I imagine that's correct.

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1 Q. It is going to get all of the user interaction analytics
 2 that one naturally gets from those activities?
 3 A. Yes, sure, it's going to get information from how users
 4 engage with those ads, yes.
 5 Q. Now, the fact that two services may have overlapping
 6 features and in some cases both be capable of satisfying
 7 a user does not mean that the services in themselves are
 8 in the same market, does it?
 9 A. No, I mean, it depends on analysing user or consumer
 10 behaviour, yes, that's — so it doesn't necessarily mean
 11 that.
 12 Q. I mean, as an example, I think you would agree that
 13 Amazon and CSSs are not in the same market and yet
 14 the search functionality on Amazon and the things that
 15 you have to go through in order to provide that overlap
 16 with things that CSSs do?
 17 A. Yes, so we — I mean, we went through that yesterday,
 18 and Amazon provides a different service, we agreed, from
 19 CSSs, albeit when — the user experience, when you go on
 20 Amazon is — you know, I agree that users are able to,
 21 when they go on to Amazon's website, compare products,
 22 but inherently it's a different service that Amazon is
 23 providing.
 24 Q. Now, in your written evidence you say that visual
 25 similarity between the Shopping Unit and the Remedy box

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1 is important to why the Remedy box is still part of
 2 Google's CSS. You recall that?
 3 A. Yes, I do, yes.
 4 Q. So I would like to consider again counterfactual 2, just
 5 to get it in so that it is in your mind, the possible
 6 implementation of scenario 2, figure 11.2. We saw it
 7 before —
 8 A. Yes, yes —
 9 Q. — but just to remind you which one we are talking
 10 about, because there are a number. Okay.
 11 Could we then go, please, to your report at table —
 12 your second report, table 4.1, which we will find at
 13 {I4/1/28}.
 14 So I would like to think about the visual features
 15 that you have got here. You see you have listed
 16 a number of visual features?
 17 A. Yes.
 18 Q. I would like to apply them with you to counterfactual 2
 19 that we just had a look at, yes?
 20 A. Yes.
 21 Q. Okay, so the first one is:
 22 "Positioned at the top of the SERP."
 23 So that also applies to counterfactual 2, does it
 24 not?
 25 A. It does, yes.

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1 Q. A "Rich format ...", that also applies to
 2 counterfactual 2?
 3 A. It does, albeit there's perhaps questions about exactly
 4 what the format might look like under sort of general
 5 search versus specialised search, but, yes, broadly
 6 I agree that.
 7 Q. They have both got, the next one down, "Carousel
 8 layout ...". If we are focusing on the one that I took
 9 you to, which was the one at the top, that has got
 10 a carousel layout, has it not, in counterfactual 2?
 11 A. Yes, correct.
 12 Q. Then there are "merchant reviews"?
 13 A. Yes.
 14 Q. We could certainly have a "Sponsored label". I am not
 15 sure whether there is or is not a sponsored label, but
 16 there is no particular reason why one would not have
 17 one?
 18 A. Well, to be clear, scenario 2 is envisaged as organic
 19 search.
 20 Q. That is a fair point, so —
 21 A. So it doesn't — it wouldn't have a sponsored label
 22 because they're not sponsored results.
 23 Q. That is a fair point. If we modified it and we were in
 24 a counterfactual 3a world, so we were now able to be
 25 paid, then it would say "sponsored", or something

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1 similar?
 2 A. Yes. Yes, sorry, I'm just thinking about what other
 3 factors might change on that, but, yes, I agree with
 4 you, under 3a, on that sponsored label row, correct.
 5 Q. You may well have a "Header", albeit where it links to
 6 is probably going to vary depending on what type of box
 7 you are thinking about?
 8 A. Yeah, I mean, it's not clear. It's not been envisaged
 9 in — as far as I can see, in scenarios 2 or 3a, but I'm
 10 not — it's not clear to me that's determinative.
 11 Q. Then the "By CSS" label, I mean, in the — in 11.2,
 12 I think what it says, although my eyesight is really not
 13 good enough, is "From Twenga" and "From Google"?
 14 A. I haven't got it in front of me, but I'll take your word
 15 for it.
 16 Q. So there is a similarity there as well, visually?
 17 A. Yes.
 18 Q. So, visually, we have covered that therefore
 19 counterfactual 2 is very, very similar to the — both
 20 the pre-Shopping Unit and the Remedy box. So what
 21 I draw from that is that, given that I think you are not
 22 saying that counterfactual 2 would involve Google
 23 providing its SERP on the — sorry, its CSS on the SERP,
 24 your table 4.1 and your focus on visual similarity does
 25 not prove very much, because what we have done is we

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1 have looked at something that is definitely not Google's
 2 CSS and we have concluded that it also looks very
 3 visually similar?
 4 A. So — so that's where I think I disagree, and that's
 5 because what we're thinking about here is different
 6 shopping units, and, again, going back to what's a CSS,
 7 and we've talked about having specialised — getting
 8 product feeds in a database, matching queries to product
 9 feeds and enabling product comparison, all of those
 10 elements are part of a CSS, okay? Those elements in
 11 the sort of Remedy box or referred to as "CM—SU" here,
 12 essentially, you have all of those elements and
 13 the visual similarity is very similar, okay, as this
 14 table shows. In scenario 2, there's no specialised
 15 shopping — it has specialised shopping results, but
 16 only from organic search results, there's no separate
 17 database where you're getting product feeds from
 18 merchants, which I think is a key part of what a CSS is
 19 providing.
 20 Q. Okay, I am not understanding your answer, I am afraid,
 21 because your — what I put to you is your case is that
 22 visual similarity tells you something important. That
 23 is what you agreed with me at the beginning, and what
 24 I have put to you is visual similarity between something
 25 that you say is non-infringing because it is

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1 counterfactual 2, your clients have advanced that to you
2 as something which is non—infringing and you have not
3 turned around and said, "Guys, what have you given me
4 here, I do not understand?"

5 So in terms of your focus on visual similarity —
6 A. Well, sorry, to be clear, it's a necessary, but not
7 a sufficient condition, okay? That's what I'm saying.
8 I'm saying I think it's necessary that it's similar, but
9 the fact that it's similar is not sufficient, there's
10 other factors, like the ones that I've just talked
11 through, that are also important to understand is it
12 a CSS or not, okay? So I think visual similarity is
13 relevant and important, but that is not in and of itself
14 determinative.

15 Q. No, and indeed — but I think you would probably agree
16 with me that if you have something that is Google's CSS
17 and it looks very, very like something that is not
18 Google's CSS, so the first is infringing, according to
19 your clients, and the second is not infringing and
20 visually they look basically the same, not only is it
21 not a sufficient condition, it does not actually tell us
22 very much at all, does it? Because what we are trying
23 to do in this trial is distinguish between whether what
24 is on the page is or is not Google's CSS, and if you
25 have got criteria that cannot distinguish because you

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1 have just accepted that the visual criteria do not
2 distinguish, then it does not actually help you answer
3 the question, ultimately, distinguishing the two?

4 THE CHAIRMAN: But if it is a necessary condition but not —
5 how can you say it is — which is what Mr Hunt has just
6 said, how can you say it is unhelpful? It is
7 a necessary condition. So if you do not have it —

8 MR PICKFORD: Yes?

9 THE CHAIRMAN: — then you can say it is not. So it is
10 clearly relevant then if it is a necessary condition.

11 MR PICKFORD: Well, I have not said, sir, that it is
12 irrelevant.

13 THE CHAIRMAN: Well, you say it is unhelpful.

14 MR PICKFORD: Yes, I am saying —

15 THE CHAIRMAN: But if it is a necessary condition, surely it
16 is helpful, because if you have not got it, then
17 you know it is not a CSS?

18 MR PICKFORD: Well, we are not advancing the case that
19 the problem is — the — so the — what I would say,
20 sir, in response to your question, is that ultimately
21 this case is about distinguishing whether what is on
22 the SERP is a CSS or not a CSS. That is at the very
23 heart of this case. So what the parties and their
24 experts have come to this trial to do is, amongst other
25 things, advance evidence on that, and the point that

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1 I am seeking to put to the witness is, if you have some
2 criteria that you are suggesting help answer that
3 question ... now, I accept they may be necessary
4 criteria, but if that is as far as they go and they
5 cannot help distinguish, then they have not taken us
6 very far forward in the key issue that we are actually
7 concerned with. Because there are all sorts of things
8 that are necessary criteria. I mean, I could list
9 hundreds of things that are necessary, that it is part
10 of an internet service, etc, these are all necessary
11 conditions, but they are not distinguishing conditions.

