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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 Wednesday, 15 July 2026
 2 (10.03 am)
 3 MR MATTHEW HUNT (continued)
 4 Cross-examination by MR PICKFORD (continued)
 5 THE CHAIRMAN: Yes, Mr Pickford.
 6 MR PICKFORD: Thank you, sir.
 7 I would like to come back to ads for a little bit,
 8 generally, both text ads and PLAs.
 9 Now, by definition, 100% of clicks on a merchant ad
 10 go to merchants, do they not?
 11 A. Yes.
 12 Q. Whereas if a click goes to a CSS site, there is
 13 attrition, is there not, where the CSSs lose significant
 14 numbers of users who do not then go on to merchants?
 15 You understand that concept?
 16 A. Not -- yeah, I agree with that. So if you mean that not
 17 100% of the people that click on a CSS website end up
 18 clicking on merchant links, yes, that's correct.
 19 Q. Yes, because some of them just bounce --
 20 A. Yes.
 21 Q. -- so were you in court for Dr Stables' evidence when he
 22 explained how large numbers just bounce off the site,
 23 they come to the website and then they leave?
 24 A. I wasn't in court, but I understand that, as I said, not
 25 everybody who clicks on a CSS website ultimately clicks

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1 on a merchant link.
 2 Q. You advanced a point to the Tribunal yesterday in
 3 the concurrent evidence which was the idea that some
 4 traffic that goes to a CSS may, when it then gets passed
 5 on to a merchant, be qualified in the sense that it has
 6 a greater likelihood of converting; you recall that?
 7 A. Yes, I do.
 8 Q. Could we go, please, to the document which is at
 9 {J1A/89}. So this is a:
 10 "Response to the European Commission request for
 11 information ..."
 12 If you go to the next page {J1A/89/2}, we will see
 13 it is from -- or maybe the page after that {J1A/89/3},
 14 we will see it is from Kelkoo?
 15 A. Okay.
 16 Q. We will see that further on as well.
 17 If we could go, please, to {J1A/89/6}.
 18 Now, have you seen this document at all before?
 19 A. I don't believe I have done. I don't recall it.
 20 Q. Okay. Could I ask you, please, to look at, on page 6,
 21 the paragraph under C.2(i). You might want to just --
 22 A. Yeah -- so sorry, C.2(i)?
 23 Q. C.2(i), yes.
 24 A. (i).
 25 Q. Read the beginning of C.2 so you see the context.

2

1 A. Yes.
 2 (Pause)
 3 You just want me to read (i)?
 4 Q. Just (i).
 5 A. Yes.
 6 Q. Okay.
 7 So you see there that Kelkoo was telling
 8 the Commission that CSSs would almost always not be able
 9 to outbid merchants if they were in a head-to-head
 10 auction for space on the SERP?
 11 A. Yeah, now, is there a -- just to double-check, is there
 12 a broader context I should understand than this that
 13 the question's being asked in? So is there a specific
 14 -- are we thinking about the PLACSS framework, are we
 15 thinking about something else, so -- or is it purely
 16 just a generic question? I just wanted to understand
 17 the context of this.
 18 Q. So the context is -- I think it is in appendix 2.
 19 The context is that they are considering the idea, what
 20 Kelkoo was advancing to the Commission is that they
 21 would like to see some sort of CSS unit on the page.
 22 A. Okay.
 23 Q. We do not really need to worry about the exact --
 24 A. Yes, sure.
 25 Q. -- specification of it, we have obviously discussed

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1 there are different ways of doing that. What Kelkoo is
 2 saying is: we want more exposure on the page, we want
 3 some kind of links that goes to us.
 4 A. Okay.
 5 Q. Because it is complaining about the fact that, at the
 6 time, the links are going to merchants --
 7 A. Yes.
 8 Q. -- okay? So that is the context.
 9 A. Okay, understood.
 10 Q. Then it is going on in this paragraph to say: by
 11 the way, do not put us in the same auction, we want to
 12 be in a separate auction because we are never going to
 13 be able to outbid merchants, okay? So that is
 14 the context.
 15 A. Yes, understood.
 16 Q. Okay.
 17 Now, that must reflect, must it not, that the ad
 18 slots are more valuable when they are used to take users
 19 direct to merchants than going to CSSs, otherwise
 20 merchants would not bid more for them?
 21 A. Yes.
 22 Q. We have just considered the basic reason that underpins
 23 that, and indeed it is referred to here by Kelkoo, which
 24 is that if users go via a CSS site, the CSS loses quite
 25 a lot of that traffic and so, inherently, that is why it

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1 is less valuable to go via a CSS than going direct to
 2 a merchant?
 3 A. So that's clearly true in 2018. It's not -- that's not
 4 obviously true at other points of time. I don't know if
 5 it would be helpful to set out the logic for that.
 6 Again, I don't know whether that would be helpful for
 7 you or for the Tribunal. I can if you want, but I'm
 8 happy to -- I agree, in 2018, that's correct.
 9 THE CHAIRMAN: Why do you say it might vary?
 10 A. So, I mean, again, this just means we're thinking about
 11 what's happening at different points of time. So in
 12 2018, by this point of time, users are used to seeing
 13 ads direct to merchants for ten years -- or, sorry,
 14 they're used to seeing at least tiles to merchants for
 15 ten years and they're used to seeing ads for five years,
 16 okay? Actually, I'm not sure from a user perspective
 17 they really notice any difference; they see a tile, they
 18 click on it, and that's been the case for ten years,
 19 okay? So users have been habituated to that, okay?
 20 In addition, if I've got various different tiles
 21 that are PLAs and I've got -- it's a bit like we talked
 22 through on the PLACSS idea, and then you've got a PLACSS
 23 tile kind of next to these PLA tiles, then you've got to
 24 think about the context, and I talked about that,
 25 possibly on Monday, and I don't know if it would be

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1 helpful just to sort of go back to that. But where, if
 2 you're at the top of the shopping funnel, i.e. the user
 3 doesn't yet know what they want, and you need to think
 4 through how the user -- they -- again, the specific
 5 example might be helpful, digital cameras, you put in
 6 "digital cameras", you get presented with a range of
 7 offers and then you get a tile that's through to a CSS
 8 in the midst a number of kind of PLA offers. So it's
 9 not clear, as a user, why you would be clicking on that,
 10 what you will be going to, then you would land on some
 11 kind of CSS website, okay?
 12 Then, again, we can hypothesise what that link might
 13 be. Clearly PLACSS is quite specific, but you could
 14 have -- you could think that it could be a wider link.
 15 So, in that example of product -- a wider product
 16 search, it could be -- conceivably it could be that you
 17 click on the link, and this may be what Mr Pickford
 18 envisages, that you go through and you see, if you like,
 19 a better page, i.e. something, a page on a CSS website
 20 that has a broader range of digital camera offers and
 21 that may well be more useful.
 22 But to be clear, from a user experience, you've then
 23 gone through from a situation where you're compared with
 24 the number of offers and then you clicked on a tile and
 25 then you see a number of offers compared again, which

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1 you've got to think about from a user perspective how
 2 useful do you find that, okay? I think that's an open
 3 question, or at least, actually, I don't think it's such
 4 an open question, I mean, clearly users -- we see some
 5 of the rates of click-through are lower and maybe it's
 6 -- maybe it's because of that.
 7 If we then go through -- if I may just go through
 8 and think about the later state and then I will come
 9 back to your question -- the later stage of the journey,
 10 you put through a very specific search, you've been --
 11 ie, for, say, a specific model of Sony Bravia TV, you
 12 get through -- from Google, you'll get a number of
 13 models, you click through to the CSS and you get through
 14 a number of models again. Again, it's not that useful
 15 for a user. So I think we also need to understand that
 16 context. I think it's important because --
 17 So then you think about the value for a CSS and this
 18 is the point that Mr Pickford's making. So I go on to
 19 a CSS website, there is some bounce back, completely
 20 agree there's some bounce back, I mean, that's clearly
 21 -- I've seen that in some of the other documents,
 22 I wasn't here for Mr Stables, but I've seen that in
 23 other documents, so that clearly is going to affect
 24 the value that a CSS places on that -- on that tile, but
 25 it's also going to be relevant to understand the context

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1 of the user when they're engaging with the CSS website,
 2 okay?
 3 Then, I think, if we just sort of pause there and
 4 think back -- go back to, say, 2008, okay? In
 5 a situation before users have been habituated to receive
 6 PLAs, and this is what we started to talk about when you
 7 suggested this idea that you might have CLAs competing
 8 with PLAs. Now, at that point of time, there might be
 9 a much more level playing field, where, in essence, I,
 10 as a user, might click through to a CSS sort of directly
 11 and find that experience quite useful for me, perhaps
 12 when I'm not used to seeing a whole load of merchant
 13 offers and then one CSS offer alongside it. Perhaps I'm
 14 shown at that point of time a couple, two or three CSS
 15 offers, maybe a couple of merchant offers. I think that
 16 was the idea that -- that you were suggesting.
 17 Now, at that point of time, as a user, I might find
 18 that clicking through on to the CSS website is really
 19 helpful and useful for me, because I'm seeing
 20 information that I'm not getting directly on Google's
 21 website, it's helping me to understand products, I may
 22 well engage better with that site, and this is
 23 the really crucial point, it might mean that, if the CSS
 24 does a really good job of helping users understand
 25 product search, the likely -- when they click through to

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1 merchants, their propensity to purchase may well be
 2 higher, okay? That would then affect the amount that
 3 CSSs could bid, okay? That is how it could have been
 4 back in 2008. I'm hypothesising because I don't know --
 5 MS ROSE: It is complete speculation, yes.
 6 A. This is speculation. I'm not saying it's any more than
 7 speculation. What I'm trying to say is what we see and
 8 understand at 2018, we need to be extremely careful with
 9 extrapolating that backwards and saying: well, it must
 10 have always been the case, it must have always been
 11 the case that CSSs would value a slot in an auction
 12 lower than a merchant. It's genuinely not clear to me
 13 that that's true.
 14 MS ROSE: So is your point that if, in 2008, in
 15 a counterfactual --
 16 A. Yes.
 17 MS ROSE: -- there was the, what you might call, hybrid 3a
 18 scenario --
 19 A. Yes.
 20 MS ROSE: -- so tiles that could be CSSs or PLAs --
 21 A. Yes.
 22 MS ROSE: -- that effectively what you might see is
 23 the market would decide over a period of time which of
 24 those displays was more valuable to users and therefore
 25 who was prepared to bid higher --

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1 A. Yeah, and --
 2 MS ROSE: -- and it would -- the display would develop over
 3 time in the way that was most closely aligned with
 4 the preferences of users and therefore with competition?
 5 A. That's what I was speculating. What -- or that's what
 6 we were discussing.
 7 MS ROSE: Yes.
 8 A. The point, and in all honesty I'm not entirely sure what
 9 the answer to this is, but when you -- because this
 10 certainly came up on Monday, but when you work through
 11 the logic of it, at some point of time, let's say PLAs
 12 start winning out in this auction and then you've got
 13 a problem that then it kind of looks like a CSS being
 14 provided, and I think there's a real tension there: at
 15 what point of time does it then become Google's CSS?
 16 I admit there's a tension there, I don't genuinely know
 17 kind of what the answer is to that, at what point of
 18 time it kind of tips over. That isn't the question that
 19 we're discussing, but that -- that's the logic that we
 20 were working through on Monday.
 21 MS ROSE: Does it matter, though, if CSSs have
 22 the opportunity to bid for a spot there themselves?
 23 A. I mean, I think it's really, really important, and this
 24 was the point I was making about the framing from a user
 25 perspective, that framing of the choice is really,

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1 really important, and there's been quite a lot of
 2 academic work, behavioural economics work, the CMA did
 3 a paper on online choice architecture, so how that
 4 framing is presented is critically important. But on
 5 the assumption that there's some sort of very neutral
 6 framing, the CSS links are shown in an equally
 7 attractive way, then I think in principle, if you're
 8 allowing user preferences to make -- to determine
 9 the outcomes, that seems to me to be competition on the
 10 merits.
 11 MS ROSE: Are there any CSSs that allow other CSSs to
 12 basically rent a spot on their CSS, which is an advert
 13 for their CSS? Do you see what I mean?
 14 A. Not that I'm aware of.
 15 MS ROSE: Yes.
 16 A. But I wouldn't expect there to be for exactly the same
 17 logic that we just worked through for the PLACSS. For
 18 the exact same reason that: why would it be useful for
 19 a user going on to Kelkoo's website to then click on
 20 a link and go to another CSSs website?
 21 MS ROSE: But, I mean, if that was an option in the hybrid
 22 3a scenario, would that suggest that that scenario could
 23 not therefore be Google's CSS?
 24 A. Sorry, could you clarify what you mean there? So in 3a
 25 we've got these different tiles for the CSSs.

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1 MS ROSE: Yes, so you have got a mixture CSSs and PLA -- you
 2 have got --
 3 A. On this hybrid example? Yes.
 4 MS ROSE: Yes, and they have the option to bid on either
 5 model, so it could go through to the merchant or it
 6 could go to the CSS.
 7 A. When you say "they" have an option, what do you mean?
 8 MS ROSE: Users.
 9 A. Users --
 10 MS ROSE: Users have the option --
 11 A. To choose, yes --
 12 MS ROSE: -- but also bidders, so you can have merchants
 13 bidding through CSSs or on their own for a PLA, and you
 14 have also got CSSs bidding on behalf of merchants or
 15 bidding for their own CLA to show on the box.
 16 A. Yes.
 17 MS ROSE: Now, could it be said that that model is
 18 inconsistent with the resulting box being Google's CSS?
 19 Do you see what I mean?
 20 A. I do see what you mean.
 21 (Pause)
 22 Yes, sorry, I'm just thinking through the logic
 23 here.
 24 So to the extent that Google was acting as a sort
 25 of, if you like, a more neutral gateway to -- for users

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1 to make the -- express their own preferences, that
 2 doesn't seem to me to be problematic, okay? I think
 3 the problem is where Google has excluded -- effectively
 4 excluded, it's a self-preferencing case, but effectively
 5 excluded to a large extent, rival comparison shopping
 6 services and to the extent that rival comparison
 7 shopping services have the opportunity to compete and
 8 users have the opportunity to express their own
 9 preferences and thereby we can get a normal competitive
 10 process, from my perspective, I think I can't see
 11 a problem with that.
 12 MS ROSE: On that basis, it would not actually alter
 13 the analysis if in fact CSSs proved less attractive and
 14 so dropped out of the box, because that would just be
 15 the result of competition?
 16 A. I mean, I think that that must be right. But then
 17 again, I'm just trying to think through --
 18 MS ROSE: (Overspeaking - inaudible).
 19 A. There's an obvious tension at some point of time --
 20 MS ROSE: But they cannot be -- have a right to be in
 21 the box even if it is less appealing?
 22 A. No, I mean, I think that's right. I think this
 23 ultimately comes down to user preferences and that's
 24 what we want, we want fair competition. Is it from --
 25 sorry, "we". As economists and a general competition

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1 economist, what you want to think about is competition,
 2 you may actually want firms to be able to have, in this
 3 case, genuine access to users to be able to, again, to
 4 use the framework actually that I set out when I thought
 5 about abuse of dominance to have -- to show
 6 functionality. That, to me, is what seems to be
 7 the essence of fair competition.
 8 THE CHAIRMAN: Can I just -- one thing I do not quite
 9 understand on what is said here in your answer, I can
 10 fully see that a click on a merchant tile, or PLA tile
 11 if you want to call it that, is more valuable than
 12 a click on a CSS tile in this -- which is what I think
 13 --
 14 A. In 2018, yes.
 15 THE CHAIRMAN: In 2018.
 16 A. Yes.
 17 THE CHAIRMAN: Because of the conversion rate.
 18 A. Yes.
 19 THE CHAIRMAN: One can -- but if they are in a box together,
 20 in terms of bidding in an auction, there is the -- it
 21 seems to me, is there not an ancillary question or even
 22 a prior question: on which tile is the user more likely
 23 to click? If users are more likely to click on the CSS
 24 tile --
 25 A. Yes.

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1 THE CHAIRMAN: -- even though the conversion rate may be
 2 only -- what does he say here, 45 to 75% --
 3 A. Yes.
 4 THE CHAIRMAN: -- but if it gets many more clicks than
 5 the merchant tile, will that not affect the value which
 6 you will bid?
 7 A. It will do, and that's a very good point. This goes
 8 back to partly what we were talking about yesterday,
 9 and, if you like, there's a bit of a trade-off between
 10 quality and what you're talking about I think could be
 11 seen as a dimension to quality, the extent to which
 12 users find it useful, so there's a bit of a trade-off
 13 between quality and price. Clearly, there is a bit of
 14 an issue particularly where a firm has greater market
 15 power that they make that trade-off towards price, ie
 16 they try to extract more from the auction and that, just
 17 logically, I imagine could have an impact on, to use
 18 your example, on -- on, if you like, the quality of
 19 the link, how useful the link is for a user, that
 20 actually less useful links could be prioritised because
 21 of the greater willingness to pay. So there's an
 22 inherent tension there and I agree with that.
 23 PROFESSOR SMITH: Can I ask one -- hopefully just one
 24 question, a variant of a question Ms Rose already asked
 25 you about the hybrid box?

15

1 A. Okay.
 2 PROFESSOR SMITH: Would you say that the kind of hybrid box
 3 that she asked you about is in the CSS market?
 4 A. That's what I said around, actually, I find that -- it's
 5 a difficult question. I think, if you can think
 6 about it at the very start, to the extent that going
 7 back to early 2008, and you've got this example, along
 8 with what Ms Rose was saying, a hybrid box where you
 9 have -- CSSs can curate their own tiles and they can get
 10 the right information that when you click on a link, you
 11 go through to a CSS webpage and it's a good user
 12 experience and they can compete directly with merchants
 13 as well, you know, particularly -- let's take
 14 the auction out of the equation, let's just assume we're
 15 thinking about how useful it is for users and that's
 16 the prioritisation. I -- I can't really -- I can't see
 17 any problem with that. Is that a CSS --
 18 PROFESSOR SMITH: No, that was not my question. Is it in
 19 the CSS market? Is it in the market for CSS services?
 20 A. As I say, I think at some point of time it kind of -- it
 21 feels to me that it kind of comes into that market,
 22 right? Or potentially could do. But at an earlier
 23 point of time, where it's a neutral gateway, I don't
 24 think so.
 25 PROFESSOR SMITH: Right, thank you.

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1 MR PICKFORD: Thank you, sir.
 2 So, I would like to come back. You may not quite
 3 remember where we were --
 4 A. Okay.
 5 Q. -- but I would like to come back to the question I was
 6 asking you which prompted this set of very helpful
 7 questions from the Tribunal, and that was about
 8 the falling off of traffic when you go through to a CSS.
 9 Your answer to me -- I'm going to summarise it in
 10 a nutshell and I, please, do not want you to give
 11 the full answer again or we simply will not get through.
 12 In a nutshell, what you were saying to me, as
 13 I understand it, was, well, you might be right in 2018,
 14 but of course, in 2018, users have been conditioned by
 15 the experiences that they have had and therefore you may
 16 well not be right in 2008, and then you began to,
 17 I think in -- as put to you, when you, in your words,
 18 speculate about 2008?
 19 A. Yes.
 20 Q. Okay.
 21 Now, are you aware that in around 2008, for example,
 22 some slides from 2010 that I put to Dr Stables, the very
 23 same problem of users not liking what they saw on
 24 Kelkoo's site and bouncing off existed then as exists
 25 now? Are you aware of that?

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1 A. I'm not aware of that, but if you want to take me to
 2 those slides, I'm happy to look at them.
 3 Q. Okay, let us go to {M2/497/7}.
 4 Do you see there is:
 5 "Why are we here?"
 6 A. Yes.
 7 Q. Now, this is -- the metadata for this is 2010. You will
 8 have to take my word for that.
 9 A. Okay.
 10 Q. It shows that the "Bounce Rates" across Europe -- I am
 11 just checking this is non-confidential -- it is -- were
 12 about 60%, and then there was a 40% interaction with
 13 Kelkoo; do you see that?
 14 A. I do see that.
 15 Q. Then one sees, at around that time, the kind of
 16 differences. If you go on the next page {M2/497/8}, you
 17 go on to see the sorts of differences that there were at
 18 that time between spontaneous traffic, "SEM" traffic and
 19 "SEO" traffic, in terms of ability to be converted into
 20 a sale; do you see that?
 21 A. Yes:
 22 "Percentage of leads which result in a sale at
 23 the merchant ..."
 24 Q. Even "Spontaneous" would not make up for the fact that
 25 if you were losing 60% of your users simply bouncing

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1 off, even if you have got a conversion rate that is,
 2 say, getting on for around 2% rather than 1.5%?
 3 A. I see that.
 4 Q. You see that?
 5 A. Yes.
 6 Q. Yes.
 7 A. But to be clear, these numbers are quite normal. So
 8 I have seen numbers for Google, for Shopping ads, that
 9 are the same order of magnitude, so just to flag. But
 10 I see these numbers, yes.
 11 Q. Yes.
 12 So you gave a very extensive answer to the Tribunal
 13 about how you cannot extrapolate backwards because
 14 everything has changed and people might be clicking on
 15 these and not expecting to go through to CSSs and it is
 16 all a big surprise. But in 2008, there were no CLA
 17 tabs.
 18 A. No.
 19 Q. There was no Remedy Box, there was none of that. So if
 20 you made your way on to Kelkoo's page in 2008, it would
 21 have been either from spontaneous traffic, it would have
 22 been from a text ad, SEM, or it would have been from
 23 organic traffic --
 24 A. Yes.
 25 Q. -- in essence.

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1 None of the problems that you have just articulated
 2 about users being surprised at what they saw and not
 3 expecting it would apply to those forms of traffic,
 4 would they?
 5 A. No, I don't think so, that's correct. Yeah, I mean,
 6 I think the -- I'm just trying to think through at the
 7 time. I think that's right, yes.
 8 Q. So the problem that I have highlighted would equally be
 9 a problem in 2008. You have highlighted a different
 10 problem about what CLAs look like, but the problem that
 11 I have highlighted, which is --
 12 A. What --
 13 Q. -- when you click through -- let me be clear about what
 14 I am highlighting. When you click through to Kelkoo as
 15 an example CSS, the most likely thing you are likely --
 16 a user is going to do is just leave the site and not
 17 engage with it. If that was a problem in 2008, then
 18 that would equally affect Kelkoo's ability to bid and
 19 win ads in 2008, would it not?
 20 A. Well, it would do, but I'm not quite sure where that
 21 leads to. But I think -- I think, in principle, that --
 22 that -- it's an issue if there's bounce back with
 23 the extent to which consumers are engaging with
 24 the website. But are we saying that that's true for
 25 merchants as well? Sorry, I'm just trying to work

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1 out --
 2 Q. No, that is not the point I am putting to you.
 3 The point I am putting to you is that there is
 4 a difficulty, if you are a CSS, that CSSs lose a lot of
 5 their traffic, whereas in 2008, if a merchant places an
 6 ad and someone clicks on that ad to go through to
 7 the merchant, by definition, just as in 2018, 100% of
 8 that traffic will go through to the merchant.
 9 A. Okay, but there's a difficulty in -- what's
 10 the difficulty? Could you just sort of clarify that?
 11 Q. Well, I have put the difficulty to you I thought fairly
 12 clearly before. The difficulty is that in a world where
 13 merchants can expect to get 100% of their clicks --
 14 A. Yes.
 15 Q. -- so if a merchant is bidding for an ad, whenever they
 16 -- someone clicks on it, which is the only time they
 17 have to pay, they get the user, whereas a CSS can only
 18 make use of a click if ultimately they manage to send
 19 that click on to a merchant --
 20 A. Yes, yes --
 21 Q. -- because if a CSS -- if a click just comes to the CSS
 22 and then it dies, then that is no good to the CSS?
 23 A. Yes.
 24 Q. So the implication of that is that merchants will, in
 25 general, be able to outbid CSSs for traffic because they

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1 get the benefit always of the click, whereas if the CSS
 2 has a very high bounce rate, they are going to struggle
 3 to -- I mean, there will be some which they can
 4 obviously win, but generally they are going to struggle
 5 to be able to outbid a merchant, that is the point.
 6 A. So I agree that if -- if they have a very high bounce
 7 rate. The only thing I would say is, if the bounce
 8 rate's not so high, so you have a lower bounce rate, and
 9 if, when you land on the merchant site, you have a --
 10 the user has a greater propensity to purchase, that --
 11 the logic doesn't necessarily flow. But -- but just to
 12 your proposition, you're putting the proposition to me,
 13 if there's a very high bounce rate, and let's assume
 14 it's really very high so that offsets any impact of
 15 greater willingness to purchase, I agree with you,
 16 the logic that you've just set out does hold.
 17 THE CHAIRMAN: But can I just ask, is there not
 18 a competition to get the click? If you see five tiles,
 19 or a carousel of eight tiles, 12 tiles, depending,
 20 the first question for a user is: which tile do I click
 21 on?
 22 A. Yes.
 23 THE CHAIRMAN: The next question is, having clicked on
 24 it: will I make a purchase?
 25 A. Yes, albeit obviously if you've clicked on a tile and it

22

1 takes you through to a CSS, you know, again, and this is
 2 again, working with Mr Pickford's logic, there's
 3 a question of: what do you then do? Do you then click
 4 through to a merchant --
 5 THE CHAIRMAN: But you may not?
 6 A. -- or do you do something else? Yes.
 7 THE CHAIRMAN: So if the merchant -- the merchant who gets
 8 a click may get 100% conversion, but if they do not get
 9 the click on their tile in the first place because users
 10 prefer to click on the CSS tile, that will -- will that
 11 not affect the value of the merchant tile and therefore
 12 how much the merchant will pay? So what I am asking is,
 13 is it not a bit more complicated: it is not just
 14 the conversion rate once you have clicked, but it is
 15 also the propensity of users of where they are going to
 16 click?
 17 A. Yeah, the likelihood of clicking.
 18 THE CHAIRMAN: The likelihood of clicking --
 19 A. Yes.
 20 THE CHAIRMAN: -- on one as opposed to the other, so that
 21 the value has to take account of both factors, does it
 22 not?
 23 A. Well --
 24 THE CHAIRMAN: To take an extreme example, if everyone likes
 25 to click on a CSS but the merchant is not going to pay

23

1 very much for a tile that gets no clicks --
 2 A. Well, but they're paying per click, so that -- that
 3 logic doesn't quite follow because they're paying per
 4 click.
 5 THE CHAIRMAN: I see, they are paying per click, but ...
 6 right.
 7 A. But, you know, at least in principle, if users engage
 8 more with the CSSs, then that -- you know, if there's
 9 competition on the merits, that should have an impact on
 10 the likelihood, I agree with you -- should --
 11 THE CHAIRMAN: Because the volume of traffic will affect the
 12 amount you offer per click if you are going to get a lot
 13 of clicks?
 14 A. So, I mean, I think --
 15 THE CHAIRMAN: Is that right?
 16 A. Sorry, could you say that again?
 17 THE CHAIRMAN: The volume of traffic you get to your tile
 18 will affect the amount you --
 19 A. Well, it doesn't necessarily affect how much you bid,
 20 and this is, I think, Mr Pickford's point.
 21 THE CHAIRMAN: That is what I am trying to understand.
 22 A. It doesn't necessarily affect how much you bid, and
 23 there is an inherent problem with an auction system
 24 where the auction system can -- again, to Google's
 25 counterfactual, where you have this auction system at

24

1 the very, very -- at the very, very start, then you do
 2 -- there are some -- I think there are some problems
 3 that arise from that, from genuine competition on
 4 the merits, because, I mean, it does affect consumers'
 5 decision-making. For example, if -- and I think this is
 6 Mr Pickford's point, in fact, around whether merchants
 7 are always willing to bid more.
 8 So if -- just working through Mr Pickford's logic,
 9 if that were the case -- and I'm not saying that is
 10 the case but let's just work through the logic -- if
 11 that is the case that merchants are always prepared to
 12 bid more, they're always going to take, if you like,
 13 the left most slots in an auction system and so you'll
 14 end up seeing more merchants, and CSSs would be crowded
 15 out by that and you'd end up in a situation that looked
 16 very similar to what we see certainly under kind of
 17 the Shopping Unit, okay?
 18 So there is an inherent tension there with an
 19 auction system just kind of for what we've just set out.
 20 So, I mean, I think that's why I've sort of slightly
 21 hesitated somewhat when we started talking and thinking
 22 about auctions because there is this fundamental
 23 trade-off there.
 24 THE CHAIRMAN: Yes.
 25 A. I think that's part of the reason why -- may be part of

25

1 the reason why I don't think it makes sense necessarily,
 2 when Google is in this more competitive situation and
 3 isn't just trying to extract the value that it might
 4 have -- it has an incentive to show on its page to
 5 present to users a page that's more useful because
 6 they're trying to attract the users. It's when I think
 7 they're less worried about trying to attract users
 8 because they've got this flow of traffic already that
 9 you can then think about trying to extract more value
 10 and that's essentially what the auction system does.
 11 So I think there is a trade-off there, but I don't
 12 think there's a simple resolution to that trade-off.
 13 I don't know what the answer is I'm just explaining what
 14 that trade-off is.
 15 MS ROSE: But do we not also know that even with the auction
 16 system it is not simply price that determines where you
 17 go on the page, because Google applies an algorithm
 18 based on relevance and usefulness?
 19 A. They do. I don't precisely understand it --
 20 MS ROSE: No, well I do not think we know how it works.
 21 A. They've given some of the parameters and again I'm not
 22 entirely sure, I think it's public domain that --
 23 MR PICKFORD: Maybe just pause --
 24 MS ROSE: I am not sure the details matter, because
 25 the point is Google could design that any way it likes

26

1 fairly, but the point is simply that, even if you have
 2 an auction in the mix, Google has an incentive to design
 3 the algorithm in such a way as to maximise traffic.
 4 A. Well, it has an incentive, it depends on what happens,
 5 depending what you're presented with --
 6 MS ROSE: So, basically --
 7 A. -- as a user. I think it has an incentive to maximise
 8 its profit. I mean, I think most economists --
 9 you know, you think about profit maximisation.
 10 Now, then exactly how the auction is defined --
 11 designed if you're trying to maximise profit depends
 12 what you think users will do --
 13 MS ROSE: Exactly.
 14 A. -- depending how --
 15 MS ROSE: Exactly.
 16 A. -- what's presented to them.
 17 MS ROSE: So if you think more users will click on CSS
 18 ads --
 19 A. Yes.
 20 MS ROSE: -- because they find them more useful, then you
 21 are going to design an algorithm that ensures that CSSs
 22 get representation in the box --
 23 A. Yes, that's --
 24 MS ROSE: But again, that is just competition.
 25 A. That's my point at the earlier point of time.

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1 MS ROSE: Yes, exactly.
 2 A. At the earlier point of time, I think you have an
 3 incentive. As you are less worried about retaining
 4 users and you have market power, and more and more
 5 market power, then I think your incentives change.
 6 MS ROSE: But what we do not know is, at that point, what
 7 would CSSs have looked like and how would users have
 8 seen --
 9 A. No, exactly.
 10 MS ROSE: How strong were their brands --
 11 A. Yes, exactly, we don't know that.
 12 We do know, for example, that, at certain earlier
 13 points of time, CSSs had quite a large proportion of
 14 kind of direct traffic, which does suggest that
 15 consumers found them quite useful. So Kelkoo provided
 16 some information, and I'll give you rough broad ranges
 17 because I can't remember what's confidential, from sort
 18 of 2004/2005, and at that point of time, of their CSS
 19 traffic, almost 40% was direct traffic which suggests
 20 that users engaged I think directly with them.
 21 So I don't know the answer to the -- to the question
 22 you're posing, but I can see that you're right that, at
 23 those earlier points of time, given the opportunity to
 24 click on CSS websites, then actually users may well have
 25 found them useful, like we do when we go to, for

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1 example, Moneysupermarket.com or GoCompare.
 2 MS ROSE: Exactly.
 3 MR PICKFORD: To be very clear, this is in no sense any kind
 4 of criticism. I made a promise that I was going to get
 5 through my questions, and I --
 6 THE CHAIRMAN: Yes, we have been interrupting. I appreciate
 7 that.
 8 MR PICKFORD: -- I can only honour that --
 9 THE CHAIRMAN: Yes.
 10 MR PICKFORD: Thank you.
 11 Could I just pick up one point, please, that you --
 12 in an exchange that you had with the Chair?
 13 The Chair put it to you, I think it was about
 14 15 minutes ago, that when I was taking you through
 15 the logic of merchants being likely to bid more, being
 16 likely to outbid CSSs, the Chair put a point to you and
 17 he said: but what if the CSS has a particularly
 18 attractive tile and they believe that they can get lots
 19 of clicks because people will want to click on their
 20 tile?
 21 If that is true, that would factor in to -- I mean,
 22 to the extent that that is true, that would factor into
 23 the amount that -- say it is Kelkoo -- Kelkoo would be
 24 willing to bid, would it not?
 25 A. Sorry, I'm just thinking through, because it's a per

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1 click auction, right?
 2 Q. Yes.
 3 A. So the greater propensity to click on a link is not --
 4 it's just not clear to me that it affects the amount
 5 that you're paid per click, so I'm just thinking
 6 about it.
 7 Q. Okay.
 8 A. I mean, I guess -- I guess, to some extent, it would do,
 9 to the extent that you value more traffic that helps you
 10 as a CSS, it helps you engage more with merchants, so
 11 yes. I don't know to what extent, but it must do to
 12 some extent.
 13 Q. Okay.
 14 Now, moving through onto varying questions on this
 15 issue. I think could we just come back to one
 16 document which I was going to skip but I think it is
 17 actually probably helpful, given the discussion we have
 18 had.
 19 Could we go to the document at {J1A/67}.
 20 So tab 67 is a Kelkoo presentation and it is on
 21 the PLA, it is from November 2017, so it has only just
 22 started the PLA at this point.
 23 If you go, please, to {J1A/67/36}.
 24 We see something about "Traffic Quality", and we
 25 have got November '17, which is their most up-to-date

30

1 figures there.
 2 Have you seen this slide before?
 3 A. I haven't, no.
 4 Q. Okay. Well, if I could just -- I showed it to
 5 Dr Stables, but I think it is probably helpful to show
 6 it to you as well in the context of what we have been
 7 talking about.
 8 It is slightly confusing. It is best to work from
 9 the right, because we see that we have got percentage of
 10 leads on the right, you see that?
 11 A. Yes. Do you prefer if I look at October or November?
 12 Does it make any difference?
 13 Q. I think it is more helpful to look at November, because
 14 in October the Remedy had literally only just started.
 15 A. Okay.
 16 Q. So November is probably a bit more representative of
 17 sort of having bedded in for at least a month.
 18 A. Sorry, yes, you're quite right.
 19 Q. So then we have got "LeadsCount", and then we have
 20 got "COS", which is I think cost of sales percentage,
 21 and then "CR", which is conversion rate, and actually
 22 the conversion rate, what is supposed to be below it is
 23 slightly to the right; do you see that? So, for
 24 instance, there is -- there are some small percentage
 25 figures that are not actually directly below CR, and

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1 they are expressed to two significant figures with -- do
 2 you see that?
 3 A. Are you talking about the column that says "DQS", sorry?
 4 Q. I am talking about the column that says -- so it
 5 says "... CR (%)".
 6 A. "... CR (%)", sorry.
 7 Q. That is conversion rate.
 8 A. Yes.
 9 Q. Then actually the figure -- directly below that is
 10 a bunch of stars?
 11 A. Yes.
 12 Q. Then actually to find the figures, you have to go to
 13 the right of it. So the figures that are actually
 14 the conversion rate are just to the right. I am not
 15 saying what they are --
 16 A. Is -- yes, yes, yeah.
 17 Q. -- because this is a confidential --
 18 THE CHAIRMAN: So the headings are slightly misaligned.
 19 A. Low single digit percentages.
 20 MR PICKFORD: Low single digit percentages, yes. Okay.
 21 You see what the PLA percentage is?
 22 A. Yes.
 23 Q. You can see what -- so that is the traffic that goes
 24 directly to merchants and that is the conversion rate
 25 for that, and you can see the kind of conversion rates

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1 that Kelkoo is getting for other types of traffic from
 2 "Spontaneous", "SEO", "SEM" and "Publishers"; do you see
 3 that as well?
 4 A. I do, yes.
 5 Q. That does not support the idea that, at least in
 6 November '17, Kelkoo was able to get a materially better
 7 conversion rate itself than under PLA traffic. There
 8 was no particular -- what it suggests, there was no
 9 particular magic that Kelkoo was able to do on its site
 10 to make its traffic better-converting than traffic
 11 through the PLA.
 12 Do you agree with that?
 13 A. I mean, I think -- I think that's what these numbers
 14 say. So, again, the -- let's just say the three rows
 15 that says "Spontaneous", "SEO", and "PLA", the numbers
 16 are very close. Okay?
 17 Q. Yes.
 18 A. So I think that does mean that the PLA traffic that --
 19 so to be clear, we're then comparing the likelihood of
 20 conversion on a PLA link direct to a merchant to a -- to
 21 somebody -- to a user arriving on Kelkoo's website and
 22 then clicking on to a merchant and that's what
 23 the conversion rate is. So -- so we're comparing
 24 slightly different things, but, yes, I agree, they're
 25 very close.