12 THE CHAIRMAN: If it was not visually similar, then it would
13 not be, so you can say it does not answer the question
14 in this case, but it is a helpful criteria for
15 determining — criterion to determine whether something
16 is or is not a CSS. But, as I understand it, it is not
17 sufficient, so you have got to go further, so it will
18 not resolve the question in this case.

19 MR PICKFORD: I have put my point. I think I can move on.

20 Okay, I would like to consider some of the things
21 that you say — some of the other things that you have
22 touched on in your report about the relationship between
23 Google Search and GSE.

24 Now, at paragraph 6.2 of your — I think it is your
25 first report, so that is to be found at {I2/1/105},

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1 section — sorry, I said paragraph 6.2, I think I meant
2 section 6.2.

3 A. Yes.

4 Q. Now, in this section you refer to the fact that GSE does
5 not have a separate legal personality from the rest of
6 Google. Do you recall that?

7 A. Yes.

8 Q. But from an economic standpoint, that of itself does not
9 affect whether Google is treating its own CSS
10 differently from rival CSSs, does it, from an economic
11 point of view?

12 A. No. I mean, again, it depends exactly how kind of GSE
13 works, but I agree. I agree with that.

14 Q. Then if we go on, please, to section 6.3.1 {I2/1/107},
15 you talk about how "Google Search retained control over
16 a number of CSS capabilities". You are familiar
17 obviously with that section of your report?

18 A. I am, yes.

19 Q. Now — then at paragraphs 227 to 228 — or sorry, 226
20 then through to 227/228 {I2/1/107–108}, you elaborate on
21 some of that.

22 Now, let us assume that you are right that what you
23 have set out there are indeed core functions of a CSS,
24 okay? So there is no argument about that. But that
25 does not mean that they are not also core functions of

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1 a general search engine, does it?
 2 A. I mean, it depends on the functions, so I'd need to read
 3 through and read through, you know ... But in principle
 4 something can be a function. I can deal with the point
 5 in principle if you want, or we could go through —
 6 Q. Well, let us —
 7 A. The point is it could — there are functions that could
 8 be functions of a CSS that could also be functions of
 9 a general search —
 10 Q. Yes.
 11 A. — service. I agree with that as a proposition.
 12 Q. Okay, so, in which case, let us go through looking at
 13 them in more detail.
 14 So if you could go — if you could read, please,
 15 that section, 226 through to 228 {I2/1/107–108}.
 16 (Pause)
 17 A. Okay, yeah.
 18 Q. Then, sorry, I should probably also ask you to look at
 19 229, which is your reference to an auction {I2/1/108}.
 20 A. Yes.
 21 Q. Now, you agreed with me earlier when I asked you some
 22 questions about what Google does when it is providing
 23 just text ads, you remember, and we went through various
 24 things that Google does when it is providing text ads?
 25 A. Yes.

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1 Q. Do you see that those essentially overlap, obviously
 2 mutatis mutandis, because in one case we are talking
 3 about text ads, in the other case we are talking about
 4 PLAs, but those same functions are things that Google
 5 does when it is providing text ads, as you set out here,
 6 are functions that it engages in when providing CSSs —
 7 when providing, sorry, PLAs?
 8 A. Yes, that's correct, albeit the context is different,
 9 right? So it's just important to understand, here,
 10 we're talking about — if you like, the exam question
 11 is: I've got the Remedy box in front of me and what —
 12 how's the Remedy box, the format of the Remedy box being
 13 determined, how's the ordering of the PLAs within
 14 the Remedy box being determined? That's what's being
 15 described here, okay?
 16 Q. Yes.
 17 A. Which is enabling product comparison by users. So
 18 whilst you can read the specific sentences and
 19 the elements and you can say, well, with AdWords, many
 20 of these same functions are happening, the context is
 21 different. So — so, yes, I can agree with you that —
 22 that I'm sure that it must be the case that many of
 23 these specific functions Google's doing for AdWords, but
 24 I think that sort of misses the bigger picture.
 25 Q. So would it be fair to say we are back in

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1 your "necessary but not sufficient" world? You would
 2 say these are necessary functions of a CSS, but just
 3 because we have found it has these functions, it does
 4 not mean that we are therefore dealing with a CSS,
 5 because they do not distinguish between a CSS and
 6 something that is not a CSS?
 7 A. Well, look, ultimately, the key point I'm trying to make
 8 here in these paragraphs is that when you have
 9 the Remedy box, it's Google that's determining what that
 10 looks like and how the individual PLAs appear within
 11 the Remedy box. That's essentially what these
 12 paragraphs are going to, okay? I would say determining
 13 the — how that Remedy box looks, which allows product
 14 comparison, and how the individual elements appear,
 15 I would say that those are — that's core elements of
 16 a comparison shopping service and that's essentially
 17 what — what these paragraphs are trying to say.
 18 Q. Yes, okay. So if you could answer my question, which
 19 is — I understand that, but what I draw from that is
 20 that you are not advancing these points as
 21 distinguishing features. You are not saying, look,
 22 these are things that Google does when it is presenting
 23 these results on its SERP, therefore it is a CSS because
 24 you only do these things when you are presenting a CSS,
 25 because you accept that Google also does these things

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1 when it presents text ads?
 2 A. Yes, but I think you need to see 226 to 229 in
 3 the context of the first paragraph, 225, okay, where 225
 4 says {I2/1/107}:
 5 "Google Search has exclusive control over the
 6 configuration and prominence of the [Remedy box] on
 7 the SERP, including all of its design aspects and
 8 operation."
 9 Then it talks about these other elements. So
 10 I think you need to see those other elements in that
 11 broader context. You're trying to separate out those
 12 other elements in a way, and then say, well, each of
 13 these individual elements, but without seeing the bigger
 14 picture, I need to focus on these individual elements
 15 and therefore almost like mechanically define what a CSS
 16 is by each of those individual elements, but that — you
 17 know, with all due respect, that misses the bigger
 18 picture point, which is the point made at paragraph 225.
 19 Q. Okay, well, let us look at 225 then. At 225, you say
 20 that:
 21 "Google Search has exclusive control over
 22 the configuration and prominence of the ..."
 23 As you call it:
 24 "... CM—SU on the SERP, including all its design
 25 aspects and operation."

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1 That is also true when Google provides ads on
 2 the page, is it not?
 3 A. Sure.
 4 Q. Just text ads?
 5 A. That is true, but to be clear, the Remedy box on
 6 the SERP enables product comparison, so therefore that's
 7 a critical element that we've talked about numerous
 8 times as regards what is a CSS. So this is — that's
 9 the context that we're talking about here and that's
 10 a different context when we're thinking about AdWords.
 11 Q. Right, so I think your case then comes down to the fact
 12 that you are saying the critical feature here,
 13 because — let us take it in stages. I put it to you
 14 that both 225 and then 226 through to 229 are features
 15 that are also common to the presentation of text ads,
 16 because Google does all the same things in relation to
 17 text ads. Now, I think your answer to that is: yes,
 18 that is true, but I have got something else to say
 19 about it. Is that correct?
 20 A. Yes.
 21 Q. Okay.
 22 The extra thing you have to say about it is you say
 23 the particular thing that the CSS — that the SERP is
 24 doing when we are presenting on it a Remedy box is it is
 25 enabling comparison, that is the point?

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1 A. It's enabling product comparison, exactly.
 2 Q. Right.
 3 A. It's got images of products, it has prices and it has
 4 attributes of the products, for example. So, yes, so
 5 that's what's unique to the Remedy box and, before it,
 6 the Shopping Unit, and it differs from AdWords.
 7 Q. Okay, let us consider a hypothetical scenario. Let us
 8 get rid of the box, travel back in time —
 9 A. Okay.
 10 Q. — and imagine a world where, because we have not got
 11 the box, we have got instead four text ads at the top of
 12 the page.
 13 A. Yes.
 14 Q. Okay?
 15 Those text ads will have been chosen as relevant and
 16 helpful to the user, will they not, by Google's
 17 algorithm? How well it has done it, I am not asking you
 18 to comment on that, but what Google's intention will
 19 have been is to choose helpful answers to the user's
 20 response — to the user's question?
 21 A. Look, I — yes, I suppose so, and I'm willing to kind of
 22 move forward on that hypothesis. Precisely how it's
 23 chosen those ads, I mean, I think — I think those
 24 AdWords results, I haven't specifically looked into, but
 25 I understand that relevance to the user response is a —

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1 it's a key part of that, yes, so I'm happy to work with
 2 that.
 3 Q. Whether or not it is as effective as a set of pictures,
 4 they will be presented there together to enable
 5 comparison between them; that is the whole idea, is it
 6 not, of Google presenting a number of results,
 7 particularly together, is to do it in a way that allows
 8 users to compare them?
 9 A. I'm not sure that's true for AdWords. I think it's
 10 presenting the AdWords because it thinks some users will
 11 click on it and then it will get some money from it.
 12 I think it's different. It's not trying — as far as
 13 I understand, what it's not trying to do is specifically
 14 enable products to be compared, which is the key
 15 function of a comparison shopping service and what
 16 I think is a key element of the Remedy box and kind of
 17 the Shopping Unit and, before it, the Product Universal.
 18 So I think that's different, if we've just got text ads
 19 that's not enabling a consumer to make that comparison,
 20 it's —
 21 Q. I think we can definitely agree that they are different
 22 and that they are not enabling the user to do something
 23 in the same way as they could if there were pictures,
 24 because humans are quite visual —
 25 A. Mm.