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1 Q. Yes, and what they do help us to understand is
 2 a comparison between the conversion rate of traffic that
 3 goes direct to merchants from --
 4 A. Yes.
 5 Q. -- Google's SERP, because that is what the "PLA" one
 6 is --
 7 A. Yes.
 8 Q. -- and traffic that goes from a CSS's website to
 9 merchants and that is the other ones, so it does show
 10 that comparison?
 11 A. It certainly does at November 2017.
 12 Q. Yes, okay.
 13 A. I think there's just -- just, apologies if I'm sort of
 14 going back on ground that we've already sort of gone
 15 through --
 16 Q. I do not think you need to go back on ground we have
 17 already gone to because we do not have time, so we will
 18 move on.
 19 A. Okay.
 20 Q. So I would like to move to a new topic, which is
 21 Google's entitlement to earn revenue from PLAs.
 22 Now, a complaint that you make about the current
 23 situation is that Google makes the vast majority of
 24 the money from showing PLAs on the SERP.
 25 A. Yes.

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1 Q. You are aware, I imagine, that to become the go-to
 2 search provider in the general search market, Google has
 3 invested many tens, if not billions of pounds. Maybe
 4 I could take you to a table that makes that a bit more
 5 concrete --
 6 A. Sure.
 7 Q. -- rather than just throwing figures at you in the air.
 8 So if we could go to {BA/2/71}.
 9 This is from the Decision. So this is some time ago
 10 and it shows what Google was investing in capital for
 11 its general search services between 2006 and 2015. So
 12 it is obviously fairly old, but what we see is, even
 13 during that period, there is, broadly speaking, a fairly
 14 up -- increasing trend in Google's investments and by
 15 the end of that period, it was investing in the order of
 16 about \$10 billion a year in capital investments alone in
 17 general search, and that was ten years ago.
 18 A. Yeah, no, I see that.
 19 Q. Okay, so we can expect, given everything that we know
 20 about what has happened in tech markets since then, that
 21 that investment will have kept on going up.
 22 A. Okay.
 23 Q. Do you agree with that, that is likely?
 24 A. I guess so, yes.
 25 Q. So what this shows us is that competing in general

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1 search is obviously a very expensive thing to do?
 2 A. Sorry, what it tells us is that Google's made very
 3 significant investments over time in general search and
 4 we can see the numbers. So --
 5 Q. Yes.
 6 A. But you're putting a -- what's the proposition you're
 7 putting to me?
 8 Q. My proposition is that, in order to be able to compete
 9 in general search, what this shows you is you need to
 10 make very substantial capital investments.
 11 A. Yeah, I mean, I -- yes, I guess so. I mean, Google --
 12 Google has made very substantial capital investments,
 13 yes.
 14 Q. Yes. Well, you are not suggesting that Google did it
 15 irrationally, I am assuming?
 16 A. No. No, I'm not.
 17 Q. No.
 18 It would expect a substantial return on that
 19 investment, would it not?
 20 A. I mean, I think that would be normal, for a profit
 21 maximising firm, yes.
 22 Q. Part of that return is manifest in the exceptional value
 23 that can be attributed to having the world's favourite
 24 homepage, can it not, because it is a very -- the SERP
 25 is incredibly valuable and that is, in part,

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1 a reflection of Google's brand and the investments that
 2 Google has made?
 3 A. Yes, I can accept that.
 4 Q. Now, none of the CSSs in this case compete in general
 5 search in any way, do they?
 6 A. No.
 7 Q. No.
 8 Just -- this is incredibly rough and ready, I am not
 9 intending to draw anything particularly strong from
 10 this, but could we go and look at a page from one of
 11 Kelkoo's presentations, which is at {M2/827/46}. So
 12 this is a 2015 cashflow from a Kelkoo document.
 13 A. Mm.
 14 Q. It says it is non-confidential, so I can actually refer
 15 to the numbers here.
 16 We can see the "Capex" line. It is under
 17 "EBITDA - GROUP" and "Capex" is the third one down; do
 18 you see that?
 19 A. I do, yes.
 20 Q. Just in -- you know, very, very roughly speaking,
 21 the kind of capex we are looking at there, per year for
 22 Kelkoo, is in the region of between, like, 80K and a bit
 23 under 200K?
 24 A. Yeah, I see that.
 25 Q. So it is fair to say, is it not, that Kelkoo's business

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1 is just a totally different kind of business to Google's
 2 General Search service, they are not comparable
 3 businesses in any way?
 4 A. Yeah, I'd accept they're different businesses, yes.
 5 Q. So Kelkoo could not possibly think that it was entitled
 6 to make the same kind of returns that Google makes in
 7 any stretch?
 8 A. No, I'd imagine Kelkoo -- I mean, I'm speculating, but
 9 I imagine Kelkoo doesn't expect to get the same returns
 10 as Google, no, no.
 11 Q. No, and it would not be reasonable if --
 12 A. No, no, I don't think it would be reasonable, no.
 13 Q. No.
 14 THE CHAIRMAN: By "return", you mean revenue, not -- do you?
 15 When you say "return", or do you mean --
 16 MR PICKFORD: I think I can express it in many ways. It
 17 could be revenue, it could be margins. I mean, there is
 18 obviously lots of different ways. Margins, I think, is
 19 typically what the economists have focused on, so to
 20 make it more concrete, I will say margins, but ...
 21 A. But then I don't know what the proposition is that
 22 you're putting to me.
 23 THE CHAIRMAN: I do not understand it either.
 24 A. Yes.
 25 MR PICKFORD: Okay, well --

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1 (Simultaneous speakers - inaudible)
 2 THE CHAIRMAN: -- (inaudible) a big -- a big company --
 3 MR PICKFORD: In which case, I will go back to my "return".
 4 THE CHAIRMAN: I am just trying to understand, one company
 5 is very big in one market, a different market, spending
 6 a lot of money --
 7 MR PICKFORD: Yes.
 8 THE CHAIRMAN: -- it makes a return. Another company is in
 9 a smaller market, makes a return. Why should the one
 10 return in terms of margin be higher than the other?
 11 MR PICKFORD: It is not about margin percentages, it is
 12 about absolutes. It is about total levels of -- total
 13 levels of revenue and ultimately profit.
 14 THE CHAIRMAN: Total levels?
 15 MR PICKFORD: Yes. It might seem like a simple point, sir,
 16 but it has -- it has -- it is a relevant point --
 17 THE CHAIRMAN: It is kind of obvious, though, I think.
 18 MR PICKFORD: -- as I will come to show you.
 19 PROFESSOR SMITH: But we are looking here at a supply chain
 20 into -- well, a supply chain in which Google and Kelkoo
 21 are involved if Kelkoo is using Google to access its
 22 market. Why should the larger -- the fact that one of
 23 the companies in that supply chain is larger than -- is
 24 an order of magnitude different than the other company
 25 does not, in itself, say anything about what are

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1 the margins that each should expect on the business that
 2 it does in that particular supply chain --
 3 MR PICKFORD: No, I agree with that, Professor. So it is --
 4 if the Tribunal will bear with me, it is --
 5 PROFESSOR SMITH: I will allow you to ask your questions,
 6 yes.
 7 MR PICKFORD: -- relevant context for where we are going.
 8 I am trying to remember, we started ... Yes, okay.
 9 So, now, you have looked at what Google makes versus
 10 what CSSs make in relation to Shopping ads, have you
 11 not? You have done some analysis of that?
 12 A. Yes.
 13 Q. You must -- what you have presented in relation to that
 14 you presumably considered to be on a fair, like-for-like
 15 basis?
 16 A. I mean, not really. So I think you need to look
 17 carefully at Hunt 1. What I did was, first of all,
 18 I set out as the broader positioning of before going
 19 into look at CSS margins, I set out -- and there's
 20 a chart that -- I don't know if it's helpful if we can
 21 go to it, where we go to Google's kind of revenues from
 22 Shopping to frame kind of the order of magnitude that
 23 we're talking about, and the number that I recollect was
 24 it's up to -- I'm trying to remember what's public
 25 domain or not, but it's double digit billions of --

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1 of -- of revenues, so a large amount, and that was --
 2 what I haven't done is try to make a direct comparison
 3 of that to what CSSs make. That isn't the way that it's
 4 framed in my expert report.
 5 Q. I see, okay. Well, I am going to come on to this in
 6 a little bit, but just as an example, have you got
 7 figure 9.12, which is at {12/1/179}?
 8 A. Yes.
 9 Q. What this purports to show is:
 10 "GSE and rival intermediaries' share of clicks and
 11 share of traffic value from the CM... Unit ... gross
 12 margin 4%."
 13 A. Yes, albeit this is very different from what we've just
 14 been discussing. What I haven't tried to do is compare
 15 total revenues from Google and then compare them to
 16 total revenues. That isn't -- this is just trying to
 17 look and understand, on a sort of a margin basis, where
 18 the value's going. So it's something -- it's just a bit
 19 different than what you were discussing.
 20 Q. Okay. You are looking at share of value is how you put
 21 it?
 22 A. Yes, and subject to the data that I had available to me.
 23 Q. Yes.
 24 Could I just clarify one thing on this. You say it
 25 is GSE and rival intermediaries, but that -- you are not

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1 actually comparing GSE and rival intermediaries, you are
 2 comparing GSE and --
 3 A. And Google.
 4 Q. -- and Google Search?
 5 A. Yes, that's correct.
 6 Q. So it would be better if the title to figure 9.12
 7 said "GSE and Google Search"?
 8 THE CHAIRMAN: Yes, it is in the legend underneath where
 9 the green -- the blue line is said to be "GSE/Google".
 10 MR PICKFORD: Yes.
 11 THE CHAIRMAN: Probably the title should also
 12 say "GSE/Google".
 13 A. Yes -- sorry, so -- well, it says "share of clicks", it
 14 doesn't actually show share of clicks on this, does it?
 15 So I think this is just share of value. I don't think
 16 -- I can't see the -- it doesn't show share of clicks,
 17 does it?
 18 MR PICKFORD: Okay. So when you are considering value, what
 19 I understand that you are doing is, on the one hand, you
 20 are looking at what a -- what rival CSSs capture from
 21 their CSS business, yes? On the one hand, yes?
 22 A. Yes, but only in relation to the Remedy Box.
 23 Q. In relation to the Remedy Box, yes.
 24 A. Yes.
 25 Q. You are looking -- so that is the CSS side of

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1 the equation?
 2 A. Yes.
 3 Q. The rival CSS side of the equation?
 4 A. Yes.
 5 Q. On the Google side of the equation, you capture two
 6 things. Firstly, you are capturing any marginal benefit
 7 that Google is also getting from its CSS business?
 8 A. Yes.
 9 Q. Yes?
 10 Then you are also capturing the value that Google
 11 gets from the auction and auctioning off its SERP and
 12 the revenues that it gets from the PLA box. You are
 13 counting that in Google's share of the value, are you
 14 not?
 15 A. I am, yes, that's correct.
 16 Q. Yes.
 17 Obviously it is only Google that owns that space on
 18 the SERP. Kelkoo and Foundem, they have no entitlement
 19 to the economic rents from that space, do they?
 20 A. No, so, look, I agree with that, yeah.
 21 Q. Yes.
 22 A. I mean, Google has a valuable -- as a general search
 23 provider, it has a valuable -- the space on its website
 24 is valuable.
 25 Q. Yes.

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1 A. Yes, I agree with that.
 2 Q. Yes, and you accept -- you certainly do in the joint
 3 expert statement -- that Google General Search should
 4 have the opportunity to recover its costs including its
 5 infrastructure and its opportunity costs of hosting
 6 the Remedy Box?
 7 A. Yes. So I think the precise wording I used, which was
 8 different from the proposition, was that it should have
 9 the opportunity -- like any firm in a competitive
 10 market, it should have the opportunity to recover its
 11 costs, 100%, yeah.
 12 Q. You say in the joint expert statement at the relevant
 13 bit, because we discussed it yesterday, you said:
 14 "I know that I don't need to identify precisely
 15 which functions Google performs as a general search
 16 engine and what infrastructure it uses for that."
 17 You remember that?
 18 A. Yes, I do.
 19 Q. I put that to you, and you said "A-ha, it was
 20 a different context, my context there was talking about
 21 value"?
 22 A. Yes.
 23 Q. It is only in the context of value that you said you did
 24 not need to engage in that exercise. In the context of
 25 wondering about what a CSS was, you accepted you did.

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1 Do you recall that exchange?
 2 A. Yes, I do.
 3 Q. Now, you go on in the joint statement to say that Google
 4 unreasonably extracts the vast majority of the value; do
 5 you recall that?
 6 A. Yes, I do.
 7 Q. So my question to you is how can you possibly know that
 8 Google gets too much of the value without identifying
 9 what functions Google General Search legitimately
 10 carries out when it is auctioning its own scarce
 11 resource, what infrastructure it uses to do that and
 12 what the opportunity cost of that box is, because we
 13 know, for instance, that it could be used -- the space
 14 could be used for text ads? If you do not know those
 15 things, how do you know that Google is getting too much?
 16 A. Okay, can I -- can I -- if I may, I'm going to turn that
 17 question around, because I think the better way of
 18 answering it is by thinking, essentially, to believe
 19 that it's --
 20 Q. Could you maybe answer my question --
 21 A. No, no, but I'm going to come on --
 22 THE CHAIRMAN: Well, let Mr Hunt --
 23 MR PICKFORD: Okay.
 24 THE CHAIRMAN: -- express himself and then you can, if he
 25 has not answered it --

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1 A. So I agree that, for -- that Google has space on
 2 the general search page and that it is quite reasonably
 3 allowed to make money from that space on its website.
 4 I think it would be unreasonable to disagree with that
 5 as a proposition.
 6 There's then a question of: to what extent is
 7 the value being driven by that space and to what extent
 8 is the value being driven by comparison shopping being
 9 provided on top of that? Okay?
 10 My belief is that actually comparison shopping in
 11 and of itself must be useful to users and therefore that
 12 I would expect comparison shopping as a function to be
 13 making a reasonable return, okay? Google's clearly
 14 invested an awful lot in comparison shopping, and so I'd
 15 expect Google to make a return on its
 16 comparison shopping service, separate to the fact that
 17 it has a general search engine. Then when I looked at
 18 and we talked about some of the -- and then I agreed
 19 with Mr Noble, there were issues when you looked at
 20 rival specialised search companies, there were issues to
 21 do with specific margins, and I wasn't trying to hone in
 22 on any specific margin. But my proposition was that in
 23 other sort of comparison markets, online comparison
 24 markets, what you see is actually margins are material,
 25 they're roughly of the range I think 40 to 80%, and

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1 that's the order of magnitude that we can see, because
 2 there's value being provided to users through
 3 comparison shopping, okay?
 4 So what you would need to believe when you look at
 5 the outcome that we see on the slide that -- that --
 6 that -- or the chart that we're looking at, is that
 7 essentially pretty much all the value is coming from
 8 Google and Google Search and the fact that the users go
 9 to Google and very, very, very little of the value is
 10 driven by comparison shopping. I don't think that
 11 that's plausible. I think that comparison shopping as
 12 a consumer must be very valuable to a consumer. I think
 13 that firms have made large investments. Google will
 14 have made large investments in comparison shopping, and
 15 that I would expect there to be reasonable margins for
 16 providing that as a service.
 17 What we -- you know, the point essentially that
 18 we're making here is it's Google, you know, acting with
 19 a great degree of market power, that's extracting and
 20 keeping all of the value for itself and that the --
 21 you know, I think the wider point is the way that it's
 22 structured the Remedy Box is precisely enabled to do
 23 that for it to keep all of the value and for others not
 24 to be able to get value in fact or differentiate, and
 25 that's entirely consistent with this graphic.

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1 MR PICKFORD: Okay, so that is a point that you made
 2 yesterday as well.
 3 I think what I infer from your answer is that you
 4 agree with me at least to this extent. You have not
 5 investigated, from the way that I have posed
 6 the question, what the opportunity cost of the SERP is
 7 or the cost of the infrastructure, have you? Now, you
 8 say, "Oh, well, I have got a different way of looking at
 9 it", but just so that I am clear about the point I am
 10 putting to you, you have not done that exercise?
 11 A. To be clear, in the expert-led disclosure process, we
 12 asked for a load of data from Google and Google said
 13 that it didn't want to provide that. We asked for data
 14 from Google, costs and revenues for General Search, and
 15 I was told that I couldn't have any of that data.
 16 Q. I am not --
 17 A. So I don't -- so I don't have any data on which basis to
 18 do anything about it. I agree I haven't done that
 19 analysis.
 20 THE CHAIRMAN: So the answer is you did not do it --
 21 A. I didn't do it.
 22 THE CHAIRMAN: -- but you say maybe you would have done it
 23 if you had got the data, but you did not do it?
 24 A. I didn't do it, I agree with that.
 25 MR PICKFORD: It is correct, is it not, that in your report,

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1 what you suggest -- and this is non-confidential -- that
 2 Google was able to retain on average around 90% of
 3 the value. You said that in paragraph 370 {12/1/177} of
 4 your -- I think it is your first report.
 5 A. So -- so that's an illustration. My belief is that
 6 the actual value that Google retains is quite likely
 7 materially higher than that based upon some of
 8 the things that we talked about yesterday, which I agree
 9 I've got imperfect information on. So, for example, if
 10 you look at the margin on the self-service volumes and
 11 if it's correct -- and I agree I don't have precise
 12 information on that -- that self-service is actually
 13 a very large proportion, that it's probably materially
 14 higher than 90%, maybe 98/99%. I don't have the precise
 15 facts.
 16 Q. Right.
 17 A. But this is an illustration in 370, as you can see. It
 18 says it specifically.
 19 Q. Could we look, please, at figure 9.15 in the statement
 20 {12/1/183}.