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1 Q. — and the evidence in this trial suggests that pictures
 2 help.
 3 But are you disagreeing with me that if Google has
 4 three or four text ads on the page, that those are not
 5 presented in a way that shares a similar format and some
 6 similar types of information to enable users to choose
 7 the one that they most want, i.e. to compare? Are you
 8 disagreeing with that as a proposition?
 9 A. In all honesty, I don't understand precisely what
 10 the proposition is.
 11 Q. Okay —
 12 A. So, well, I mean, you said it's got some text and some
 13 words, but I'm not understanding — I don't think you've
 14 given me enough information to be able to reach a clear
 15 — you're asking me to reach a conclusion on something
 16 that, in all honesty, I don't understand precisely how
 17 it's been specified. So, I mean, I'm not sure if it's
 18 clearer to the ...
 19 Q. Okay, well, let me respecify it.
 20 A. Okay.
 21 Q. So let us make it concrete and say that there are four
 22 text ads on the page, okay?
 23 A. Okay.
 24 Q. Let us assume that they are all next to each other, one
 25 above the other.

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1 A. Okay.
 2 Q. Okay?
 3 Let us assume that each of them contains information
 4 about a product that is deemed to be responsive to
 5 the user's search in the same way that the Remedy box
 6 does. It does not have a picture —
 7 A. Mm.
 8 Q. — but you understand that if someone puts in, for
 9 instance, "red dress" —
 10 A. Yes.
 11 Q. — into Google and then they get the Remedy box up, they
 12 will get a variety of red dresses, okay?
 13 A. Mm.
 14 Q. So let us assume that they now get up a variety of four
 15 text ads that are responsive to the search for "red
 16 dress", yes?
 17 A. Okay.
 18 Q. Okay?
 19 Now, when a user looks at those and decides what
 20 action it is going to take next, decides which one it is
 21 going to click on, surely what the user is doing is
 22 making a comparison between the options that it has been
 23 provided with? That must be the case.
 24 A. In all honesty, it's not clear to me it is the case. So
 25 they're presented with some words, okay, and there's

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1 four links with some words. Are they comparing
 2 the words or does one of them — there's an attractive
 3 word in one of them? In all honesty, it's not clear to
 4 me from what you've said that a user does go through all
 5 of them and then compare them clearly, and, you know,
 6 it's not clear to me, for example, in organic search
 7 results that the user does that in the same way. They
 8 get presented with blue links which have words and
 9 a user clicks on one, it doesn't necessarily mean, and
 10 it's not clear to me at all, that a user therefore is
 11 comparing each of those results. I don't think that —
 12 it doesn't follow to me. You know, again, as I said,
 13 I think it's similar to organic search. You get blue
 14 links with words and you click on one of them, it
 15 doesn't clearly mean to me that you're comparing them.
 16 Q. Okay, I have put my point on that.
 17 I would like to move on to a different but related
 18 question.
 19 In your counterfactual 3b that you have been
 20 instructed to consider, that is where the rival gets to
 21 control part of the SERP and which offers are presented
 22 to users. You agree with that?
 23 A. (No audible response).
 24 Q. Now, it would be for Google to choose which CSS got to
 25 control part of the SERP; is that right? Is that how

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1 you understand it?
 2 A. Yes, so, I think — again, I go back to my instructions,
 3 but essentially it is "primarily" — and again there's
 4 a question what that means — but primarily relevance
 5 based, so Google's determining which — which CSS should
 6 be provided the —
 7 Q. We are in the world of 3b here.
 8 A. 3b, yes.
 9 Q. So my understanding is that you are allowing for
 10 a potential auction in this scenario.
 11 A. Yes, but again, we could go back to the wording and it
 12 might be helpful to do that, but it says that
 13 the ordering is "primarily based on relevance".
 14 I mean, it might be helpful to do that, if — just
 15 so that we're on the same page, if that's okay.
 16 Q. It appears a few times. Can I ask where you have gone
 17 to for that, because I would like to go to the same
 18 place as you?
 19 A. Yes, no, so I've gone to my first report, where it
 20 summarises — under kind of section 11.3, where it
 21 says, "Equal promotion by ... a box".
 22 THE CHAIRMAN: Are you on {I2/1/211}?
 23 A. I'm now looking on page 211 of Hunt 1.
 24 THE CHAIRMAN: 210/211, yes, so {I2/1}, it starts on
 25 {I2/1/211}:

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1 "Scenario 3: Equal promotion by means of a box."
 2 Then you go on to, you say on the next page, which
 3 is {I2/1/212}; is that right?
 4 A. Yes, I'm just looking here and it says —
 5 THE CHAIRMAN: The scenario 3b that counsel is asking about
 6 is actually on {I2/1/213}.
 7 A. Yes, I think the paragraphs at the start apply equally
 8 to 3a and 3b.
 9 THE CHAIRMAN: Yes.
 10 A. So what it specifically says under
 11 paragraph 472(b)(iii), it says {I2/1/212}:
 12 "Both scenarios 3a/3b may or may not have involved
 13 the charging of a fee or [some] other form of
 14 consideration to all CSSs participating in
 15 the specialised Shopping Box ... provided that any such
 16 fee or consideration still delivered equal
 17 treatment ..."
 18 Then it carries on.
 19 Then it says — so, actually, sorry if we jump
 20 forward to 485(b), which is I think the point that's
 21 directly relevant to what Mr Pickford's discussing
 22 {I2/1/217}, I've put:
 23 "I understand that the possibility of a fee to
 24 Google is envisaged under this scenario. However, my
 25 instructions state that selection of CSSs under either

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1 scenario 3a or 3b would be 'focused on selecting
 2 the CSSs most relevant to the user query', which
 3 I interpret to mean that selection must be primarily
 4 based on relevance."
 5 So that's — just to be clear, that's kind of —
 6 those were my instructions and that's how I interpreted
 7 them.
 8 MR PICKFORD: How, as an economist, do you marry those two?
 9 What do you understand it means to select primarily by
 10 relevance but you can also have a fee? How does that
 11 work?
 12 A. Well, I mean, look, clearly to some extent there's
 13 a trade-off between how much someone is willing to pay
 14 and the quality of what they're providing. So I think
 15 it's worth thinking about this and comparing two
 16 different things. So if we think about it in the early
 17 period, if we go back to 2008, and we're in the period
 18 that we discussed before, where Google is essentially
 19 feeling competition from rivals, it wants to drive
 20 greater usage of the SERP, i.e. it wants to attract
 21 users, in that case, then you may well not charge any
 22 fee whatsoever, or if you charged a fee, it might be
 23 relatively low, because what you really wanted to choose
 24 the CSS on would be primarily how good it is, because
 25 you're competing hard and you're trying to attract

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1 volumes, okay? Whereas at a later point of time, let's
 2 say Google isn't so worried about using — losing users,
 3 you know — you know, Google at that point of time could
 4 weight more on price and care less about quality because
 5 it's not so worried about quality because frankly it's
 6 not competing so much with rivals.
 7 So I think there's inherently some degree of
 8 trade-off between, sort of quality and charge, and
 9 I think Google — again, precisely how it does that in
 10 the algorithms, I — I don't profess to know, but
 11 there's — self-evidently, there's the possibility of
 12 a trade-off and you can weight one more than the other
 13 when you're determining which — which CSS you
 14 prioritise.
 15 Q. Sorry, I'm sure it is just me, but I am finding it
 16 difficult to understand what you mean when you say that
 17 one would weight primarily — now, you have given an
 18 example where basically you said the fee is trivial and
 19 does not really change very much. You have given
 20 another example at the other end where you say, well,
 21 basically, you know, the auction could be the dominating
 22 factor.
 23 What I am trying to work out is say the rule is —
 24 because this is what your clients are presenting as
 25 the rule that Google has to follow. If the rule is that