21 Now, there is some confidential material above that
 22 figure. The figure itself is confidential. There is
 23 then some things that you say about it beneath it that
 24 are non-confidential. I believe it should be possible
 25 to ask questions about this in open court, but I am

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1 putting Mr Jowell on notice that the way I am going to
 2 approach it is this, that I am assuming that the numbers
 3 in the chart are confidential but there is quite a bit
 4 of discussion below about how they have changed, gone up
 5 and down, etc., and I am assuming that it is okay for
 6 me to adopt a similar approach to talking about how they
 7 have tended to change over time as long as I do not
 8 mention the actual numbers. If there is an objection to
 9 that, I will go into -- or I will ask to go into camera.
 10 THE CHAIRMAN: Yes, well, 386 is not confidential.
 11 MR PICKFORD: Exactly, but I do not want -- you know --
 12 THE CHAIRMAN: No, no.
 13 MR PICKFORD: I have been very precious about our
 14 confidential information and I want to make sure that
 15 Mr Jowell has an equal opportunity.
 16 MR JOWELL: Thank you. No, that approach should be
 17 acceptable.
 18 MR PICKFORD: Thank you.
 19 Now, as I said, you discuss the statement at 386 and
 20 you say:
 21 "The above chart shows that Kelkoo's gross margin
 22 declined significantly during the Decision period."
 23 Then you go on to say:
 24 "The chart also shows that Kelkoo's gross margin did
 25 not see a material recovery in the post-Decision

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1 period."
 2 Do you see that?
 3 A. I do, yes.
 4 Q. If we go to the chart, we see it starts from a low --
 5 A. Yes.
 6 Q. -- in 2017. It then begins to climb up, and in years
 7 2020, '21 and '22, it is sort of rough -- it is -- they
 8 are roughly similar?
 9 A. Yes.
 10 Q. You see that?
 11 A. I see that, yes.
 12 Q. Now, just pausing before we get on to 2023. That rise
 13 from 2017 through to that period 2020, '21 and '22, that
 14 surely is evidence of a recovery?
 15 A. I mean, yes, the numbers have increased.
 16 Q. Yes. So what you say --
 17 A. The numbers have increased. There's a question of
 18 materiality from a situation where, when you look at all
 19 of the evidence, by the end of the Decision Period,
 20 Kelkoo's business was, you know -- you know, it was in
 21 a very much poorer state than it had been at earlier
 22 points of time and it's recovered somewhat from that.
 23 I -- I agree with that.
 24 Q. We see that the last one you have included on that chart
 25 is January to August 2023, and we all know, do we not,

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1 that the Christmas shopping season is absolutely core
 2 for comparison shopping? Have you seen the various
 3 graphs that show that it is a very cyclical business?
 4 A. Yes, I have seen charts like that.
 5 Q. Yes. So we cannot read anything into the fact that 2023
 6 is lower because it is missing four months --
 7 A. Yes, it's only part of the year, yes, sure.
 8 Q. -- and it includes probably the two biggest months of
 9 the year? Yes, okay.
 10 So I am intrigued by the fact that you say that
 11 the change that we see here where we can see where we
 12 start from and where we get up to, ignoring the final
 13 one, is not material. I mean, your position is that is
 14 not a material increase?
 15 A. Well, again, there's a question: what does "material"
 16 mean? So, in a situation where Kelkoo was one of
 17 the largest comparison shopping businesses, I actually
 18 don't know the precise share of the Remedy -- clicks on
 19 the Remedy Box that it had in those years. I know that
 20 it went up to double digits, but I believe that wasn't
 21 until 2025, so it's a material player in the Remedy Box,
 22 I think probably high single digit percentages in
 23 the Remedy Box, I think, in this sort of period, and
 24 it's making some more profit. There's no doubt it's
 25 making some more profit.

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1 Q. Okay.
 2 A. But I think that's the context that we have to think
 3 about, that I was thinking about when I wrote this.
 4 Q. Right, so when you go on, you say:
 5 "Notably, since 2021 Kelkoo's absolute gross margin
 6 has been declining ..."
 7 I think you would accept that is not a fair
 8 presentation of what has actually been happening,
 9 because we can ignore the last year and we see that
 10 since 2021 it has not?
 11 A. Yes, it has been declining. Yes, I mean, I think it's
 12 fair to say that what I didn't do is try to annualise
 13 the 2023 figure, so I can't tell you for a fact how
 14 the 2023 figure relates to 2022. What I can see is 2022
 15 is lower than 2021, so "has been declining", you could
 16 say, that, yeah, maybe that does overstate it, I agree
 17 with you.
 18 Q. Did you seek any other evidence from your client in
 19 relation to 2022? Does this come from Kelkoo, this
 20 information?
 21 A. Yes.
 22 Q. Did you seek any information beyond 2022 and a half --
 23 and an incomplete year of 2023?
 24 A. We did, and I can't remember why there was a problem
 25 with comparability. So I think we did. I can't -- in

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1 all honesty, I'd need to double-check.
 2 Q. Okay.
 3 A. But my team that were doing sort of the data side of it,
 4 you know, we certainly are -- we were trying to get
 5 the best information that we could.
 6 Q. Just to finish this off, I think, just so we are clear,
 7 I do not think you are probably going to argue much
 8 about this now, if we go back to 385, I am not going to
 9 read it out, but the final sentence which begins:
 10 "This is consistent ..."
 11 Do you see that?
 12 A. Yes, I do.
 13 Q. I think you would accept that we cannot -- that is just
 14 wrong, we cannot rely on that?
 15 A. Sorry, what can't we rely on?
 16 Q. So you have made a statement, which I do not want to
 17 read out because it is --
 18 A. Is this the first sentence or the second sentence?
 19 Q. It is the one that begins:
 20 "This is consistent ..."
 21 I mean, I am not quite sure why it is in blue,
 22 because, in my submission, it is exactly the same type
 23 of statement that is said to be non-confidential below,
 24 so ...
 25 THE CHAIRMAN: It does not seem to be -- Mr Jowell, why that

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1 is a confidential statement.
 2 MR JOWELL: It is just the first sentence is confidential.
 3 THE CHAIRMAN: Yes, so I think one can -- you are content
 4 that we can declassify the last sentence?
 5 MR JOWELL: I will take an executive decision --
 6 (Simultaneous speakers -- inaudible)
 7 A. I agree with you that sentence -- reading that sentence
 8 now, that doesn't seem to me to describe appropriately
 9 the graphic below.
 10 MR PICKFORD: Thank you.
 11 A. I agree with that.
 12 Q. Thank you.
 13 Now, this is not a criticism for you, it is just to
 14 clarify what you have and have not done. You have done
 15 no profitability analysis of CSSs such as PriceRunner or
 16 Idealo, have you?
 17 A. No, I haven't.
 18 Q. So you have got no idea obviously how they have fared
 19 over the last 20 years in terms of their profitability?
 20 A. No, I haven't done that analysis.
 21 MR PICKFORD: Okay, I am going to move to a new topic, which
 22 is the counterfactual.
 23 When would be convenient? Is that a convenient
 24 moment for a morning break, sir? I am happy to continue
 25 or pause as --

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1 THE CHAIRMAN: Well, if you are starting a big --
 2 MR PICKFORD: It is a big -- it is a new topic, so ...
 3 THE CHAIRMAN: Yes, well, shall we take a short break now,
 4 yes, and come back at just after 20 past?
 5 MR PICKFORD: Thank you.
 6 (11.14 am)
 7 (A short break)
 8 (11.31 am)
 9 THE CHAIRMAN: Yes.
 10 MR PICKFORD: Thank you, sir, members of the Tribunal.
 11 Mr Hunt, you mentioned yesterday, and indeed again
 12 I think today, in some of your answers, and in
 13 particular yesterday it was concerning how Google would
 14 have charged for access to the SERP in 2008, and you
 15 said: well, everything was different because Google did
 16 not have market power then. Do you recall -- you recall
 17 that point?
 18 A. I didn't say Google didn't have market power.
 19 Q. Oh, I beg your pardon. Sorry, what was your point?
 20 A. I said Google -- from the documentary evidence, it was
 21 clear that Google was concerned about attracting users
 22 to the SERP. I never said that Google didn't have
 23 market power.
 24 Q. Okay. I --
 25 A. It might have had less market power. In fact, I think

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1 it probably logically would have had less market power.
 2 I don't believe I said that it didn't have market power.
 3 Q. Less market power, yes. You did -- so you said -- you
 4 did -- you certainly did say less market power. You
 5 said that {Day14MT1/77:3}:
 6 "... a little bit [of] the kind of idea of what
 7 monopolists can do or firms that have market power with
 8 firms that have less market power."
 9 A. So that was a fully generic statement.
 10 Q. Yes, and then ... I will ask my team to find
 11 the reference. I had understood you to say something
 12 slightly different.
 13 A. I don't think I would have said that, because I don't
 14 think that, but if I did, then I agree that that was not
 15 -- that was a misstatement.
 16 Q. Okay. I think, for the time being, I can skip over that
 17 and potentially just come back to it, just if someone
 18 alerts me to something on that.
 19 Okay, charging for placement, a topic that was
 20 considered quite a lot yesterday, and I just want to ask
 21 a few supplementary questions about that, if I may.
 22 THE CHAIRMAN: Are you on counterfactuals now?
 23 MR PICKFORD: I am on counterfactuals, yes.
 24 THE CHAIRMAN: Yes.
 25 MR PICKFORD: So at JES 3.7, if we could turn to that, at

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1 {11/4/67}, and you say there that {11/4/68}:
 2 "... it is unclear why implementing a CM-like option
 3 that charges CSSs for access to its Shopping Box would
 4 have been more commercially rational in
 5 the counterfactual than a lawful scenario which does not
 6 charge for access."
 7 You recall obviously that point?
 8 A. Yes.
 9 Q. Now, you obviously discussed that in the concurrent
 10 evidence yesterday, and during that discussion, you
 11 accepted a point in fact that we made in our openings,
 12 I made orally, which was that if CSSs are going to
 13 charge merchants for getting access to the box, then it
 14 is unrealistic in that world that the box would remain
 15 free as between Google to CSSs because merchants are
 16 always going to have to -- merchants are always going to
 17 have to pay for access to the box --
 18 A. I didn't accept that point.
 19 Q. You did not accept that?
 20 A. No, I think that's a misunderstanding.
 21 Q. Ah, okay.
 22 A. I accepted that CSSs would be charging merchants, which
 23 would make it different from the situation back in 2008
 24 where Google provided free access to merchants.
 25 I accepted that merchants would end up being charged.

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1 That was the point that I accepted.
 2 Q. Right, I see. But -- right, okay, well, in which case,
 3 we are going to need to go through the steps --
 4 A. Sure, of course.
 5 Q. I think what you did accept or state is that Google's --
 6 if CSSs generally are charging --
 7 A. Yes.
 8 Q. -- then Google's CSS is also likely to charge, because
 9 otherwise there is a potential margin squeeze --
 10 A. Yes.
 11 Q. -- problem and you mentioned that?
 12 A. I mean, I think so. I mean, I think, just working
 13 through the logic of it, it would seem quite odd if
 14 Google was still providing a service for free.
 15 Q. Okay, so --
 16 A. I imagine that its rivals would complain about that.
 17 Q. Yes, okay.
 18 So step one is that we move from the fact that
 19 merchants have to pay for access to the box via rivals,
 20 to the fact that, in fact, any access to the box is
 21 going to be charged for via the CSS, whether it is
 22 a rival CSS or Google's CSS?
 23 A. The merchants will be charged --
 24 Q. The merchants pay, yes.
 25 A. The merchants will be -- yes, will ultimately end up --

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1 I agree with you. It was the logic that you put,
 2 I think, in the openings. I agree with that logic.
 3 Q. Yes.
 4 So the next step then is that given that merchants
 5 are all going to be paying --
 6 A. Yes.
 7 Q. -- that is a very different situation to the arithmetic
 8 that Google would have been thinking about when it was
 9 thinking about access to a Product Universal because one
 10 of the whole points of that was that it was free to
 11 merchants, so merchants were incentivised to sign up to
 12 it, and secondly, users knew that all of the results
 13 were entirely untainted by dirty lucre, whereas if, in
 14 this world, merchants are paying, those advantages do
 15 not hold any more do, they?
 16 A. I agree it's a different world, but I think we then need
 17 to then work through the logic of how it's a different
 18 world and why. So I don't -- so it's -- I agree that
 19 logically -- and this was the point that you had made --
 20 it's different inasmuch as merchants would end up
 21 needing to pay for access.
 22 Q. Yes.
 23 A. Okay?
 24 Again, there's a question about how would Google
 25 would -- so let's just think about it from

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1 the perspective of -- it's just easier to think about it
 2 if we crystallise it and think about 3a or 3b, it could
 3 be 3a or 3b, but let's just think about it like that --
 4 where -- let's say what Google wants to do is bring
 5 users on to Google's -- Google's -- to Google's search,
 6 okay? They want users to come into Google Search and
 7 put their queries into Google Search, that's what they
 8 want, okay?

9 So, now, clearly what Google actually did was to try
 10 to improve its own comparison shopping service by
 11 providing free access to merchants to attract those
 12 merchants and thereby improve its service. I -- I agree
 13 with that, and I agree that that looks very different in
 14 the counterfactual, because Google isn't just doing it
 15 for -- if you like, for its own comparison shopping
 16 service, but the logic may well be somewhat different
 17 inasmuch as Google might still have an interest to
 18 attract attractive -- on the assumption that they are
 19 attractive -- CSSs to its webpage because that makes
 20 Google Search attractive, and then if Google, as a CSS,
 21 is competing with other CSSs and competing in part on
 22 the price that's charged to merchants, that might serve
 23 to keep the amount that's charged to the merchants down
 24 and actually still make the SERP an attractive location,
 25 admittedly not only for Google, that would also apply

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1 for the other comparison shopping services.

2 So I agree it's different from -- it's completely
 3 different from a 2008 situation, but I think that's
 4 where the logic takes you to what -- what I believe
 5 would have happened.

6 Q. Right, so, just to be clear, you are saying the logic
 7 takes you, notwithstanding it is different, to still
 8 Google not charging for access -- Google Search not
 9 charging CSSs for access to a box? Is that your
 10 position?

11 A. I mean, I -- it's not 100% clear, but let's just think
 12 about the logic of this, and this was actually a point
 13 that Ms Rose kind of raised, and I was trying to think
 14 about whether I could think about an example to try to
 15 bring this alive. I think this is imperfect, but I was
 16 trying to think about, given our exchange -- was it
 17 yesterday or the day before? So --

18 Q. I mean, would it be okay if you answered my question
 19 first?

20 A. No, no, because I think it's -- I don't think I can do
 21 it without working through the logic, because I think
 22 it's critically important, because there isn't
 23 a simply "yes" or "no" answer. I don't think there is.
 24 So let's just work through the logic. You've got a --
 25 let's -- let's -- let's just imagine a situation, and

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1 I'm going to move away completely from CSSs just to try
 2 to bring it alive and make it tangible. Let's imagine
 3 you've got a news stand which is selling different
 4 magazines, selling different -- and let's say they're
 5 classified ad magazines, so it's similar to what we're
 6 talking about. So you just imagine you've got a news
 7 stand here and I've got various different magazines that
 8 I, as a consumer, I can go to a particular news stand
 9 and I can choose one of them, okay?

10 Now, in a world where, I think it's worth thinking
 11 about, there could be rival news stands, there could be
 12 -- and again, let's -- I don't need to specify precisely
 13 what they are, but let's just imagine that there's rival
 14 news stands -- and you own this news stand -- obviously
 15 I'm trying to draw an analogy with Google here. Now, if
 16 you want to attract people to your news stand, you might
 17 have an incentive, and I'm not saying you do or don't,
 18 but you might have an incentive to offer access to that
 19 for free to -- to get the best quality, if you like,
 20 magazines. Imagine that these are magazines that charge
 21 people that want to place classified ads in them, they
 22 charge them a certain amount, but they give themselves
 23 away free to users, because I think that's a useful
 24 analogy to draw.

25 Now, in that situation you can imagine a situation

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1 where the owner of the news stand might, at some point
 2 of time, if it's trying to make itself really
 3 attractive, choose to provide access without charge
 4 because it wants to attract these sort of magazine
 5 owners to put their magazines on the news stand to make
 6 that news stand attractive, okay?

7 Now, conversely, if it starts charging the magazine
 8 owners, okay? So let's say I charge a magazine owner,
 9 there's some issues about exactly how -- it's not
 10 a perfect analogy, but I start charging them, it seems
 11 logically true to me that I'm a magazine owner, okay,
 12 I've got these classified magazines, and I'm trying to
 13 maximise my profit, and depending exactly how I'm
 14 charged it doesn't influence your incentives, but
 15 broadly speaking, I would want to recover those charges
 16 that the news stand owner is charging me by -- in
 17 the charges that I'm setting to the people that want to
 18 place the classified ads in my magazine, okay?

19 So this was to the point that you asked, Ms Rose,
 20 around you -- I think you were -- you couldn't see why
 21 I was saying -- I think you couldn't see why I was
 22 saying the amount that's charged by Google to the CSSs
 23 affects how much they charge merchants, and that's why
 24 I'm trying to draw this analogy. Because actually, in
 25 this case, if the classified -- sorry, if the news stand

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1 owner charges the magazine owners, that's going to
 2 affect the charges that they --
 3 MS ROSE: It is just pass through.
 4 A. There's a degree of pass through, that's right. Okay?
 5 Now, again -- so that goes -- so I haven't got
 6 a very clear answer to your question.
 7 MR PICKFORD: No.
 8 A. I'm sorry, I don't. No, I don't. But there's just
 9 a question of, if Google was so -- really, really wanted
 10 to provide -- make the SERP very attractive, it may have
 11 an incentive to still provide access for free to
 12 the CSSs -- again, going back to this news stand analogy
 13 -- recognising that the CSSs would be charging
 14 merchants, okay? But it might still have an incentive
 15 to do that. It's a different incentive. It's not
 16 the same as what actually happened, and I'm not trying
 17 to say it's the same. But you can understand there
 18 would be essentially the tension here. So I can't give
 19 you a very clear answer. I don't know.
 20 Q. Okay, let us take your news stand example. Let us
 21 imagine a world in which the magazine owners pay to be
 22 on the news stand, okay?
 23 A. Yes.
 24 Q. They already take the opportunity to pay because that is
 25 how the deal works.

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1 A. Yes.
 2 Q. Okay?
 3 They can pay more to be more prominent and they can
 4 pay less to be less prominent, okay?
 5 A. Yes.
 6 Q. Now let us imagine a news stand owner comes along with
 7 something that is brand new where it says not only can
 8 you get -- so previously they were just on the rack, but
 9 now he has a brand new rack that is in -- that is,
 10 you know, bigger and it has got more lights on it and it
 11 is better and it is right at the front of the store,
 12 okay?
 13 If news stand owners were already paying to be on --
 14 sorry, if magazine owners were already paying to be on
 15 the stall, you would imagine they would be quite happy
 16 to pay similar amounts to get something even better and
 17 be promoted heavily on the stall?
 18 A. So you're now flipping -- so I'm talking about Google's
 19 incentives, you're flipping it around and talking about
 20 CSSs' incentives --
 21 Q. Yes.
 22 A. -- which is a different point. You're talking about
 23 would CSSs be prepared to pay for access?
 24 Q. Yes.
 25 A. Yeah, I imagine they probably would be prepared to

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1 access. My point isn't that --
 2 Q. Okay.
 3 A. -- my point was: what was Google's incentive? Okay?
 4 What's Google's incentive to charge in a situation when
 5 it charges it has an impact on -- on how others engage
 6 with it?
 7 Q. Well, let us just go through the logic of that --
 8 A. (Overspeaking -- inaudible).
 9 Q. -- let us break it down --
 10 A. They're different points.
 11 Q. -- let us break it down in little bits --
 12 A. Sure.
 13 Q. -- okay?
 14 So, first point is I think you would agree -- you
 15 agree, I am sure, that in 2008, CSSs were purchasing
 16 significant amounts of text ads, were they not, in order
 17 to be on the SERP?
 18 A. Yes, I believe they were.
 19 Q. Yes.
 20 We know that text ads were sold according to
 21 a second price auction?
 22 A. Yes, I believe that's right.
 23 Q. We also know that, in principle, PLAs are more
 24 attractive than text ads because they have the lovely
 25 pictures and we know that consumers seem to be quite

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1 attracted to pictures?
 2 A. Yes.
 3 Q. So what we are now considering is a world in which
 4 Google has already got lots of CSSs who were paying to
 5 be on its SERP for text ads and it is considering
 6 introducing a new, improved form of ad, it is the PLA,
 7 okay? Yes? Are you with me so far on this hypothesis?
 8 A. Okay.
 9 Q. Now, you are positing that, notwithstanding it has
 10 already got that roster of CSSs who are willing to use
 11 its SERP, it is going to want to leave money on
 12 the table by not charging CSSs for access to this new,
 13 improved form of access to the SERP. That is what you
 14 are saying. You have explained that --
 15 A. It could be the case.
 16 Q. That is your case?
 17 A. Yes, I believe that -- to be clear, it's not my case,
 18 I'm saying that it could be the case that it chooses not
 19 to charge. I'm not saying I know for certain.
 20 Q. Okay.
 21 A. But I can certainly see that it can make sense to me
 22 that it wouldn't be charging.
 23 Q. I mean, ultimately, obviously none of us know, we are
 24 dealing in counterfactuals. The point of your economic
 25 evidence is --

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1 A. Yes.
 2 Q. -- is to help --
 3 A. I think I -- so if your question is: do you think it
 4 could be commercially rational for Google not to charge?
 5 Yes.
 6 Q. But ultimately, what the Tribunal is going to have to
 7 decide is what is likely, is it not? What -- well, I am
 8 going to put to you it is not good enough just to say it
 9 might have thought this or it might have thought that,
 10 our job at this point is to try to help the Tribunal
 11 understand what is the most likely thing.
 12 A. Yes, I think that's right, and I think -- but in
 13 a situation where Google's making trade-offs, and in
 14 that point of time, if its concern is to make the SERP
 15 as attractive as possible, if its primary concern, which
 16 it actually was, from the evidence was from 2008, it may
 17 have chosen to make a different trade-off, but
 18 a trade-off nonetheless, to have foregone revenues in
 19 the short term because of the -- the potential to make
 20 the SERP more attractive, to make Google Search more
 21 attractive. It might have made that choice.
 22 Q. Were you aware of the evidence that we had from
 23 Dr Stables that Kelkoo's objective, generally its
 24 commercial objective, was to try to make as much as it
 25 could from its business of selling clicks on to

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1 merchants, reasonably enough, because that is what
 2 profit making entities generally seek to do? You are
 3 aware of that?
 4 A. I actually don't know precisely what Mr Stables said,
 5 but --
 6 Q. Okay, but you would be willing to assume that that would
 7 be a pretty natural thing for a CSS to do, to try and
 8 maximise its profitability and get -- and sell its
 9 clicks for as much as it can and to buy them in for as
 10 cheaply as it can?
 11 A. Yeah.
 12 Q. That is fair?
 13 A. I mean, look, for any firm, it can have different
 14 short run and long run incentives and they can differ
 15 over time. So I'm not -- I don't think it's -- I can --
 16 I'm not quite sure, are you saying that -- is your
 17 suggestion to me that CSSs would always, at any point of
 18 time, seek to extract as much value from -- from
 19 the webpage? Is that -- is that -- is that
 20 the proposition?
 21 Q. I am saying in general -- in general, and I am allowing
 22 for some sort of short run variations, but in general
 23 a CSS is going to try to buy in its clicks as cheaply as
 24 possible, indeed it is best if it can get them for
 25 free, and to sell them for as high a price as possible.

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1 Just as a very general proposition.
 2 A. In general, if -- profit maximisation I think would be
 3 consistent with them trying to pay as little for
 4 the clicks and extract as much from them as they can,
 5 subject to -- and this is actually precisely the broader
 6 point of there's short run and long run trade-offs. So
 7 if they do that in a way that makes the CSS not very
 8 attractive for users, they're extracting lots of money
 9 but they're showing some -- so in the short term they
 10 can show ads and make money, but actually that's not so
 11 attractive for users, then there's -- there's a bit of
 12 a -- there's a trade-off there. They wouldn't be very
 13 successful if they kept doing that in a way that didn't
 14 make their website or their service attractive.
 15 So, broadly speaking, I agree with you there's
 16 profit maximisation, but I just think we need to be
 17 careful with just assuming that "always" means that in
 18 the short run you're trying to extract as much for any
 19 individual webpage because I don't think that's clear,
 20 I think there's -- there's longer term trade-offs.
 21 Q. Well, we are talking about CSSs.
 22 A. I'm talking about CSSs. I mean, it's true for any
 23 business; there's going to be short run optimisation and
 24 long run optimisation.
 25 Q. Well, I mean, you are -- are you aware that when Kelkoo

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1 sold a click, users did not even know where that click
 2 came from -- sorry, merchants did not know where that
 3 click came from; they are just selling merchants a click
 4 and it could have come through the publisher business,
 5 it could have come through their own site, it could have
 6 come from anywhere?
 7 A. Okay.
 8 Q. So given that lack of transparency, there is no reason,
 9 is there, why -- I mean, it is a very simple proposition
 10 that Kelkoo is not going to, general speaking, try to
 11 get the best price it can for ads that it sells to
 12 merchants. That must be right?
 13 A. In optimising its business, Kelkoo needs to think about
 14 the amount it can extract from merchants, but, because
 15 it's a two-sided market, it also needs to think about
 16 the impact of that on users, okay? So, in principle, if
 17 it doesn't affect -- so let's just assume that, there is
 18 no impact on user experience, then, yes, on that
 19 assumption, you try and extract more from merchants,
 20 yes.
 21 Q. Yes, so given all that, it does not make a lot of sense
 22 for Google, when Google is thinking about auctioning
 23 space on its SERP, when there is an opportunity cost of
 24 that SERP, to just leave money on the table, because it
 25 is just giving money to CSSs, because CSSs are going to

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1 still try and profit maximising, the CSSs do not owe
 2 Google any favours?
 3 A. So, again, Google is making a trade-off, right? So in
 4 the price it set, it's making a trade-off of how much
 5 does that affect the attractiveness of the SERP, okay?
 6 If it doesn't affect the attractiveness of the SERP very
 7 much to be charging and it has all the mechanics to
 8 charge, yes, it would -- it would like to charge and
 9 extract -- extract money, I agree with that. But that's
 10 on that assumption, and I think what we saw was that
 11 Google actually cared enough about actually in drawing
 12 consumers to the SERP that it was prepared to forego
 13 this very valuable top part of the SERP, it was prepared
 14 to forego any revenues from that essentially --
 15 Q. (Overspeaking - inaudible).
 16 A. -- on the idea that it was going to bring more users to
 17 the SERP and that would make the SERP more attractive --
 18 Q. Yes --
 19 A. -- and there could have still been that trade-off --
 20 Q. In that -- that --
 21 A. -- (inaudible).
 22 Q. That happened in a context where of course Google was
 23 wanting to build up its own CSS, was it not?
 24 A. Yes.
 25 Q. Yes, because all of this traffic just went to its own

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1 CSS? Yes?
 2 A. Yes.
 3 Q. Yes, okay.
 4 So in that world, there was an incentive for Google
 5 potentially to do that through those means.
 6 In the world we are in now, where every single CSS
 7 in the UK can contribute to Google's UK Shopping
 8 business by placing ads, I am assuming in some sort of
 9 PLA format, that constraint does not exist anymore,
 10 does it, because --
 11 A. Sorry, I'm -- we're not in 2008 now. What --
 12 Q. No, we are in 2008.
 13 A. We're still in 2008.
 14 Q. We are in 2008, okay?
 15 A. Sorry.
 16 Q. But we are in a counterfactual --
 17 (Simultaneous speakers - inaudible)
 18 A. (Inaudible) -- sorry, Google's Remedy Box --
 19 Q. I beg your pardon, yes okay. So I am positing -- I am
 20 positing Google's Remedy --
 21 A. Okay.
 22 Q. -- but back in 2008.
 23 A. Yes, okay.
 24 Q. I am trying to anchor it in a particular hypothetical.
 25 I think -- I mean, obviously the problem we all have

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1 with these is --
 2 A. Yes.
 3 Q. -- is there are so many hypotheticals, we have to be
 4 quite careful about which one we are talking about.
 5 So the one that I am talking about is imagine we
 6 have taken the Remedy Box and we have gone back to 2008.
 7 A. Yes.
 8 Q. The difference in that world is that now Google has lots
 9 of CSSs who are all contributing their products into
 10 the box on the page, does it not?
 11 A. Sorry, so, again, this is the Remedy Box, so the CSSs,
 12 again, have a relationship with merchants --
 13 Q. Yes.
 14 A. -- either by the self-service model or by the managed
 15 model --
 16 Q. Yes.
 17 A. -- and they're contributing -- or their --
 18 Q. Exactly.
 19 A. -- intermediaries were placing PLA --
 20 Q. Yes, imagine that world.
 21 A. Yes, okay.
 22 Q. In that world, for the box to be a success, it does not
 23 actually desperately matter how successful Google's CSS
 24 is alone, because Google's CSS is just one of many CSSs
 25 and what Google --

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1 A. You see, now you're talking about Google's CSS, but
 2 again, to be clear, you are talking about --
 3 Q. I'm talking about Google's stand-alone CSS.
 4 A. -- (inaudible) GSE, yes. Okay, yes.
 5 Q. Yes. Do you agree with that?
 6 A. Sorry, what's the proposition?
 7 Q. The proposition is that, as compared to the -- what
 8 happened in the real world in 2008 --
 9 A. Mm.
 10 Q. -- is that there was a direct link between the box and
 11 just Google's CSS. So for the box to be successful,
 12 Google's CSS also had to be successful because there was
 13 an interrelationship between the two, yes?
 14 A. That -- I don't think that's quite right, or at least my
 15 understanding. So, again, looking back at
 16 the documentary evidence, if what you're suggesting
 17 is -- so Google hadn't worked out what its monetisation
 18 strategy -- at least in the documents, back in 2008, it
 19 clearly hadn't worked out what its monetisation strategy
 20 was. It was clearly plausible that one of its
 21 monetisation strategies could have been additional users
 22 coming to Google Search and then monetising it through
 23 increased sales of AdWords because there would be more
 24 volumes and they would sell more AdWords. In that
 25 scenario, then your -- your proposition was Google's CSS

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1 would have been successful.
 2 Q. My proposition is actually a much simpler one. It is
 3 simply that there was a one-to-one relationship in
 4 the real world in 2008 between the box and the CSS,
 5 because there was only one CSS that contributed to that
 6 and it was Google's. Do you agree with that?
 7 A. What do you mean by "a one-to-one relationship"? Sorry,
 8 it was -- it was Google's CSS, yes.
 9 Q. Yes.
 10 A. Yes.
 11 Q. So there was only one CSS that fed into the box. It is
 12 very, very simple.
 13 A. Yes.
 14 Q. Okay.
 15 Now in my hypothetical counterfactual world, there
 16 is a -- there are a host of CSSs that are feeding into
 17 that box and all I am putting to you is that is
 18 a substantial difference for this reason, that it does
 19 not matter how successful particularly Google's CSS is
 20 alone, it gets to rely on all CSSs contributing their
 21 merchants' products into the box. That is the final
 22 time I am going to put it and you can agree, you can
 23 agree with it or not.
 24 A. (Inaudible) -- but to be clear, if -- again, go back to
 25 this -- the point here is -- sorry, I'm --

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1 THE CHAIRMAN: I think, if I have understood it, the point
 2 being made is that in the -- if the Remedy Box applied
 3 in 2008 --
 4 A. Yes.
 5 THE CHAIRMAN: -- then the value of what is in the Remedy
 6 Box was not dependent on GSE, Google's standalone
 7 search engine, being particularly good or well populated
 8 by merchants, because there were all the other CSSs who
 9 were placing PLAs in the Remedy Box.
 10 MR PICKFORD: That is precisely the point. Thank you.
 11 THE CHAIRMAN: So it was not dependent on Google having
 12 a successful self-standing comparison shopping site,
 13 GSE. I think that was the difference from the situation
 14 in the actual world in 2008.
 15 A. Sorry, so the point is that Google doesn't -- sorry.
 16 THE CHAIRMAN: Well, I think that is the first point, as
 17 I understand it, is that in --
 18 A. Okay, so --
 19 THE CHAIRMAN: -- 2008 --
 20 A. So, sorry --
 21 THE CHAIRMAN: -- in 2008, to get products showing in
 22 the OneBox --
 23 A. Yes.
 24 THE CHAIRMAN: -- or Product Universal, as I think it was
 25 called, that was dependent on Google's standalone

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1 Shopping site, not called GSE then, but its standalone
 2 Google Shopping, being a good site with a lot of
 3 merchants.
 4 A. Yes, yes, that's right, yes.
 5 THE CHAIRMAN: So to have a good OneBox, it --
 6 A. Yes.
 7 THE CHAIRMAN: -- it was necessary to have a good standalone
 8 site.
 9 A. I agree with that, yes. Yes, I agree with that.
 10 THE CHAIRMAN: Yes.
 11 Whereas the contrast that counsel is making is that
 12 if the Remedy had applied, because the Remedy Box is not
 13 dependent on the Google Shopping standalone site but
 14 there are a load of sites, all the other CSSs also can
 15 feed into the Remedy Box, increasing the quality of
 16 Google's standalone site was no longer such a priority.
 17 I think that is --
 18 (Simultaneous speakers - inaudible)
 19 A. So I think that the -- yeah, so I think that's true for
 20 Google's standalone site.
 21 THE CHAIRMAN: Yes.
 22 A. But clearly the quality of the box is what's important,
 23 and then CSSs have this role of essentially feeding in
 24 the PLAs into the Remedy Box --
 25 THE CHAIRMAN: Yes, the quality of the box --

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1 A. -- in 2008, and that can lead to a high quality box but
 2 with Google in the -- Google's comparison shopping
 3 service in a different role, yes.
 4 THE CHAIRMAN: Yes --
 5 A. Yes, I agree with that.
 6 MR PICKFORD: The mere fact that CSSs paid to be there, just
 7 like they were paying for text ads, does not mean that
 8 the quality of the box is inherently undermined,
 9 does it?
 10 A. It's going to have an impact on the box, right? So it's
 11 going to have an impact on what appears in the box, so
 12 to some extent -- I mean, again, I haven't, you know,
 13 specifically looked into it, but to some extent there is
 14 a -- there's an inherent tension there that if you're --
 15 that the PLAs that appear in the box, if they're always
 16 the ones where merchants are prepared to pay more, it
 17 doesn't necessarily mean that they're the links which
 18 are of most value to users, so it can have an impact on
 19 the -- on the user experience.
 20 Q. We --
 21 A. So to go back to the quality, it depends what you mean
 22 by "quality", but to the extent that the benefit for
 23 a user, if that's what we mean by "quality", could be
 24 not as good in the -- if we take the Remedy Box back to
 25 2008.