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1 it has to be primarily by relevance but there can be
 2 a fee —
 3 A. Mm.
 4 Q. — I am confused as to how Google could possibly
 5 implement that because I do not understand what that
 6 means and I am asking whether you could help me.
 7 A. So I can interpret what that means. I mean, I'm not,
 8 you know, precisely sure how Google would have
 9 implemented it —
 10 Q. I am not asking —
 11 A. But let me give you an example.
 12 So let's just keep it really simple, okay? Let's
 13 assume that I know some of Google's algorithms work by
 14 having a — you look at the price you bid and there's
 15 a quality component. So you multiply quality by price
 16 and that gives you, if you like, an adjusted price,
 17 okay? Now, it depends how — you know, how you weight
 18 that quality function. So therefore, if quality — if
 19 you really, really care, that function of quality will
 20 look very different, i.e. you'll put a lot more weight
 21 on the question of quality than you would on price.
 22 This is just a simple example, and it's just clear to me
 23 that, you know, to some extent, if you didn't care about
 24 quality at all, you'd simply remove that element and
 25 you'd only care about price, and it's fairly clear to me

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1 that you can trade one off by the other. Precisely how
 2 you do that, I'm not sort of professing a specific view
 3 because I don't know enough about it.
 4 Q. Okay. So you took us on to this quality point. I was
 5 actually just asking about some other issues.
 6 So the first thing is, within this scenario 3b,
 7 I think we agree that it was for Google to choose which
 8 CSSs get to control part of Google's SERP subject to
 9 what you say about the rule that it has to be mainly or
 10 primarily based on relevance?
 11 A. Well, again, that was the — interpreting
 12 the instructions that were given to me, yes, yes.
 13 Q. So that is what you understand by this, yes?
 14 A. Yes.
 15 Q. Did you understand whether Google would be allowed to
 16 use its own algorithms and processes to choose those
 17 CSSs?
 18 A. Yes, I mean, Google will need to have some way of
 19 determining which CSSs and they would do that by means
 20 of algorithms, yes.
 21 Q. It is the case then, as I understand it, that — let us
 22 suppose — sorry, put a hypothetical to you. Let us
 23 suppose that consumers are — users are more interested
 24 in seeing links to merchants than merchant platforms,
 25 okay?

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1 A. Yes.
 2 Q. I think your position, as I understand it from various
 3 points that you have made, is that the only way that
 4 Google can satisfy that is through a 3b world, where
 5 what Google does is not choose the merchants that it
 6 would send them through to, as it does under the Remedy
 7 box, it has to choose a CSS and the CSS has a series of
 8 merchants that — and it is the CSS — and it is through
 9 that medium that you then go through to a merchant; is
 10 that right?
 11 A. Sorry, to be clear, that's not my position, that was —
 12 they were the scenarios —
 13 Q. I am sorry —
 14 A. — I was instructed —
 15 Q. I beg your pardon —
 16 A. — to consider —
 17 Q. Sorry.
 18 A. But we started earlier — or, earlier, we discussed
 19 whether or not there could be, say, competition between
 20 comparison shopping services and merchants, and whilst
 21 that wasn't something that I considered in my reports —
 22 Q. That is —
 23 A. — at least in principle, I could see that that could
 24 happen at earlier points of time. You could have
 25 mutual, as we talked about, tiles being provided access

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1 to consumers, and depending what the user preference is
 2 and how much they interacted with and liked the CSS
 3 websites, then in principle they could compete with
 4 merchants. Yes, in principle, I could see that that —
 5 Q. Sorry, you are right to remind me of that.
 6 So in that world, just so I can understand that
 7 world more fully, how are you envisaging the — well,
 8 the classic PLAs that go to merchants, how do they
 9 interact with the tiles that go to CSSs? For instance,
 10 are the CSS tiles — sorry, the tiles where the CSSs are
 11 presenting their own merchant results?
 12 A. In all honesty, I don't know. This was a scenario that
 13 the Tribunal —
 14 Q. Okay, that is —
 15 A. — (inaudible), so I haven't envisaged that precisely.
 16 I think it's a very interesting scenario to consider.
 17 Exactly how it would work, we'd need to work that
 18 through, so I'm willing to — I'm happy to discuss that
 19 with you, but if you ask me how am I envisaging it,
 20 I think we need to —
 21 Q. That is fair enough. It was put to you and only this
 22 morning, so I am going to move on to a different
 23 question.
 24 A. Okay.
 25 Q. So I think you will be able to see that where I have

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1 been driving at with some of my questioning is that
 2 whether the Remedy box is part of a CSS really needs to
 3 focus not so much on the overlaps, but
 4 the differentiating features between general search
 5 results and CSS results. Do you agree with that?
 6 A. Sorry, could you say that again, please?
 7 Q. Yes.
 8 So whether the Remedy box is in fact part of a CSS
 9 or a CSS in its own right, you need to consider not just
 10 the overlaps. We have been considering some of
 11 the overlaps already, like we considered the visual
 12 similarity and we considered the functional overlaps,
 13 and we saw that those apply both to general search
 14 results and also to the Remedy box. Are you with me so
 15 far?
 16 A. I am, but that wasn't the way I — I approached it, but,
 17 yes. But carry on.
 18 Q. What I am putting to you is that really what we need to
 19 hone in on is what are the differentiating features
 20 between general search results and CSS results in order
 21 to determine whether the Remedy box falls in with
 22 general search results or whether it falls in as a CSS;
 23 is that fair?
 24 A. Yes, but to be clear, the way I envisaged — so we can
 25 try — I'm happy to go with you and try and do it like

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1 that, but just to be 100% clear about the way
 2 I approached it, the way I approached it was defining —
 3 or understanding what a CSS is by reference to the —
 4 what the Commission said and supplemented by the factual
 5 witness evidence on Google's side and on the claimants'
 6 side. Then, understanding what are the dimensions of
 7 a CSS, I then sought to understand what is Google
 8 providing and how those CSS functions and assets map on
 9 to Google. So that was the way I approached it.
 10 Now, I think what you're suggesting is let's
 11 approach it differently and think about what's — what's
 12 general search and what's specialised search. Now,
 13 that's a slightly different way of doing it, but I think
 14 the conclusion that I reached I think can map on to what
 15 you've said, but I'm just being clear about how
 16 I approached — how I thought about it and arrived at my
 17 thinking about what is Google's CSS.
 18 Q. Okay, thank you. That is clear.
 19 Now, could we perhaps please go to a table that is
 20 in Google's written opening submissions. I imagine you
 21 have seen this —
 22 A. I have.
 23 Q. — and you know where I am going. I think it is
 24 the only one, it is table 1. It is at {A2/1/64}.
 25 I anticipated that you had had a look at it and no

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1 doubt have some views on it. So what I would like to do
 2 is go through the lines in that table and see to what it
 3 extent you agree and what extent you disagree with
 4 the table, if I may.
 5 A. Of course.
 6 Q. So do you agree with line 1 that text ads, Remedy box
 7 ads and CSSs all rely on feeds of information and not
 8 crawling?
 9 A. Yes, but the feeds are different. The information in
 10 the feeds differs. But, yes, I agree that they all rely
 11 on feeds.
 12 Q. In each case, it is the website owner that chooses
 13 whether and when those different types of ads appear and
 14 in what format?
 15 A. I think that's correct, yes.
 16 Q. In each case, one uses algorithms, or the website only
 17 uses algorithms and user data to select the results?
 18 A. Yes, I think that's right. Again, for each of them —
 19 well, the algorithms are different and user data's
 20 different and the formats are different, but, yes, in
 21 principle, these activities all take place for each of
 22 them, I agree with that, yes.
 23 Q. Now, if we go over to line 4 {A2/1/65} — we do not need
 24 to go over this in detail because you have already told
 25 me you do not agree that what text ads enable you to do

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1 — users to do is to compare results, so —
 2 A. Yeah.
 3 Q. — I have got a tick in that and I am assuming that you
 4 put a red cross in that one?
 5 A. That's correct.
 6 Q. But otherwise you would agree that the Remedy box and
 7 CSSs do enable that to happen?
 8 A. Correct.
 9 Q. Then, "Placement by auction", certainly as regards
 10 Google, Google's text ads are auctioned and its Remedy
 11 box is auctioned, but in general, CSSs do not charge by
 12 auction; that is right, is it not?
 13 A. I believe that's right. I mean, in all honesty, I've
 14 not looked into it precisely, but I believe that is
 15 right, they charge cost per click, typically, or — yes,
 16 but they don't charge by auction is the key point,
 17 I think you're right, yes.
 18 Q. 6, I think we can skip over because it is a very simple
 19 one and you are not going to disagree with me.
 20 A. Yes.
 21 Q. 7:
 22 "Can link to CSSs."
 23 So a text ad could go through to a CSS, a Remedy box
 24 ad, at least in some incarnations, could go through to
 25 a CSS?