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1 Q. We have had a lot of evidence that Google does not just
 2 take into account auction, it takes into account
 3 particularly click-through rate and quality of ads, and
 4 you are not seeking to contradict any of that?
 5 A. No.
 6 Q. No.
 7 Right, could we go on to your -- there is a point
 8 that you make in your second report where you quote some
 9 advice from Sir John Vickers to Google.
 10 Could we please pick that up at {M1/456}.
 11 We see, at paragraph 3, that he says:
 12 "The Commission might contend that the only
 13 equal-treatment terms involve rival CSSs getting
 14 CU space for free. That is economic nonsense and,
 15 depending on the extent of free access required, would
 16 lapse into the removal counterfactual because presumably
 17 Google would rather remove the CU, given its opportunity
 18 cost, than donate it to others."
 19 This is advice he gave on 1 July 2015, so this is
 20 during the --
 21 A. Yes.
 22 Q. -- proceedings --
 23 A. Yes.
 24 Q. -- before the Commission.
 25 Now, you have set out at great length --

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1 THE CHAIRMAN: Sorry to interrupt you. "CU" is -- is that
 2 what is being referred to --
 3 MR PICKFORD: Commercial unit. Another word for
 4 the Shopping Unit.
 5 THE CHAIRMAN: Yes, the Shopping Unit, yes.
 6 MR PICKFORD: Yes.
 7 Now, you have at great length explained your
 8 reasoning and so I simply want yes/no answers here and
 9 if you do not think you can give a yes/no answer,
 10 I would like you to tell me first.
 11 Do you agree with Sir John that it is "economic
 12 nonsense" to say that the equal treatment requires free
 13 provision? Yes or no?
 14 A. In 2015? I agree, for Google -- it's not a simple yes
 15 or no. In 2015, for Google, when it's choosing to
 16 profit maximise, I agree it didn't have an incentive to
 17 provide that for free.
 18 Q. Okay.
 19 But your previous answers, as I understand it, you
 20 do not agree for 2008?
 21 A. I think 2008 is very different --
 22 Q. Okay --
 23 A. -- it comes back to the degree of market power --
 24 Q. -- you have explained why it is different. Okay.
 25 Sir John posits that Google would prefer to remove

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1 the box "given its opportunity cost, than donate it to
 2 others". My simple proposition, yes or no, he is right
 3 about that, is he not?
 4 A. In all honesty, I don't -- I see what he says and I can
 5 see the logic, so ... I mean, I can understand
 6 the logic.
 7 Q. Okay.
 8 A. Is that right? I don't know. I don't know whether it's
 9 right for Google to completely remove the box or if it
 10 needed to provide access for free at that point of time.
 11 Q. Okay.
 12 I would like to look at just one of the commercial
 13 documents that you cite in your evidence. It is
 14 a document at {M1/537/1}.
 15 A. Yes.
 16 Q. You obviously recognise this document --
 17 A. I do.
 18 Q. -- because you cited it.
 19 You explained in relation to it that it illustrates
 20 the kinds of trade-offs that we have been discussing
 21 very much just now and also trade-offs that you have
 22 discussed earlier on. You recall that?
 23 A. In all honesty, I don't recall it, but --
 24 Q. Okay, let us --
 25 A. -- this document, but I know I've looked at this

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1 document, I remember this document.
 2 Q. Let us -- before we go back to the document then, let us
 3 go just back to your second report, first --
 4 A. Yes.
 5 Q. -- just so that you can see the context. So we will
 6 find -- the page I am on is {I4/1/81}, and I am looking
 7 at subparagraph (c) there. You say:
 8 "Second, I note that evidence regarding Google's
 9 consideration of third-party control of the Shopping Box
 10 is not solely confined to early points in time. Indeed,
 11 consistent with Google's factual witness evidence, this
 12 features as one of the options Google considered as part
 13 of its proposals to the Commission. I understand that
 14 Google was actively considering the associated estimated
 15 revenue impacts and technical feasibility of the set of
 16 proposals it was putting forward to the Commission.
 17 This reflects explicitly the types of trade off that
 18 Google may have been considering ..."
 19 Then you refer back to a general point about
 20 trade-offs?
 21 A. Yes.
 22 Q. We have been discussing a lot about these -- about
 23 trade-offs in terms of whether a box might be free or
 24 paid for, etc. You --
 25 A. Yes.

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1 Q. -- you have agreed with all of that? Okay.
 2 Then the document itself is the one that is referred
 3 to at 259 in your -- footnote 259, okay? So that is
 4 the context.
 5 A. Yeah.
 6 Q. Now, if we could go back then to the document itself
 7 {M1/537/1}, and if we could go, please, to {M1/537/7}.
 8 This is all under the big heading:
 9 "Google ingestion and ranking of CSS inventory."
 10 A. Mm.
 11 Q. Then we have got some sub-headings:
 12 "'Single CSS SCU' approach."
 13 Then a:
 14 "Sketch of A Simple Implementation."
 15 You see at the bottom.
 16 Then, what it says there is, under that
 17 implementation:
 18 "Rank CSSs for this query: Fairly early in query
 19 processing ..."
 20 A. Sorry, where are you, sorry?
 21 Q. I am right at the bottom of the page.
 22 A. Oh, yes, yes.
 23 Q. "... i.e....."
 24 Then I am not going to say the next bit because it
 25 is confidential:

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1 "..... we determine a ranking of CSSs for this query
 2 event. The ranking could be purely quality based, or
 3 alternately we could run an auction among CSSs for
 4 display of the entire SCU. (See here for more details
 5 on the organic ranking and the CSSs auction options).
 6 The CSS that ranks first for this query will be used to
 7 construct the SCU, and we call this CSS the 'winning
 8 CSS'.
 9 Okay? You see this?
 10 A. I do.
 11 Q. One of the things that is being considered here is the
 12 idea that it might be free -- this box might be free to
 13 CSSs in some sort of organic world, or it might be -- it
 14 might be auctioned off; you see that?
 15 A. Where am I meant to be looking, sorry?
 16 Q. So I took you to the previous page {M1/537/7}, that
 17 says:
 18 "The ranking could be purely quality based, or
 19 alternately...." --
 20 A. Oh, yes.
 21 Q. --:
 22 "..... we could run an auction among CSSs for display
 23 of the entire SCU."
 24 So you see what is being potentially thought?
 25 The classic points where you are saying --

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1 A. Yes.
 2 Q. -- different options --
 3 A. Yes.
 4 Q. -- might be considered with different ramifications.
 5 Now, this is a document you looked at before. If we
 6 look at the comments on that paragraph, it says:
 7 "So in the pure organic case, wouldn't this
 8 basically mean that the SCU becomes free?"
 9 Then the responsive comment:
 10 "Yes, if a 3rd party CSSs wins. And I think that
 11 basically kills the business."
 12 A. Yes.
 13 Q. Now, you refer to this document in your report. Did you
 14 see comments 38 and 39 when you were looking at this
 15 document before?
 16 A. I think I did, yeah. Yeah.
 17 Q. Okay. But you did not draw them to the attention of
 18 the Tribunal in your evidence showing your fair,
 19 objective, impartial assessment of whether there is
 20 evidence that charging is likely to be a good thing from
 21 Google's perspective or a bad thing?
 22 A. To be 100% clear, this is -- is this not a 2017
 23 document?
 24 Q. Yes.
 25 A. Yeah, so this is a 2017 document. In a situation where

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1 the Shopping Unit had been running for nine years,
 2 Google's been monetising it since 2013 and is making
 3 a lot of money from it, I completely understand why it
 4 didn't want to provide access for free to CSSs at that
 5 point of time. It would have been enormously harmful
 6 for it commercially. That -- that is clearly logically
 7 true in 2017, there's no doubt of that, and so I have no
 8 qualms whatsoever with what they're saying. I accept
 9 the logic of that.
 10 MS ROSE: This is a discussion on a sort of 3b model, is it
 11 not, a single CSS taking over the whole Commercial Unit?
 12 MR PICKFORD: I mean, it is a little hard to map on exactly,
 13 but I think that is probably correct. It depends, of
 14 course -- well, it is correct to a degree, but of
 15 course, as we heard in evidence from Google's witnesses
 16 and in particular Mr Friedman, there is a very, very big
 17 difference between what -- what 3b envisages is that
 18 the CSS basically takes control.
 19 MS ROSE: That is what this seems to be talking about.
 20 MR PICKFORD: Well --
 21 MS ROSE: Because it talks about the Shopping Tab going to
 22 a third party.
 23 MR PICKFORD: But also, at the beginning, it talks about
 24 "Google ingestion and ranking of CSS inventory". So my
 25 understanding, in fact -- if we go back to {M1/537/7},

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1 this is all under the big heading:
 2 "Google ingestion and ranking of CSS inventory."
 3 It describes the characteristics :
 4 "We allow third-party CSSs to submit feeds on behalf
 5 of their sellers , and we ingest these offers and use
 6 them to build our index and such ..."
 7 So, actually , I am not sure it is 3b, assuming that
 8 that large sub-heading, which is how I read it,
 9 continues to be what is being considered below.
 10 A. No, but we're under the heading that says "Single CSS
 11 SCU' approach".
 12 THE CHAIRMAN: Then it says at 3:
 13 "We would likely provide a way for the user to
 14 switch which CSS is used ..."
 15 MR PICKFORD: Yes, but --
 16 THE CHAIRMAN: Then they give --
 17 MS ROSE: There is a whole box.
 18 THE CHAIRMAN: -- an illustration. It is the whole box. So
 19 it is you can switch the box to another CSS.
 20 MR PICKFORD: So I think it is a whole box, but my point is
 21 I am not sure it is totally clear from this that it is
 22 the -- that the whole box is entirely controlled by
 23 the rival CSS, which is what is said ...
 24 (Pause).
 25 As I was saying, I do not think it is a full 3b

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1 implementation, and if one goes over the page to see
 2 the description back on page 8 {M1/537/8}, it describes
 3 something at 2 which I cannot read out, and then it says
 4 that:
 5 "We build [i.e. Google builds] the SCU with only
 6 offers and other metadata available from ...'winning
 7 CSS."
 8 Then it displays that CSS.
 9 So my understanding of this, and we can obviously
 10 make submissions on it, is it is a variant of -- in
 11 fact, the nearest analogue, I would say, is in fact
 12 the existing PLA in this sense, that what is being
 13 envisaged is that there is going to be ingestion of
 14 third-party results from feeds, and then what Google
 15 will do is run some type of auction, rather different
 16 from the auction that it now runs, where the box that
 17 then appears is only going to be populated by results
 18 from one particular CSS. So it is going to run
 19 a version of the current auction but there is going to
 20 be a constraint on it that everything that you see on
 21 the page has to come from one CSS.
 22 THE CHAIRMAN: Is it a bit like the scenario 3b that we see
 23 on the previous page of Mr Hunt's report?
 24 MR PICKFORD: Well, my point is: not that much, because
 25 the point of scenario 3b as advanced by the Claimants is

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1 they say that they should get to control basically what
 2 happens on the SERP. That is the whole --
 3 THE CHAIRMAN: Yes.
 4 MR PICKFORD: -- rationale. The whole legal rationale for
 5 3b is that they say: well, look, Google is running
 6 a CSS, we want our CSS on the SERP, we want it right
 7 there, because that is how we are going to attract users
 8 and it is a great place to be, and we want to win an
 9 auction where only CSSs get to appear and they control
 10 everything. We have responded to that in our evidence
 11 and we have said -- and our submissions and we have said
 12 there are all sorts of problems with that starting from
 13 the fact that we are then basically handing over quality
 14 and control of our SERP to a third party, and we have
 15 never done that before in that way at all , and that is
 16 -- we say that we are not required to and that is too
 17 much of an ask. So that is 3b.
 18 THE CHAIRMAN: Yes.
 19 MR PICKFORD: What is being considered here, as I said,
 20 I think is actually , in many ways, closer to a version
 21 of the Remedy Box, but it has the major difference that
 22 when the Remedy Box appears it is always going to be
 23 populated only by one CSS's results, and so in that
 24 sense they are not going to be -- at the moment, the way
 25 in which merchants and CSSs compete against each other

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1 on the page is that they are directly -- you have got
 2 Kelkoo competing for the number one slot and it might
 3 win it , and then Google competes for the number two
 4 slot , etc., and the idea behind this is that that
 5 competition moves to a different stage of the process
 6 and now the CSSs effectively compete to be the sole
 7 provider of results that have been fed in. That is my
 8 understanding of what is being said here.
 9 PROFESSOR SMITH: They compete with Google's CSS, among
 10 others?
 11 MR PICKFORD: Yes.
 12 THE CHAIRMAN: Is the outcome -- I am just looking at
 13 the picture just before the paragraph you read out in
 14 Mr Hunt's second report on page -- I think it is page 80
 15 in the bundle, page 79 in the document, figure 5,
 16 {11/1/80}. There you have a box choice at the top of
 17 which CSS, including the Google CSS, and then CSSs
 18 showing the whole box -- has the whole box. Is that
 19 the equivalent?
 20 MR PICKFORD: I am not able to answer that question. I do
 21 not know what the exact outcome being considered in that
 22 document is. I think we would have to interrogate it
 23 and look as to whether there are any mock-ups or not.
 24 I think I can only really help you in terms of what
 25 the process that seems to be being envisaged is.

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1 May I just take instructions?
 2 (Pause).
 3 It has been pointed out to me by my learned junior
 4 that the image that is being considered on page 80 of
 5 Mr Hunt's report appears to be one where, if you click
 6 through, you go through to the CSS and that is not what
 7 is being envisaged in the passage of Google's document
 8 that I took you to.
 9 MS ROSE: Well, that passage envisages either that you would
 10 click through to the seller via the CSS, if it was an
 11 individual product offer, or that you would click
 12 through to the CSS. It has both of those options,
 13 depending, presumably, on exactly what is showing on
 14 the box.
 15 MR PICKFORD: That may well be the case. I cannot -- I am
 16 not in a position to say otherwise.
 17 MS ROSE: Well, you are, because it is in the document you
 18 have just been showing us.
 19 MR PICKFORD: Well, I --
 20 MS ROSE: I am simply reading from the page we were looking
 21 at.
 22 MR PICKFORD: I am sure that is right, Ms Rose. I was
 23 obviously taking Mr Hunt to this for a particular
 24 purpose and I am in no place to disagree with what you
 25 have just told me about that aspect of the document.

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1 With the Tribunal's permission ...
 2 THE CHAIRMAN: Yes, go on.
 3 MR PICKFORD: Thank you.
 4 So what I was going to say now is that I have
 5 focused with Mr Hunt on those aspects of
 6 the counterfactual where, to my understanding, as an
 7 economist, he was most able to be likely to help, which
 8 is things to do with pricing and charging. In his
 9 second report he covers a very large amount of
 10 the contemporaneous material which he interprets in
 11 particular ways. We do not agree with all those
 12 interpretations but, in my submission, a lot of that is
 13 just interpretations of factual documents --
 14 THE CHAIRMAN: Yes.
 15 MR PICKFORD: -- that, entirely consistently with the ruling
 16 that you gave before, you do not want me to canvass with
 17 him, so I am not going to do it.
 18 THE CHAIRMAN: The relevance of latency and so on is --
 19 MR PICKFORD: Quite, but there are -- (overspeaking) --
 20 THE CHAIRMAN: These are not economic questions.
 21 MR PICKFORD: There are large amounts of material where we,
 22 as lawyers, are in as good a position as Mr Hunt to make
 23 submissions about it.
 24 THE CHAIRMAN: Yes.
 25 MR PICKFORD: So the marker that I am laying down -- I am

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1 sorry, sir, was there a ...
 2 THE CHAIRMAN: There is a problem with the sound.
 3 PROFESSOR SMITH: There is a little echo in the sound.
 4 MR PICKFORD: I probably got a bit animated and maybe that
 5 ...
 6 THE CHAIRMAN: Yes, well, you are absolutely right that it
 7 is not -- that is not evidence and economic opinion, and
 8 therefore you need not -- you do not have to challenge
 9 it in cross-examination.
 10 MR PICKFORD: So on that basis, I have no further questions.
 11 I would just like to check --
 12 THE CHAIRMAN: Of course.
 13 MR PICKFORD: -- with those along the bench from me.
 14 (Pause).
 15 There are no further questions from any of us.
 16 Before I just sit down --
 17 THE CHAIRMAN: Yes.
 18 MR PICKFORD: -- could I say one thing? There are a couple
 19 of points that have nothing to do with cross-examination
 20 that I would like to cover at some point today, and
 21 hopefully we should be able to do that because I have
 22 made very good time, but I do not want to trouble
 23 the Tribunal with them now, because obviously we are
 24 mid-cross-examination, but just to put a marker down
 25 that there are a few other issues to raise today.

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1 THE CHAIRMAN: Yes.
 2 MR PICKFORD: Thank you.
 3 THE CHAIRMAN: I am sure we can accommodate that.
 4 Yes.
 5 Re-examination by MR JOWELL
 6 MR JOWELL: Mr Hunt, just a few brief questions in
 7 re-examination.
 8 Yesterday -- it is in the transcript at
 9 {Day14MT1/63}, perhaps we could go to that, lines 12 to
 10 22 -- ah, maybe it was the draft. I think this is no
 11 longer a good reference, because I was looking at
 12 the draft transcript. But in any event, you mentioned
 13 a document dated 24 October 2008 --
 14 A. Yes.
 15 Q. -- which recorded -- you said recorded Google's
 16 rationale for tolerating cannibalisation of text ad
 17 revenue by way of the Product Universal. Could I just
 18 ask that you be shown a document. It is {M1/197}. You
 19 can see it is a document, an internal Google document:
 20 "... Impact on Google.com Ad Revenue."
 21 Dated October 24, 2008. Is this the document that
 22 you had in mind?
 23 A. Yes, it is.
 24 Q. Just looking at the summary, perhaps if you remind
 25 yourself, does that -- do you want to add anything in

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1 light of that?

2 A. I just wanted to point to, when I was talking about

3 the trade-offs here between, essentially, volumes and

4 the sort of monetisation trade-off, there's a number of

5 documents that refer to that, but particularly this

6 document is very clear about what that trade-off is. So

7 I think I particularly had this document in mind and

8 I cite it in my -- kind of my report.

9 Q. Thank you.

10 If we could -- if I could remind of you of

11 {Day14MT1/11:25}. Again, this is not working. In any

12 event, you mentioned that you had requested data from

13 Google as to the breakdown in the revenue and click

14 split between the managed and the self-service models;

15 do you recall that?

16 A. I do, yes.

17 Q. If we could go to {L6/0.1}, and if we see, here is

18 a letter from Linklaters, and if you look at the bottom

19 of the page, we see:

20 "We note that when discussing commercial models in

21 PLA1 and PLA3, paragraph 28 of Braendle 3 refers to

22 the distinction between ... the 'fully managed',

23 'self-managed' and 'hybrid' models."

24 You can see -- sorry, if we could go back, before we

25 get there. You say:

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1 "For the purposes of his expert analysis, Mr Hunt

2 has requested further data on the revenue and clicks

3 split between the fully managed, self-managed and hybrid

4 commercial models in the PLA1 and PLA3 versions of

5 the Compliance Mechanism, on a monthly basis ([and] ...

6 in the event monthly data is not available, on

7 a quarterly or annual basis) in order that he is able to

8 analyse which model was the most used version during

9 the Post-Decision Period."

10 Was this the nature of your request?

11 A. Yes.

12 Q. If we could -- we can see -- if we go to {L6/0.2}, one

13 can see Herbert Smith, for Google's, initial response,

14 and you see they say that it is unreasonable to provide

15 it in the time, and if you go over the page {L6/0.2/2}

16 you can see they complain about the request. They

17 say -- in 4.1 and 4.2 they say it is unnecessary, that

18 it is not explained why it is necessary.

19 There was then a -- I do not know if you are aware

20 of this but there was then a long series of

21 correspondence that culminated in Mr Wisking giving his

22 ninth witness statement which, if we can go to

23 {H3B/13} --

24 MR PICKFORD: Sorry to rise. At the moment I am not quite

25 sure what the re-examination question is here. This

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1 seems to be submissions, because there was no question

2 from that document at all.

3 MR JOWELL: Well, I am coming on to it, because I am showing

4 the witness a number of documents.