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1 A. Sure.
 2 Q. But if a CSS is presenting results on its website, it is
 3 never going to link through to other CSSs?
 4 A. No, I imagine not.
 5 Q. Then the next one:
 6 "Other types of results ... on [the] page."
 7 Now, obviously you made the point in the context of
 8 Google's SERP, there are many types of results on
 9 the page, so that is true of text ads, obviously, yes?
 10 A. Mm.
 11 Q. Sorry, you "mm—ed" —
 12 A. Yes —
 13 Q. — and it is just for the transcript.
 14 A. — sorry, sorry. Yes. Yes, sorry, yes.
 15 Q. Thank you.
 16 That is true of the Remedy box equally, because it
 17 is also on the SERP?
 18 A. Yes.
 19 Q. But it is not true of a CSS in general because CSSs are
 20 just concerned basically with presenting lots of PLAs,
 21 they are not going to give links to other types of
 22 things on the SERP?
 23 A. I think CSSs do have ads, so there are ads on CSS
 24 webpages, so I don't think that's precisely right.
 25 Q. Right, okay.

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1 Filtering tools. Now, you do not get — I think we
 2 are agreed and we do not have to — I am not trying to
 3 go over material that has been covered in detail, it is
 4 simply so I have put this table to you.
 5 There is nothing you would disagree with, is there,
 6 in relation to filtering tools?
 7 A. No, on filtering tools, I think we're clear on that.
 8 Q. "... specific price comparison functionality"?
 9 A. I mean, again, define what specific price comparison
 10 functionality is.
 11 Q. Fair point. Your client's counsel I think said — made
 12 that point in opening. It might be better to say
 13 specific price comparison tools, for instance, like
 14 sorting by price, would be the canonical price
 15 comparison tool?
 16 A. Okay, so I agree that on the Remedy box you can't sort
 17 by price. I agree with that.
 18 Q. The provision of "detailed product information, guides
 19 and reviews", that is something you would not see in
 20 a text ad or the Remedy box, but you would find that on
 21 at least a good CSS, a high quality CSS?
 22 A. Yes, yes, you certainly could do.
 23 MR PICKFORD: Would that be a convenient moment to pause for
 24 the afternoon transcript break?
 25 THE CHAIRMAN: Yes.

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1 Yes, we will come back at 3.40, and we have got to
 2 end today — that is why we started at 10, we have got
 3 to end at 4.20 today.
 4 MR PICKFORD: Okay. Thank you.
 5 (3.30 pm)
 6 (A short break)
 7 (3.42 pm)
 8 THE CHAIRMAN: Yes, Mr Pickford.
 9 MR PICKFORD: Thank you, sir.
 10 So we are going to move on to a new topic, which is
 11 the functional links between Google Search and GSE.
 12 Now, you are familiar, I am sure, with the concept
 13 of economies of scope between different products in
 14 a multi-product firm?
 15 A. I am.
 16 Q. Two or more products may well share common costs which
 17 can make it more efficient to produce the products
 18 together rather than separately?
 19 A. Yes.
 20 Q. That could be true of products that are upstream and
 21 downstream within a vertically integrated undertaking?
 22 A. Yes.
 23 Q. Now, are you aware that in the allocation of costs to
 24 GSE, some costs are allocated exclusively to GSE whilst
 25 it shares a proportion of other costs which relate to

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1 activities which benefit both GSE and other parts of
 2 Google?
 3 A. So I haven't specifically looked into exactly how
 4 the costs allocation to GSE works, but I can take what
 5 you've said as read. I'm happy to work with that.
 6 Q. In order to avoid self-preferencing, a vertically
 7 integrated undertaking is not inherently required to
 8 become unvertically integrated and structurally separate
 9 its upstream and downstream businesses, is it?
 10 A. I mean, I think that's more a question of — well,
 11 probably a question of law rather than economics, but —
 12 but, as an economist —
 13 Q. As an economist —
 14 A. — as an economist, it doesn't seem to me that that's
 15 necessary. I mean, I think there's obviously some —
 16 yeah, sorry, so ... Continue, please.
 17 Q. Thank you.
 18 So could we go, please, to your first report at
 19 paragraph 234. We will find that at {I2/1/111}.
 20 You say in the final sentence there:
 21 "Importantly, GSE does not undertake the key
 22 functionalities of CSSs, that are performed by
 23 Google Search and that are described above in relation
 24 to the CM-SU."
 25 A. Yes.

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1 Q. So I would just like to investigate that a bit
 2 further —
 3 A. Sure.
 4 Q. — if I may.
 5 Now, you have cited a document in your statement
 6 which is to be found at {K1/26/1}.
 7 This is a letter from Cleary Gottlieb Steen and
 8 Hamilton, explaining, on 29 August 2017, the Remedy to
 9 the Commission and certain aspects of it.
 10 You have presumably read that because you refer to
 11 it in your report —
 12 A. I did, yes.
 13 MS ROSE: (Off microphone) Who are Cleary Gottlieb
 14 (inaudible)?
 15 MR PICKFORD: Google.
 16 Could we go, please, to — I am just checking on it.
 17 Yes, it is non-confidential. Can we go, please, to
 18 {K1/26/6} of that.
 19 You see, about a third of the way down roughly, it
 20 says, "GSE Bidding Rules".
 21 A. Mm.
 22 Q. You see that?:
 23 "Two principles will apply to GSE's bids: First, GSE
 24 will bid in a manner that maintains its overall
 25 profitability for a given reporting period. Second, GSE

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1 will limit the level of individual product ad bids such
 2 that the cost of those bids will not exceed the payments
 3 from its advertising partners."
 4 You see that?
 5 A. Yes, I do see that.
 6 Q. Then it goes into more detail about profitability.
 7 A. Mm.
 8 Q. One sees that it says, under — if you go to the second
 9 sub-bullet point under "Profitability" —
 10 A. Yes.
 11 Q. — you see it says:
 12 "GSE's costs will comprise the variable and fixed
 13 costs required to carry out its activities ..."
 14 Then there is an important bit that I would like you
 15 to concentrate on because this is going to be relevant
 16 to the questions:
 17 "... (i.e., activities related to EEA
 18 Google Shopping websites ..."
 19 A. Yes.
 20 Q. That is one:
 21 "... AdSense for Shopping in the EEA ..."
 22 That's another?
 23 A. Yes.
 24 Q. "... and bidding to place GSE product ads on Google
 25 General Search pages)."

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1 Do you see that?
 2 A. I do.
 3 Q. Now, if we just go through each of those activities .
 4 The first one, the EEA Google Shopping websites,
 5 that is the analogue of Kelkoo running its own CSS
 6 website, is it not?
 7 A. Okay, yes.
 8 Q. You agree with that?
 9 A. Well, yes, it seems to be that's what it says, yes.
 10 Q. Yes, obviously I cannot — yes, on its face.
 11 A. Yes, yes. Yes, no, I think so.
 12 Q. Running AdSense for shopping in the EEA, again, on its
 13 face, that is the analogue of Kelkoo's publisher
 14 business, is it not?
 15 A. I believe so, yes. I've not — I've not specifically
 16 looked into AdSense and how AdSense works, but I broadly
 17 understand that that's the case.
 18 Q. Then bidding to place PLAs in the shopping units on the
 19 SERP, again, on its face, that is the analogue of what
 20 Kelkoo does when Kelkoo places PLAs in the Shopping
 21 Unit, is it not?
 22 A. Yes. I believe so, yes.
 23 Q. So what this is telling the Commission is that Google
 24 has to meet the associated variable and fixed costs of
 25 those activities ; agree?