5 THE CHAIRMAN: Well, you said Mr Hunt referred to asking for

6 this data.

7 MR JOWELL: Yes.

8 THE CHAIRMAN: You said that request was conveyed, and

9 the response.

10 MR JOWELL: Yes, and I am just --

11 THE CHAIRMAN: I do not know if we have to go through all

12 the correspondence --

13 MR JOWELL: No, very well.

14 THE CHAIRMAN: -- frankly, with the witness. What happened

15 in the end?

16 MR JOWELL: Well, that is what I was just going to show,

17 which is --

18 THE CHAIRMAN: I mean, the fact he asked for it and that

19 request was conveyed --

20 MR JOWELL: Well, we can just -- we can cut to the end,

21 which is what I am getting to, because this one was a

22 long correspondence.

23 This is Mr Wisking's ninth witness statement. If we

24 go to paragraph 45 of that on page 17, please

25 {H3B/13/17}, and one can see there on paragraph 45 that

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1 Google's response is it does not have any such data.

2 If one goes to {H3B/13/21}, paragraph 58, you can

3 see there they say it in very clear terms. So that was

4 the response to your --

5 A. Yes.

6 Q. -- request: we do not have it.

7 Finally, today, at [draft] page 21, if we could go

8 to page 21, hopefully that will have a bit -- today's --

9 this is today's transcript -- yes -- page 21, at lines 1

10 to 15, you can see that there is a question:

11 "... if the CSS has a very high bounce rate, they

12 are going to struggle to -- I mean, there will be some

13 which they can obviously win, but generally they are

14 going to struggle to be able to outbid a merchant, that

15 is the point."

16 That Mr Pickford was putting.

17 You say:

18 "So I agree that ... if they have a very high bounce

19 rate. The only thing I would say is, if the bounce

20 rate's not so high, so you have a lower bounce rate, and

21 if, when you land on the merchant site, you have a --

22 the user has a greater propensity to purchase, that --

23 the logic doesn't necessarily flow. But -- but just to

24 your proposition, you're putting the proposition to me,

25 if there's a very high bounce rate, and let's assume

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1 it's really very high so that offsets any impact of
 2 greater willingness to purchase, I agree with you ... "
 3 I just wanted to give you the opportunity to expand,
 4 if you like, on what you meant by "offsets any impact of
 5 greater willingness to purchase" in that context.
 6 A. Yes, so, I mean, this is a point that we've gone across
 7 a number of times, so I'll try and be really brief.
 8 My -- the point was that if -- obviously if -- when
 9 a user goes on to a CSS webpage and subsequently goes on
 10 to a merchant's page, if they have higher willingness to
 11 purchase the merchant's offer, all other things equal,
 12 that will make the -- what the CSS will -- essentially
 13 will value the traffic that comes into its website, all
 14 other things equal, it will make it value that traffic
 15 hitting its website by more, because the -- the --
 16 the purchase intent of the users going on to
 17 the merchants is higher and that's reflected in
 18 the value for the merchants that they pay, and then
 19 that's reflected in the amount that the CSS would be
 20 willing to pay for the traffic. Therefore there's an
 21 issue here with bounce rate of, you go on to a CSS
 22 website, some users come away, other users follow
 23 through on to merchants' webpages, and they're clearly
 24 offsetting effects. On bounce, when a consumer bounces,
 25 they don't go through to a merchant and there will be

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1 less -- there will be no value in that. Conversely,
 2 when the user goes through to a merchant, if they're
 3 more likely to purchase the goods, then that, it will
 4 have more value, and those two effects would offset each
 5 other.
 6 So here I'm talking about a scenario that
 7 Mr Pickford had put to me with a very high bounce rate,
 8 and if you assume the bounce rate's so high that you
 9 can't offset it with greater willingness to purchase
 10 the goods, which would also seem to make sense because
 11 if the bounce rate's so high then the user probably
 12 doesn't engage that well with the website, then I agreed
 13 with Mr Pickford that in that scenario, with a very high
 14 bounce rate, then the value for a CSS for traffic would
 15 logically be lower and that was the point I was trying
 16 to make.
 17 MS ROSE: Is one way of looking at it that, if you ask what
 18 are CSSs selling to merchants, they are selling two
 19 things. One is a higher volume of traffic, because they
 20 are exposing the merchant's product through things like
 21 Google Search, and the other is they are filtering that
 22 traffic from the perspective of the merchants so that
 23 when it comes through to the merchant from the CSS,
 24 there is a higher propensity to buy, and if you look at
 25 it from the perspective of the merchant you would ask,

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1 well, why would a merchant want to be to a CSS, why
 2 would a merchant pay the CSS for clicks?
 3 A. Yes.
 4 MS ROSE: Those are the two reasons: more traffic and/or
 5 higher quality traffic.
 6 A. Yes, that's correct, but then here we're working through
 7 the logic of, if that's correct, what does that mean
 8 for --
 9 MS ROSE: Yes, but that --
 10 A. -- how much the CSS --
 11 MS ROSE: But that just -- (overspeaking) --
 12 A. -- (inaudible)
 13 MS ROSE: -- goes up the trench.
 14 A. Yes, exactly, that's right.
 15 MR JOWELL: I have no further questions for Mr Hunt.
 16 THE CHAIRMAN: Mr West?
 17 MR WEST: (Off microphone - inaudible)
 18 Questions from THE TRIBUNAL
 19 THE CHAIRMAN: Just for my rather needling satisfaction, can
 20 I just ask you to clarify one small -- very small thing.
 21 It is in your first report, Mr Hunt. It is at page 153,
 22 which is {12/1/154}. You have got a figure 9.3 with
 23 a green line, a blue line and a little broken grey line.
 24 A. Yes.
 25 THE CHAIRMAN: The green line, at the bottom, says "GSE".

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1 A. Yes.
 2 THE CHAIRMAN: The blue line is "Rival Intermediaries".
 3 A. Yes.
 4 THE CHAIRMAN: So if we go on to the next page {12/1/155},
 5 which is about seven lines down, just after
 6 the paragraph referencing footnote 446:
 7 "... an increase in the proportion of clicks on
 8 merchant offers from rival intermediaries ..."
 9 That should be the blue line, should it not?
 10 A. Yes. Yes, that's right.
 11 THE CHAIRMAN: Yes, I got confused. Thank you. That is all
 12 I wanted to ask.
 13 There are no further questions for Mr Hunt.
 14 Shall we take an early break and then you want to
 15 address us on another matter; is that right?
 16 MR JOWELL: That seems sensible to us.
 17 THE CHAIRMAN: Would that be a sensible thing to do at
 18 the moment? Then we will move to Mr Noble. So we will
 19 come back at -- shall we come back at 1.30?
 20 So, Mr Hunt, that concludes your evidence, but you
 21 are still in purdah.
 22 A. Okay.
 23 THE CHAIRMAN: So you cannot discuss the case until
 24 Mr Noble's evidence is concluded.
 25 (12.35 pm)

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1 (The short adjournment)
2 (1.38 pm)
3 THE CHAIRMAN: Yes, Mr Pickford.
4 MR PICKFORD: Thank you, sir. So I think you were going to
5 hear from me on the two points now; is that right?
6 THE CHAIRMAN: Do they relate to the expert --
7 MR PICKFORD: No.
8 THE CHAIRMAN: No, I think --
9 MR PICKFORD: Oh, I have misunderstood, I am sorry.
10 THE CHAIRMAN: We thought we would finish the expert
11 evidence and then hear from you, but all I said is I
12 think we should not be in a timing problem.
13 Yes, Mr Jowell.
14 MR ROBIN NOBLE (continued)
15 Cross-examination by MR JOWELL
16 MR JOWELL: Thank you.
17 Good afternoon, Mr Noble.
18 As the Tribunal alluded to in the hot tub, at 1.37
19 of your report, you mentioned that you recognise
20 the definition of Google's CSS is ultimately a legal
21 issue, and the -- you recall that?
22 A. Sorry, I am just trying to get the mic.
23 THE CHAIRMAN: Just give Mr Noble a moment to get things
24 sorted.
25 (Pause)

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1 A. Sorry.
2 MR JOWELL: So I was just reminding you that you mentioned
3 at paragraph 1.37 of your first report that you
4 recognise that the definition of Google's CSS is
5 ultimately a legal issue?
6 A. Yes.
7 Q. The Tribunal also took you to paragraph 2.39 of your
8 report where you cite the Commission's definition of
9 a CSS in Recital 191 of the Decision?
10 A. Yes.
11 Q. Now, could I take you to paragraph 2.41, which is at
12 {I3/1/44}. I see it has come up.
13 You go on, you say -- you then go on to say that:
14 "At a minimum, CSSs are defined by having."
15 Then you say, first of all:
16 "A standalone website on which users can (i) search
17 for products by entering free text ..."
18 And so on.
19 Now, the source for that seems to be, when we look
20 at the footnotes, footnote 95 -- forgive me, if we go
21 back -- if one looks at the footnote 95, you mention
22 Braendle 2, paragraph 26, and Goodrow 2,
23 paragraph 21(a), yes?
24 A. Yes.
25 Q. If we go on in your report to {I3/1/108}, so this is

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1 paragraph 5.8, you criticise Mr Hunt. You say:
2 "Second, in my view Mr Hunt's premise that
3 the CGSE includes the user-side functionalities of
4 Google's CSS is based on a misunderstanding of
5 the economic differences between search engines and
6 CSSs."
7 You say:
8 "As set out in section 2E.2, I consider CSSs to be
9 one of many intermediaries in online product searches,
10 having, at a minimum ..."
11 Again, you say:
12 "... (i) a standalone website with certain
13 functionalities that allow users to 'search for and
14 compare products' ..."
15 Again, if we look at the footnote, footnote 255, we
16 see again the same reference to Mr Braendle's evidence
17 and Mr Goodrow's evidence, yes?
18 A. Yes.
19 Q. Now, just to be clear, Mr Braendle's evidence was that
20 before he started working on the Remedy in July 2017,
21 after the Decision came out, he had no prior experience
22 working with or on CSSs. Indeed, I think he said that
23 he was not even familiar with the expression "comparison
24 shopping services". Were you aware of that?
25 A. Yes, I think I was, yes.

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1 Q. So I think you would agree then that Mr Braendle is not
2 really a source of authority on whether a CSS always
3 requires a standalone website, is he?
4 A. I mean, he -- I mean, he had -- he had a view on that,
5 which I'm quoting, but I would -- I would accept that,
6 you know, he -- because he wasn't active in the business
7 in the earlier period, he may not be the -- you know,
8 the sole authority on that.
9 Q. The sole authority.
10 A. Yes.
11 Q. Or the best person, perhaps?
12 A. Yes.
13 Q. If we go to Mr Goodrow's evidence that you cite at
14 paragraph 21(a), if we go to {H3A/6/6}, what he says is,
15 paragraph 21, he says:
16 "As an Engineering Manager in Google Product Search
17 team, my role involved managing the consumer-facing user
18 interface ... of Google Product Search. This meant
19 the [User Interface] for both."
20 One:
21 "The 'Google Product Search property' a website that
22 allowed users to search for products ..."
23 Etc., etc.
24 Then we go down to (b):
25 "What was called the 'OneBox' (which by the time

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1 I joined became 'Product Universal', which we also later
 2 called the 'Shopping Universal'), which was the way that
 3 Google Product Search results showed up in Google Web
 4 Search results ..."
 5 Do you see that?
 6 A. Yes.
 7 Q. So he seems to be saying that he saw Google Product
 8 Search as having two user interfaces, one on
 9 the standalone website and one in the OneBox, or
 10 the Shopping Universal; do you agree?
 11 A. I'm not sure he's quite saying that, is he? Because
 12 the first -- the first sentence of 21(b) is he's
 13 describing the way in which Google Product Search
 14 results showed up in the Google web search results.
 15 Q. Well, if you look at the top, it is -- if you see
 16 the introduction, the chapeau for both (a) and (b), he
 17 says Google -- he says:
 18 " ... my role involved managing the consumer-facing
 19 user interface ... of Google Product Search."
 20 Then he says:
 21 "This meant the [User Interface] for both ..."
 22 Then he is clearly referring to two things, is he
 23 not, and one is the property, which he identifies with
 24 the website, and the second then is (b), the OneBox? So
 25 it is -- he is identifying two user interfaces, is he

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1 not, or two parts of the user interface?
 2 A. I mean, I think -- I think that's definitely what it
 3 says. I mean, I think there's a question of how one
 4 interprets what it means, particularly 21(b), given that
 5 the -- he's -- he's -- I mean, for me, the wording,
 6 "which was the way that Google Product Search results
 7 showed up in the Google Web Search results", is quite an
 8 important part of understanding what he means by 21(b)
 9 in the context of the Commission's market definition.
 10 Q. Well, he is certainly -- it is a bit hard to say that he
 11 is saying anywhere in this paragraph that the existence
 12 of a website is an essential condition for something to
 13 be a CSS. He is not saying that, is he?
 14 A. Sorry, is -- sorry, what was the proposition, that he's
 15 not saying ...?
 16 Q. He is not saying in this paragraph that the existence of
 17 a separate website is an essential condition for
 18 something to be a CSS, is he? He does not say that at
 19 any point?
 20 A. I mean, he doesn't -- he certainly doesn't use that
 21 wording, no. No, he doesn't.
 22 THE CHAIRMAN: Mr Jowell, Mr Noble has accepted that
 23 the definition for the purpose of these proceedings of
 24 what is a CSS is a legal question, so I am not quite
 25 sure what is the point of cross-examining him on how he

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1 approaches the definition.
 2 MR JOWELL: Well, I see that, and I could -- I mean, but
 3 I --
 4 THE CHAIRMAN: We have considered what is
 5 the characteristics of the market, how they compete in
 6 the market, how you define the market. Those are
 7 economic questions. But beyond that ...
 8 MR JOWELL: Yes.
 9 Well, let us -- let me go on then, if I may, to
 10 things that are perhaps more -- getting closer to the --
 11 to what might properly be called economic analysis,
 12 I suppose, involved in this.
 13 If we go back to 108 of your statement, so that is
 14 {13/1/108}, you go on to -- after mentioning
 15 the standalone website, you say:
 16 "... relationships with online retailers ... and ...
 17 the technology and capability to collect merchant feeds
 18 and offers ..."
 19 Then, over the page {13/1/109}, we see in 5.9, you
 20 criticise Mr Hunt for disregarding the definition of
 21 CSSs as established by the Commission, and you say that
 22 he does not:
 23 "... sufficiently [acknowledge] the competitive
 24 differences of Google Search and CSSs, which are shaped
 25 by their vertical relationship."

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1 You mention two. The first is the "Supply-side
 2 differences", and you point out that general
 3 search engines operate differently from CSSs, yes? You
 4 recall that?
 5 A. Yes. No, I think I point out three, don't I?
 6 Q. Yes, but one of them is that you say that general search
 7 services crawl effectively, they crawl the internet, and
 8 you contrast that with CSSs that use other processes,
 9 that effectively use different --
 10 A. Yes.
 11 Q. Yes.
 12 A. Yes.
 13 Q. You also focus on the existence of narrower --
 14 a narrower set of technologies with more specialised
 15 features tailored to product comparison, yes?
 16 A. Yes.
 17 Q. But you would agree, I think, that the Remedy Box is
 18 also focused on user engagement in the context of
 19 product queries, is it not?
 20 A. I mean, the -- the Remedy Box is part -- I mean, the way
 21 I interpret the Remedy Box is it is part of the SERP,
 22 which is -- in line with the Commission's market
 23 definition, it includes both general search results that
 24 come from the general web crawling process which we just
 25 described, and also results from verticals, and in this

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1 -- when it identifies a product search, it then may or
 2 may not trigger a product search result, one of which
 3 can be the Remedy Box, or in the earlier iterations
 4 the other -- the other iterations of the box.
 5 Q. Yes, but you agree that the -- obviously that the Remedy
 6 Box, clearly it is focused on user engagement in
 7 the context of product queries?
 8 A. Yes, and indeed the whole page is meant to be focused on
 9 that. I mean, that's the purpose -- I mean, the point
 10 that when -- when Google talks about trying to make
 11 the SERP page relevant, I think it's referring to
 12 the fact that everything on the SERP page is -- is
 13 essentially trying to speak to what it is that it thinks
 14 the query is, and if it thinks that a query is about
 15 products, then I think it's trying to present results
 16 that relate to products in all their different forms,
 17 and similarly if it thought it was about travel, it
 18 might present very different things.
 19 Q. Okay, but the Remedy Box also relies specifically on
 20 a narrower set of technologies, does it not, because
 21 the product box is not based on the same algorithms as
 22 the organic links? Correct?
 23 A. Yes, I think that's correct, and I think that's also
 24 true of other verticals too.
 25 Q. Yes.