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1 A. That's what it says, yes.
 2 Q. Where those costs are common, they are allocated on
 3 the basis of reasonable accounting conventions, and we
 4 see that if you go to the bottom of the page —
 5 A. Mm.
 6 Q. — the final sentence:
 7 "Common costs across GSE and other parts of Google
 8 (e.g., costs corresponding to [the] shared technology
 9 and R&D, or common sales and marketing expenditures)
 10 will be allocated on the basis of reasonable accounting
 11 conventions."
 12 You see that?
 13 A. I see that, yes.
 14 Q. Yes, okay.
 15 Now, the activities that I have just gone through,
 16 namely the operating of the shopping websites,
 17 the operating of effectively syndicated advertising, and
 18 placing PLAs, those are the activities of a CSS, are
 19 they not?
 20 A. Well — sorry, so this is going back to — to the bit in
 21 the first sentence in — in brackets, those three
 22 activities ?
 23 Q. That is right .
 24 A. Well, I mean, I think the bidding to place GSE product
 25 ads on Google's General Search pages, it's not clear to

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1 me that unencumbered of that, it's necessarily
 2 an activity of a CSS, but in the post—decision world —
 3 Q. Yes.
 4 A. — then, yeah, I mean, it certainly can be.
 5 Q. In the post—decision world, which is the world we are
 6 in —
 7 A. Yeah.
 8 Q. — the three things that are listed there are
 9 the activities that one would expect of a CSS?
 10 A. Okay, sure, yeah.
 11 Q. They are its core activities ; agreed?
 12 A. Okay.
 13 Q. You agree?
 14 A. Sure.
 15 Q. Okay.
 16 Now, if we can go back to your report again then,
 17 please, back to —
 18 THE CHAIRMAN: Can I just — sorry to be a bit tedious. Is
 19 this the letter that you are referring to in
 20 footnote 342 {I2/1/111}?
 21 A. Let me double—check that.
 22 THE CHAIRMAN: Is that —
 23 A. I believe that must be the one, because if we just go up
 24 to the top page, this talks about the:
 25 " ... (Google responses to Commission questions,

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1 20 August 2017) ..."
 2 So —
 3 THE CHAIRMAN: Yes, it is 29 August —
 4 A. 29th, okay, in which case —
 5 THE CHAIRMAN: So that is a typo, is it, probably?
 6 MR PICKFORD: No, I think, sir —
 7 THE CHAIRMAN: It is a different letter?
 8 MR PICKFORD: Might I respond?
 9 THE CHAIRMAN: Yes.
 10 MR PICKFORD: I think this is the letter that Mr Hunt refers
 11 to at footnotes 241 {I2/1/89} and 245 {I2/1/90}.
 12 A. Okay, 241?
 13 THE CHAIRMAN: 241, ah.
 14 MR PICKFORD: Yes, and 245.
 15 THE CHAIRMAN: I see, sorry.
 16 MR PICKFORD: So he refers there to —
 17 A. Okay.
 18 Q. It has the same Google Shopping reference and it is
 19 29 August —
 20 A. Yes.
 21 Q. — 2017. So that —
 22 THE CHAIRMAN: I see.
 23 MR PICKFORD: — that is the letter you are referring to.
 24 A. Yes, understood.
 25 Q. You refer to it again in 245.

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1 A. Yes, I see that, yes.
 2 THE CHAIRMAN: 242 is a different one.
 3 MR PICKFORD: Yes.
 4 A. Yes, okay.
 5 THE CHAIRMAN: Thank you.
 6 MR PICKFORD: So if we could go back, please, to your
 7 witness statement again.
 8 A. Yes.
 9 Q. At 234 {I2/1/111}, you said there:
 10 " ... GSE does not undertake the key functionalities
 11 of CSSs ..."
 12 That is just wrong, is it not? I mean, it does
 13 undertake the key functionalities of CSSs, because you
 14 agree with me that that is what it did on the face of
 15 that letter?
 16 A. So — okay, it's an interesting point. So — so I think
 17 what you're saying is, as regards the — the going back
 18 to what the function of GSE is, as regards
 19 the comparison shopping functionality on the standalone
 20 website, I understand, and is this correct, that it's
 21 purely GSE that manages that functionality on
 22 the standalone website?
 23 Q. Yes, I —
 24 A. That's right. So, yes, but the functionality of
 25 comparison shopping on the Google Search webpage is

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1 different.
 2 Q. That is a different question.
 3 A. It's a different question.
 4 Q. It is a different question, Mr Hunt.
 5 What I am putting to you is you say:
 6 "Importantly ..."
 7 So you obviously place emphasis on it:
 8 " ... GSE does not undertake the key functionalities
 9 of CSSs ..."
 10 I have just shown you —
 11 A. Sure.
 12 Q. — the material in the letter that you have read and
 13 agreed with that shows that it does undertake —
 14 A. No.
 15 Q. — the key functionalities of CSSs?
 16 A. So if we just read what that says:
 17 " ... GSE does not undertake the key functionalities
 18 of CSSs ..."
 19 Apologies, there is a comma there that probably
 20 shouldn't be there, but it says:
 21 " ... that are performed by Google Search and that
 22 are described above ..."
 23 What it's trying to say is GSE does not undertake
 24 the activities that have previously been described that
 25 Google Search is undertaking. That's what that means.

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1 THE CHAIRMAN: So, as regards the GSE standalone site, you
 2 accept —
 3 A. I'm accepting that, yes.
 4 THE CHAIRMAN: — that in that respect, GSE does
 5 undertake —
 6 A. In that respect, yes —
 7 THE CHAIRMAN: — the key functionalities —
 8 A. — that's right. But it doesn't undertake
 9 the functionalities that are described above that
 10 Google Search undertakes. To be clear —
 11 THE CHAIRMAN: In relation to —
 12 A. — they're the activities that matter because the vast
 13 majority of traffic goes through the Remedy box. So
 14 what happens on GSE's standalone website doesn't matter
 15 that much because there's so little traffic that goes
 16 through it.
 17 So what matters is, you know, for this case, what's
 18 going through the Remedy box, what goes through
 19 the Shopping Unit, and what I'm saying is GSE doesn't
 20 perform those functions because they're performed by
 21 Google Search.
 22 MR PICKFORD: Okay, let us go on then to paragraph 236.
 23 You say there:
 24 " ... what remains clear is that GSE does not perform
 25 the majority of the functions of a CSS ..."

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1 "Of a CSS" —
 2 A. Yes.
 3 Q. —:
 4 " ... in relation to its activity in the CM—SU."
 5 Now, just pausing there, because I am going to come
 6 on to the rest of the paragraph in a moment, pausing
 7 there. The activity of a CSS that arises specifically
 8 in relation to the Remedy box is collating merchant
 9 offers and bidding to place them in the box, is it not?
 10 You agreed with me about that about five minutes ago
 11 when we were looking at the letter. So GSE does provide
 12 precisely the function that you say it does not provide
 13 here?
 14 A. No, because I've just explained why. So if, again,
 15 reading the sentence, on the face of it, it says that:
 16 " ... GSE does not perform the majority of
 17 the functions of a CSS in relation to its activity in
 18 the [Remedy box]."
 19 That's precisely for the reason why I explained,
 20 that Google Search undertakes those activities and not
 21 GSE, so that's what that sentence says.
 22 THE CHAIRMAN: The next sentence —
 23 MR PICKFORD: Sir, would it be okay —
 24 THE CHAIRMAN: — is perhaps helpful, is it, Mr Hunt?
 25 A. Yes.

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1 THE CHAIRMAN: You are referring to the ---
 2 A. So ---
 3 THE CHAIRMAN: --- Remedy box, the operation of the Remedy
 4 box.
 5 A. I am referring to exactly the operation of the Remedy
 6 box. So I'm entirely happy to accept that GSE, as
 7 regards the standalone shopping website, performs those
 8 functions. I have no issue with that whatsoever.
 9 What I'm trying to say is the Remedy box, which is,
 10 in my understanding, the appropriate way of thinking
 11 about Google's, you know, comparison shopping service on
 12 the SERP, I'm saying that it's Google Search that
 13 manages those functions and not GSE, and essentially
 14 that's what these paragraphs go to.
 15 MR PICKFORD: Okay, I would like, if we may, just to break
 16 it down, because it is an important part of your
 17 analysis. You emphasise its importance above.
 18 You say in the first sentence --- and do not worry,
 19 we are going to come on to the second sentence --- that:
 20 "... what remains clear is that GSE ..."
 21 Yes? So we are talking about GSE:
 22 "... does not perform the majority of the functions
 23 of a CSS ..."
 24 A. Yes.
 25 Q. It has got nothing so far to do with Google Search at

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1 all here, okay? It "does not perform the majority of
 2 functions of a CSS":
 3 "... in relation to its activity ..."
 4 So we are talking about GSE's activity, yes?
 5 A. Yes.
 6 Q. "... in relation to [GSE's] activity in the [Remedy
 7 box]."
 8 A. Sure, but the entire point ---
 9 Q. So --- sorry, just to pause, taking it step by step.
 10 A. Sorry, go on.
 11 Q. So GSE's activity in relation to --- so in relation ---
 12 GSE's functions in relation to its activity in the box,
 13 what it is responsible for doing, because you agreed
 14 with me about this before, is collating offers from
 15 merchants and bidding and seeking to get those offers
 16 into the box; that is right, is it not?
 17 A. So I understand --- to be clear, my understanding is that
 18 GSE has both a self-service function ---
 19 Q. Sure.
 20 A. --- as well as a managed service.
 21 Q. Sure.
 22 A. So to the extent that it's performing a managed service
 23 function --- I understand that it's engaged in bidding ---
 24 I understand that that's not true when it's performing
 25 a self-service function.

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1 Q. Okay.
 2 A. Because it enables the merchants to do that.
 3 Q. Subject to that qualification, you agree with me that
 4 what GSE is doing there is the analogue of what Kelkoo
 5 is doing, because Kelkoo also runs both a managed and
 6 a self-service business, and ---
 7 A. But in relation to inputting certain things into
 8 the box, but it's the box that I'm saying is the CSS,
 9 right? That's --- that's the point of what I'm saying.
 10 Q. Yes, but none of this refers to the box as a CSS. This
 11 refers to GSE, so we are talking about the standalone
 12 entity ---
 13 A. Yeah.
 14 Q. --- and then you talk about "the functions of a CSS".
 15 Now, at that point, you cannot possibly be talking about
 16 the box, you are talking about ---
 17 A. But it's qualified by "in relation to its activity in
 18 the CM-SU". So it's precisely related to the box.
 19 That's what this sentence says. So I'm not --- sorry,
 20 I'm just not understanding the question.
 21 Q. Well, I think we are obviously not understanding each
 22 other.
 23 I am giving you an opportunity to agree with me that
 24 this sentence is incorrect, because, on its terms, it
 25 does not correspond to the points that you accepted.

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1 Now, I am not going to keep on putting that point,
 2 but I am going to draw inferences in relation to it,
 3 so ...
 4 A. Yes, and I mean, you can do, but my --- what this
 5 sentence means is I think what I've said, that
 6 the CM-SU, when understanding what the CM-SU is and I'm
 7 understanding GSE's role in relation to that and I'm
 8 saying that role in relation to the Remedy box, I don't
 9 consider to be a --- the majority of the functions of
 10 a comparison shopping service. That's what that
 11 sentence says.
 12 Q. Okay, we will have to ---
 13 THE CHAIRMAN: So when you say:
 14 "... it does not ... aggregate merchant offers ..."
 15 You are referring to the merchant offers that appear
 16 in the Remedy box?
 17 A. Yes ---
 18 THE CHAIRMAN: Yes ---
 19 A. --- I'm saying it's Google Search that's ---
 20 THE CHAIRMAN: --- not to the merchant offers that appear on
 21 GSE?
 22 A. No, not on the standalone website. I'm saying in
 23 the Remedy box, it's Google Search that's determining ---
 24 THE CHAIRMAN: Yes, I think we understand ---
 25 A. --- what the presentation looks like, how they're

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1 presented, what the ordering is, it's not GSE that's
 2 doing that. That's what this says.
 3 MS ROSE: You are making the same point here in relation to
 4 GSE that you make in relation to other CSSs —
 5 A. Yes.
 6 MS ROSE: — elsewhere in your statement. You are saying it
 7 is not acting as a CSS, it is basically acting as an
 8 advertising intermediary.
 9 A. Yes, exactly, it's acting as an advertising
 10 intermediary.
 11 Now, that might be — you could argue that that's
 12 some part of what it is to be a CSS, but my point is
 13 it's a very small part, it's a narrow part, that really
 14 the core of what's happening is happening — it's
 15 Google Search that's managing that by the way it's
 16 configuring the Remedy box and choosing how PLAs appear
 17 within that, so ...
 18 MR PICKFORD: In relation to the second sentence, we would
 19 not want, would we, GSE to be responsible for the sorts
 20 of control that you talk about in terms of ranking,
 21 formatting and features? That would be deeply
 22 problematic if GSE did that, because GSE is competing
 23 against rival CSSs, so Google would be giving itself
 24 a major advantage if it did that?
 25 A. Sorry, I'm not quite understanding, because Google does

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1 give itself a major advantage because it does do that,
 2 but it does it under Google Search, not under GSE.
 3 Q. Okay.
 4 A. So I'm not — so I'm not sure I understand the question.
 5 Q. Okay. So I think what I understand from this is that
 6 this comes back, in fact, to your point that you say it
 7 is about forcing — you the Remedy forces, effectively,
 8 CSSs to act as marketing entities rather than being able
 9 to perform their CSS functions on the page?
 10 A. Yeah —
 11 Q. This is what this is going to?
 12 A. — as narrow intermediaries which, to the extent that
 13 they are CSS functions, are very minor functions,
 14 because the core of what's happening is happening within
 15 the Remedy box. That's my — that's the point I'm
 16 making.
 17 Q. Now, I think you would understand that a CSS can promote
 18 itself, presumably, on Google's SERP without having to
 19 offer its full range of CSS defining functions on
 20 the SERP as well? Do you agree with that?
 21 A. Sorry, when you say "a CSS can promote itself ... on
 22 Google's SERP", what do you mean?
 23 Q. Let me give you an analogy. Let us suppose — just a
 24 silly example, but let us suppose AlixPartners took out
 25 an ad on Google Search —

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1 A. Yes.
 2 Q. — and it used that ad to draw attention to its work in
 3 competition economics.
 4 A. Okay.
 5 Q. Obviously you do not have to provide your service on
 6 the SERP to get some promotional benefit from the fact
 7 that your name appears on the SERP. It is just the ad
 8 is a marketing tool.
 9 A. Yeah, okay, so if AlixPartners was to purchase an
 10 AdWords ad, I agree, yeah. So, yeah, okay.
 11 Q. Yes, and in a similar way, not exactly the same way but
 12 in a similar way, every time a CSS's ad appears on
 13 the SERP, so it is an ad that they have placed on behalf
 14 of the merchant, nonetheless their name appears on this
 15 very, very valuable real estate that gets billions of
 16 pairs of eyes, does it not?
 17 A. Yes, so their name appears. I agree that that's
 18 factually correct.
 19 Q. They get a product recognition benefit from that,
 20 a service —
 21 A. I'm not quite sure what your "product recognition
 22 benefit" is, but what they do is they get some traffic,
 23 yeah. It's a small amount, but they get some.
 24 Q. The short point there is, presumably, if someone clicked
 25 on the link and they discovered that they absolutely

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1 loved Kelkoo, they thought, "Wow, I have been wasting my
 2 time going to Google, I love the Kelkoo experience" —
 3 A. Mm.
 4 Q. — they would presumably do it again, would they not,
 5 and you would see that that traffic would grow?
 6 A. Well, I mean, I think the way that consumers are
 7 presented with different — I mean, it's well understood
 8 in behavioural economics that actually how you're
 9 presented with something really affects how you engage
 10 with it. So the fact that — I think that's one of
 11 the real problems with the "by CSS" links at the bottom
 12 because, from a consumer perspective, it's very unclear
 13 what that means and how you engage with it.
 14 So can I just sort of check, what was your
 15 proposition again, sorry?
 16 Q. Well, my proposition was simply that if there was a user
 17 who had the opportunity to click through to Kelkoo — we
 18 have all agreed that it does not happen very often —
 19 A. Yes.
 20 Q. — but they have the opportunity to do it, if they
 21 really liked what they saw, then one would expect that
 22 rather than there being 1% — I am obviously not just —
 23 I am taking Kelkoo as an example, but rather than it
 24 being just 1% of users that click through to that, that
 25 progressively more and more users would use those links

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1 because they would find that they were really helpful to
 2 them.
 3 A. So that depends on a number of things. So it kind of
 4 depends also on what users are thinking when they click
 5 on those links, what do they understand they're going to
 6 go to when they click on them. So if there's a mismatch
 7 between their understanding of what those links mean,
 8 when they click on them and then they go to something
 9 they're not expecting and is not useful, then — then,
 10 you know, they might not kind of engage well with that.
 11 So I think it depends a bit on the framing of what's
 12 presented to them, but in principle, if they understood
 13 well what they were being presented with, and they
 14 clicked on it and they went to something useful, I agree
 15 that they would engage with it.
 16 Q. Okay. I am going to move on to —
 17 A. But I think there's a number of "ifs" there, but, yes.
 18 Q. Thank you.
 19 I am going to move on to a new topic, which is
 20 looking at competition on the merits.
 21 A. Okay.
 22 Q. Now, I think you agreed — I think it was yesterday —
 23 with the proposition that if firm A does something
 24 better than firm B because its product is better or more
 25 popular, that is obviously competition on the merits in

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1 action. That was something that was discussed
 2 yesterday, I think.
 3 A. Yes.
 4 Q. I think you also agreed that tech markets are widely
 5 considered to be fast-moving and require innovation to
 6 continue to compete effectively?
 7 A. I don't think we specifically discussed that, but
 8 I accept that as a proposition, yes.
 9 Q. So I would just like to ask a few questions about where
 10 Amazon fits in.
 11 A. Sure.
 12 Q. These are for the purposes of just understanding your
 13 argument, okay? So I am going to put some hypothetical
 14 questions about Amazon.
 15 So presumably it would be very commercially
 16 beneficial for CSSs if they were able to present their
 17 own comparison shopping pages directly on Amazon's
 18 website in the same way as it has been suggested that
 19 Google should allow CSSs to do so on Google's search
 20 results page; do you agree with that?
 21 A. Well, no, I mean, there's some big assumptions being
 22 made in what you've just said. It depends why users are
 23 going to Amazon's website and what they want. So if
 24 users are going to Amazon's website because the purpose
 25 of Amazon's website is because it's a merchant or

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1 a merchant platform which enables them to purchase goods
 2 and that's what they expect when they go on to Amazon's
 3 website, then there's a question, again, just because
 4 the framing of choices that consumers are making is
 5 really important. So if they're going on to Amazon's
 6 website with that in mind, it's not clear to me how
 7 useful they would find the CSS result. That's not clear
 8 to me.
 9 Q. Yes, so it might well be, I agree with you, that users
 10 would not particularly be assisted often by those
 11 results. But look at it from the perspective of CSSs.
 12 Imagine there was a rule that applied not just to Google
 13 but to Amazon where a CSS was allowed to put a box on
 14 Amazon's page which, say, had alternative retailers that
 15 you could go to. So Amazon has got all its retailers —
 16 A. Okay.
 17 Q. — and then the CSS gets the opportunity to have
 18 a box —
 19 A. Okay.
 20 Q. — and effectively that box is: if you do not like what
 21 you see on Amazon, come over here. That kind of box.
 22 A. Okay.
 23 Q. Now, putting aside how much users want that box or not,
 24 my question to you is: that would be likely to be
 25 commercially very beneficial for CSSs, would it not?

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1 A. It depends, doesn't it? I mean, it depends on what
 2 terms they get access, and how much it costs and —
 3 Q. Let us — let us —
 4 A. So let's say they were to get a load of traffic for
 5 free, then, yes, that would be great; I'm sure CSSs
 6 would like that, yes.
 7 Q. Now, when Amazon generally presents its results, it is
 8 controlling its eligibility, is it not, the eligibility
 9 and ranking of what appears on the page?
 10 A. Well, it's — so it's clearly — yeah, I mean,
 11 logically, it's presenting a set of results, so I guess
 12 it must be determining first which results are eligible
 13 for a particular query and then determining which order
 14 they're in. So, yes, logically, what you say must be
 15 right.
 16 Q. It controls the presentation and the user experience?
 17 A. Yes, that's correct.
 18 Q. It controls the user engagement data?
 19 A. Yes, that's correct.
 20 Q. So, again, this is just to test how your arguments work,
 21 okay? I am not suggesting that ultimately this is what
 22 is going to be imposed.
 23 A. Sure.
 24 Q. These are hypotheticals.
 25 Applying the competition on the merits criteria from

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1 your report, Amazon seems to satisfy the criteria of
 2 having the potential to provide access to users. We
 3 discussed it could potentially do that at a very
 4 attractive price, it depends on how it prices that
 5 access. We discussed yesterday how, functionally,
 6 Amazon overlaps a lot with what CSSs do, and it is also
 7 controlling all of its own functionality on its website.
 8 So I just want to understand why is it that, I presume,
 9 you would say that that is not a problem for competition
 10 on the merits, the fact that Amazon does not put a box
 11 of the type that I described on its page. Why is that
 12 not a problem for competition on the merits?
 13 A. So I'm just trying to understand to see if I understand
 14 the question correctly. So, to be clear, I mean,
 15 competition on the merits, as far as I understand it,
 16 relates specifically to the underlying theory of harm
 17 that we're thinking about as regards self-preferencing
 18 of Google, okay? So you're now asking me about Amazon.
 19 Q. Yes.
 20 A. Just can you relate that back to me, to this idea of
 21 competition on the merits and the self-preferencing
 22 theory of harm? I'm just — I'm obviously missing
 23 something.
 24 Q. So why do we not pick up your first report at page 50 —
 25 sorry, at page 33.

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1 A. Sure.
 2 Q. This may help a little bit {I2/1/33}. What I am seeking
 3 — you see paragraph 59 there?
 4 A. Yes.
 5 Q. You have got three elements to your competition on
 6 the merits framework. You have got access to users and
 7 you talk about non-discriminatory access?
 8 A. Yes.
 9 Q. You have got functional capabilities, and you have got
 10 the cost of traffic?
 11 A. Yes.
 12 Q. What I am doing through my hypothetical is just trying
 13 to draw out from you, so that I can understand fully
 14 the implications of your framework, what is it about
 15 the Amazon example that means that there is not
 16 a problem for competition on the merits given that
 17 Amazon does not put a box like Google's box on the page.
 18 THE CHAIRMAN: To be clear, this is competition on
 19 the merits with Google's CSS.
 20 A. Yes, exactly.
 21 THE CHAIRMAN: The rival CSS. Is your question — is
 22 the hypothesis that we should assume Amazon is a CSS?
 23 MR PICKFORD: No, it is simply — I mean —
 24 THE CHAIRMAN: Because if it is not, I do not understand
 25 the point.

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1 MR PICKFORD: Well, we can —
 2 THE CHAIRMAN: Perhaps I missed something, but ...
 3 MR PICKFORD: The point — obviously, sir, my case is that
 4 Google is not a CSS.
 5 THE CHAIRMAN: I understand that.
 6 MR PICKFORD: What we have seen is —
 7 THE CHAIRMAN: But I think you said at the beginning that is
 8 the critical question, and I think Mr Hunt agreed with
 9 you that if Google — if he is wrong about that and
 10 Google is not a CSS, then a lot of this falls away.
 11 MR PICKFORD: What I am saying —
 12 THE CHAIRMAN: But you are now asking — this particular
 13 point here, this is on the basis that this is Google's
 14 CSS.
 15 MR PICKFORD: Sir, what I am trying to get at —
 16 THE CHAIRMAN: Yes.
 17 MR PICKFORD: — is the extent to which these other factors
 18 — because there are a number — you have got the word
 19 "non-discriminatory" and access to users —
 20 A. Mm.
 21 Q. — but then you got have this point about functional
 22 capabilities, and then you have got this point about
 23 cost of traffic, and what I am trying to understand is
 24 in particular how much the second two add to your
 25 analysis, because it seems to me, and indeed I believe

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1 the Chair was putting a similar point to me but I am
 2 bouncing it back to you, everything really depends on
 3 the definition of the CSS point and that if you abstract
 4 from that, you have not got a competition on the merits
 5 point — problem any more.
 6 A. I mean, look, I agree with you, it does turn on what is
 7 a CSS, so —
 8 Q. Okay, thank you, in which case that is —
 9 A. — I don't disagree with you on that.
 10 MR PICKFORD: Thank you.
 11 (Pause)
 12 Sir, would that — I am about to embark on a new
 13 area. Would that be a convenient moment to —
 14 THE CHAIRMAN: You can have another —
 15 MR PICKFORD: Five minutes.
 16 THE CHAIRMAN: — five minutes, but if you —
 17 MR PICKFORD: I am happy to give up my five minutes.
 18 I promised that I would finish within a day and I will
 19 stick to my promise.
 20 THE CHAIRMAN: Yes, very well. Just a minute.
 21 (Pause)
 22 If it will assist, we can start at 10.00 tomorrow?
 23 MR PICKFORD: That would be helpful, thank you.
 24 THE CHAIRMAN: Yes. If that is all right with you, Mr Hunt.
 25 We will resume until 10, and as you know you cannot

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1 discuss this case.
2 So 10 o'clock tomorrow morning.
3 (4.17 pm)
4 (The Court adjourned until 10.00 am on Wednesday,
5 15 July 2026)
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