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1 Then you -- if we go over the page {I3/1/110}, you
 2 mention "Demand-side differences" and you talk about:
 3 "... Mr Hunt's apparent conflation of parts of
 4 Google Search and Google's CSS ..."
 5 Now, and you say that -- you say:
 6 "As discussed in section 2C ... users generally
 7 employ search engines for a wide variety of queries."
 8 You say that:
 9 "Those starting their purchasing journey on general
 10 search services are provided with broad results from
 11 across the internet ... whereas detailed comparison of
 12 prices and product characteristics occurs elsewhere."
 13 I think you -- there is a footnote, 267, where you
 14 refer -- and indeed 268, you refer to Mr Friedman's
 15 evidence in the footnotes?
 16 A. Yes, that is correct, and in the other footnotes, I've
 17 got several references to the Commission's Decision.
 18 Q. Yes.
 19 Now, did you hear Mr Friedman's oral evidence?
 20 A. I heard some of it, yes.
 21 Q. In light of that, do you still stand by your assessment
 22 that the Remedy Box is not somewhere where users
 23 habitually compare prices and product characteristics?
 24 A. Well, I think it's important to see the -- what I say
 25 here in the light of what's then talked about in the --

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1 in the joint statement, because the demand-side
 2 differences are really what I emphasised in the joint
 3 statement, so that's at {I1/4/34} of the joint
 4 statement, and I refer extensively there to what --
 5 the Commission's market definition and I use some of
 6 the same references that I used here, but I also refer
 7 to some other ones there, and I think I was responding
 8 in the joint statement to a general criticism from
 9 Mr Hunt that he was concerned that there was a degree of
 10 circularity in what I was doing in that -- and I believe
 11 what he was referring to was in part the fact that I was
 12 referring to witness evidence that related to the Remedy
 13 Period and I think what I haven't been clear enough
 14 about, and I acknowledge that at -- where it is, in
 15 the joint statement, it is at {I1/4/37}, at the bottom
 16 right, was that, having re-read this section in light of
 17 Mr Hunt's criticisms, I did think it was a fair
 18 criticism that I could have been clearer about precisely
 19 why the definitions I was drawing -- what was
 20 the sources for them and hence why, in a sense, that is
 21 part of the reason why it is such a long answer to that
 22 question in -- in the joint statement.
 23 Q. Okay. Understood.
 24 Can I just ask you generally, if we just think about
 25 the Remedy Box, if you -- depending on the query, of

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1 course, but if you, say, have a relatively common query,
 2 like "Bialetti coffee makers" or something like that, it
 3 shows you immediately nine or so different products,
 4 does it not?
 5 A. In -- you mean if the Remedy Box is triggered --
 6 Q. Yes.
 7 A. -- I would then see a carousel of --
 8 Q. Nine --
 9 A. -- of -- yes.
 10 Q. You would immediately see nine, and if you click on
 11 the right link, you can get up to -- I think it is up to
 12 40 potentially? 30 or 40 --
 13 A. Yes, I believe that's factually correct.
 14 Q. Each of those are going to have prices, price
 15 information, typically?
 16 A. Yes.
 17 Q. They will also have other information, like delivery
 18 times and reviews, number in stock, and so on?
 19 A. I don't know whether it presents on the Remedy Box,
 20 whether it includes all of those details.
 21 Q. It sometimes --
 22 A. Right, okay.
 23 Q. Well, one can see.
 24 A. Yes.
 25 Q. But that is sufficient, is it not, to give many users

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1 a service that allows them to conduct meaningful
 2 comparison of prices and products, does it not?
 3 A. Yes, I mean, from -- sort of stepping back, there are
 4 lots of ways that a consumer can compare things.
 5 I mean, that's -- that's what section 2 of my report is
 6 trying to discuss is the various routes that consumers
 7 can take from, in a sense, beginning their shopping
 8 journey, and there's a diagram that I'm sure that
 9 the Tribunal has looked at, which is at page -- where
 10 is it -- {13/1/37} of my report, which describes some of
 11 those. I think it's fair to say that following various
 12 of these arrows, you know, various forms of comparison
 13 could well be taking place in lots of those. So one
 14 could compare it on a -- you know, a John Lewis website
 15 or the Amazon website or the Shein website or, you know,
 16 on a comparison shopping service or on a general web
 17 search.
 18 Q. Or in the Remedy Box?
 19 A. Yes, forms of comparison could take place via all of
 20 those routes, and so, yes, that would include that.
 21 Q. Coming back to your report that you see on the screen in
 22 front of you, you then mention "Commercial
 23 relationships" {13/1/110}, and you say:
 24 "... merchants take part in the Shopping Remedy only
 25 through the intermediation of CSSs, meaning that

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1 Google Search no longer has direct interactions with
 2 merchants 'from a business or technical standpoint' in
 3 relation to the Shopping Remedy."
 4 But are you aware now that Google does in fact still
 5 contract with merchants through Google Ireland?
 6 A. Well, I mean, to me -- I mean, I think this relates
 7 a little bit to the conversation that was had with
 8 Mr Hunt, yesterday, around whether or not one needs
 9 legal separation, and for an economist, I think, in my
 10 mind I'm drawing a -- a line between an entity that I'm
 11 referring to as Google Shopping Europe and another
 12 entity that I'm referring as Google Search. Now, I'm
 13 aware, I think, those are not legal entities in
 14 the sense that there is no separate legal personality
 15 associated with them, and so, because of that, that
 16 would I think necessarily mean that there must be some
 17 Google entity that maybe relates to both that you would
 18 have to contract with because you would need
 19 a contracting entity, so ...
 20 Q. That is fair enough. But it is also the case, is it
 21 not, that Google technically interacts with merchants in
 22 relation to their receipt of feeds? It cannot avoid
 23 that, even under the Remedy, can it?
 24 A. I mean, Google as a whole -- a holistic entity, yes,
 25 that must be true, but again, I think this is -- in

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1 a sense, the intellectual distinction I'm drawing is
 2 that there's Google Search on the one hand and there's
 3 Google Shopping Europe on the other, and my
 4 understanding is the way that Google operates is that
 5 there is essentially a form of separation between
 6 the two so that the merchant does engage with what I'm
 7 terming Google Shopping Europe and that information
 8 about that merchant is treated in the same way as
 9 information that might be provided by Kelkoo or any
 10 other CSS by the entity that I'm referring to as
 11 Google Search, such that there is, you know, no -- no
 12 mechanism by which discrimination could occur. So it
 13 couldn't self-preference because it knows that,
 14 you know, a particular product is being provided --
 15 a particular PLA is being provided by Google versus
 16 Kelkoo; it would only make that decision on parameters
 17 like price and quality.
 18 Q. I understand that. But it does still technically
 19 interact with those merchant feeds, does it not,
 20 inevitably?
 21 A. Yes, yes, inevitably, because there isn't legal
 22 separation.
 23 Q. No.
 24 Now, you mentioned in your evidence yesterday,
 25 I think, that there are two -- that if market definition

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1 depends largely on demand-side substitutability and you
 2 mentioned that that depends itself on what users care
 3 about; do you recall that?
 4 A. Yes, yes.
 5 Q. Could I show you the *PriceRunner* -- the very recent
 6 *PriceRunner* judgment. This is at {P/6/144}.
 7 A. So this -- this is the translation?
 8 Q. Yes, this is the translation, forgive me, yes.
 9 THE CHAIRMAN: This is the judgment of the Swedish Market
 10 Court and it came out a week ago or so --
 11 MR JOWELL: Yes, it did.
 12 They --
 13 THE CHAIRMAN: -- two weeks ago, as you see. This is, as
 14 you say, an agreed translation.
 15 MR JOWELL: Translation, yes.
 16 You see the middle paragraph? The court concludes:
 17 "As already established, Shopping Unit functioned in
 18 substantially the same way subsequent to
 19 the Modifications as before. According to the Patent
 20 and Market Court, Shopping Unit also met the specified
 21 definition of a CSS in the period subsequent to
 22 the Modifications."
 23 Then the next bit is the bit that I am interested:
 24 "There is no reason to believe that internet users
 25 perceived Shopping Unit in any other way subsequent to

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1 the Modifications than as described in the paragraph
 2 above."
 3 Then they say this:
 4 "This is also supported by a market survey conducted
 5 by PriceRunner. It shows that consumers who shop online
 6 and who use the Shopping Unit do so primarily to search
 7 for products and compare prices, but also to compare
 8 other product attributes, check availability, and click
 9 through to a retailer to make a purchase."
 10 Now, were you aware of the existence of this survey
 11 previously?
 12 A. No, I wasn't.
 13 Q. Did you consider asking for a survey in the context of
 14 these proceedings?
 15 A. No. No, I did not, because the -- my understanding was
 16 that we needed to take the -- you know, in a sense,
 17 begin the analysis from the Commission's market
 18 definition.
 19 Q. Do you think that this survey evidence might assist you
 20 and indeed the Tribunal in ascertaining users'
 21 preferences?
 22 A. If -- if I were to undertake a market definition
 23 analysis, which I haven't, then survey evidence about in
 24 a sense -- what, this is consumer -- well, I think this
 25 might be speaking to consumer-side, demand-side

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1 substitution, but I have to say, I'd need to know
 2 precisely what it is that they asked about in order to
 3 know that, because some surveys don't do that and I've
 4 been involved in a number of surveys and some do and
 5 some don't, so ...
 6 Q. Okay.
 7 THE CHAIRMAN: Mr Pickford, yes.
 8 MR PICKFORD: I am a little bit concerned about where these
 9 questions are going. I do not think there has ever been
 10 any push-back on the proposition that findings of fact
 11 of other courts and tribunals are inadmissible.
 12 THE CHAIRMAN: Yes.
 13 MR PICKFORD: There is no proposition of law that can
 14 possibly be put to this witness, because he is not
 15 a fact -- he is not -- that is not what he is there for.
 16 What this seems to be, as far as I can tell, is a hook
 17 by which Kelkoo are going to try to bring in something
 18 from different proceedings, under different rules with
 19 different evidence into these proceedings, and they are
 20 going to try and get answers to say: a-ha, well, now we
 21 have to have further disclosure. Or something along
 22 those lines.
 23 THE CHAIRMAN: There are two points -- quite separate
 24 points.
 25 One, I do not think, Mr Jowell, it is appropriate to

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1 cross-examine Mr Noble on a finding by the Swedish
 2 court. You can perfectly well ask whether a consumer
 3 survey would not be relevant and --
 4 MR JOWELL: That is what I did ask.
 5 THE CHAIRMAN: Yes, but one does not need to go to that
 6 judgment.
 7 MR JOWELL: Yes.
 8 THE CHAIRMAN: That is point one, and -- whether Mr Noble is
 9 aware of it or not, and that is a question clearly it is
 10 open to you to ask.
 11 The second point, Mr Pickford, is, was this document
 12 not disclosed by Google as part of disclosure in these
 13 proceedings?
 14 MR PICKFORD: My understanding is the answer to that is no,
 15 because it is a market survey that was conducted by
 16 PriceRunner for the purposes of the Swedish proceedings.
 17 I am not aware that it has been disclosed in these
 18 proceedings.
 19 THE CHAIRMAN: But it was given to Google in the Swedish
 20 proceedings, presumably?
 21 MR PICKFORD: Can I just take instructions?
 22 (Pause)
 23 Yes, so my understanding is that it was disclosed to
 24 Google in the Swedish proceedings.
 25 THE CHAIRMAN: Yes.

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1 MR PICKFORD: But it is not responsive to any disclosure
 2 order made in these proceedings, and I am afraid I do
 3 not even know the basis on which it is provided as
 4 a document in the Swedish proceedings. I do not know
 5 whether we are entitled to disclose it even if we wanted
 6 to. I would have to make enquiries about that. But
 7 there has been no order --
 8 THE CHAIRMAN: There has been no order specifically about
 9 this --
 10 MR PICKFORD: No.
 11 THE CHAIRMAN: -- no. Indeed, these Claimants may not have
 12 been aware of it until they saw the judgment.
 13 But, subject only to the question of whether, under
 14 Swedish law, you are not entitled to disclose it in
 15 other proceedings, once you have it as a document, if it
 16 is relevant, and on first blush it might be, it might be
 17 very relevant, one would have thought you are under an
 18 obligation to disclose it.
 19 MR PICKFORD: Well --
 20 THE CHAIRMAN: It does not matter where you got it, unless
 21 the terms of disclosure in Sweden are such that you are
 22 not entitled to disclose it any further, which I do not
 23 know.
 24 MR PICKFORD: I will have to take instructions, but I have
 25 known nothing about this until today.

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1 THE CHAIRMAN: Yes.
 2 MR PICKFORD: So it is not a document that I --
 3 THE CHAIRMAN: Well, except when you read the judgment, you
 4 mean?
 5 MR PICKFORD: Sorry?
 6 THE CHAIRMAN: Except when you read the Swedish judgment?
 7 MR PICKFORD: Well, I -- I do not --
 8 THE CHAIRMAN: Or those behind you read it.
 9 Anyway, I do not think that affects this
 10 cross-examination. You might want to take instructions,
 11 first, about the terms on which you got the document
 12 and -- when you got the document in the Swedish
 13 proceedings and under what terms, and whether Swedish
 14 law prohibits any further disclosure. But prima facie
 15 it seems a relevant document, but I do not think it is
 16 a matter for Mr Noble, that is clear.
 17 MS ROSE: When you are taking instructions, can you also
 18 consider the distinction between producing the document
 19 and disclosing its existence?
 20 MR PICKFORD: Of course.
 21 THE CHAIRMAN: So, I mean, I think you asked Mr Noble, did
 22 he consider asking -- conducting a survey, and I think
 23 his answer was: well, if I were to undertake a market
 24 definition analysis, I would have considered that, but
 25 I did not do such analysis presumably because we are

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1 bound by the market analysis in the Decision.
 2 Is that ...?
 3 A. Yes, that's a fair summary, yes.
 4 MR JOWELL: So, just if I may respond to one point that my
 5 learned friend -- perhaps a technical point, but under
 6 the ruling in *Hollington v Hewthorn*, there is no
 7 prohibition on putting a document, even if it is
 8 inadmissible, to a witness.
 9 THE CHAIRMAN: Yes, well --
 10 MR JOWELL: What is inadmissible is relying on it for
 11 the truth of its contents, but I am perfectly entitled
 12 to put an inadmissible document to a witness --
 13 THE CHAIRMAN: Yes. Well --
 14 MR JOWELL: -- and certainly for the purposes of
 15 ascertaining whether there is useful further evidence.
 16 THE CHAIRMAN: Yes, it does not establish the truth of it,
 17 but the -- certainly, it is fair you can ask was he
 18 aware that there had been such a survey in Sweden --
 19 MR JOWELL: Yes.
 20 THE CHAIRMAN: -- and the answer is Mr Noble says he was
 21 not.
 22 MR JOWELL: No, indeed, and I asked him whether he thought
 23 it would be useful and I think the thrust
 24 is: potentially.
 25 Is that a fair --

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1 THE CHAIRMAN: That the market definition analysis would be
 2 useful?
 3 MR JOWELL: Yes.
 4 A. Yes, although I would say that, in my experience, there
 5 are lots of different types of surveys, and I would
 6 almost put them would three buckets. There's one which
 7 are sort of general market surveys that tell you
 8 something about what consumers' preferences are.
 9 There's a second group, which is what I call a sort
 10 of a diversion survey. Those tend to be used in merger
 11 contexts, which are about what you would call unilateral
 12 effects analysis and you're asking people: what happens
 13 if thing A isn't available, where would you go next?
 14 That gives you a hierarchy in terms of what -- what
 15 the preferences are and that can be helpful in terms of
 16 your analysis.
 17 Then there's a third type of survey which is in
 18 a sense much more useful for market definition, which is
 19 then asking much more specific questions to do with, and
 20 this is marginal choices, because one of the challenges
 21 with a diversion -- the second group, the diversion
 22 survey, is you make everybody divert, and what market
 23 definition is about is about marginal choices by
 24 marginal consumers and so you would then need to try and
 25 tease out: well, who would not change what they do and

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1 who would and by how much? So that's in a sense why it
 2 critically matters what is this survey, what does it
 3 look like, how was it conducted, what is the number of
 4 observations, who was it asked to, etc.
 5 MR JOWELL: So I am sure you would be very interested to see
 6 it?
 7 A. It seems an interesting survey.
 8 Q. Could I turn to another topic then, which is {I3/2/112}.
 9 You raised this in the hot tub. It is your table
 10 of -- with the list of the various CSSs and
 11 the different business models. Perhaps I have got
 12 that -- it is I3, tab 2, page 112.
 13 A. This is annex 13?
 14 Q. Yes, indeed.
 15 A. Yes, yes.
 16 Q. It is your list of the various CSSs with the various
 17 business models and the top 40.
 18 A. Yes.
 19 Q. Now, you are aware that Mr Hunt asked for a breakdown in
 20 the revenue and clicks split between the managed,
 21 self-service and hybrid model, are you not?
 22 A. Yes.
 23 Q. You are aware that Google said that that data was not
 24 available?
 25 A. Yes, I am, yes.

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1 Q. Now, I understand that you have sought to identify from
 2 material in the public domain which business model each
 3 of these companies operates under?
 4 A. Yes, and I think also, just to -- I -- re-reading
 5 the survey, it wasn't just the public domain, I think
 6 there are various witness statements and other documents
 7 in this case, for example, about Kelkoo, that I've
 8 referred to. So not all of it's public domain, but the
 9 vast majority is because most of the entities here are
 10 not -- not parties, so ...
 11 THE CHAIRMAN: But apart from Kelkoo and Ciao and Google
 12 itself -- in fact Google itself is not included, GSE is
 13 not included, I think, in your table, is it?
 14 A. No, this is the rival -- top 40 rivals, so --
 15 THE CHAIRMAN: Yes, so it is only Kelkoo and Ciao and
 16 Connexity, because you would have had --
 17 A. Yes, and then Foundem is not in here because they don't
 18 participate.
 19 THE CHAIRMAN: No. Is Ciao in here? They should be, should
 20 they not?
 21 MR JOWELL: I do not know. Ciao no longer --
 22 THE CHAIRMAN: Oh, this was in --
 23 MR JOWELL: -- it trades under Kelkoo in 2023, yes.
 24 THE CHAIRMAN: Yes, so it was no longer.
 25 So it is just -- it is only Kelkoo and Connexity

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1 that you could get from these proceedings?
 2 A. Yes.
 3 THE CHAIRMAN: So everything else is --
 4 A. Everything else is public domain.
 5 THE CHAIRMAN: Yes.
 6 A. Then I think, as I explained yesterday, there are
 7 various links and footnotes that then seek to evidence
 8 the points that I make.
 9 MR JOWELL: Yes, I appreciate you are a busy man, and this
 10 is no criticism, but I take it that the research was
 11 actually probably done by someone in your team; is that
 12 fair?
 13 A. Yes, so the -- yes, it was, and I looked through various
 14 parts of that, yes.
 15 Q. Yes.
 16 As just mentioned, I think you mention at the top --
 17 you -- I think we cannot see it, but, yes, you say -- at
 18 the top there, you say you:
 19 "... note that the business model and the pricing
 20 structure are not always identifiable from public data."
 21 A. Yes, that's --
 22 Q. You fairly acknowledge that.
 23 A. Yes, because I think the statistics we talked about in
 24 the hot tub didn't add up to 40 --
 25 Q. Right.

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1 A. -- because of that factor.
 2 Q. Right.
 3 Now, of course, ranking these by number of clicks,
 4 that does not necessarily reflect relative revenue,
 5 does it?
 6 A. Sorry, revenue?
 7 Q. You have attempted a ranking of the top 40.
 8 A. Yes.
 9 Q. But your ranking is by the number of clicks.
 10 A. Yes.
 11 Q. I make a very simple point, that does not necessarily
 12 reflect --
 13 MS ROSE: Do we know these are ranked by number of clicks?
 14 THE CHAIRMAN: Well, top 40 in which sense?
 15 MR JOWELL: Yes.
 16 THE CHAIRMAN: Is perhaps --
 17 A. Yes, so it's clicks, essentially, that the -- so
 18 the homework that still is extant is the ordering and
 19 the numbering to give you the number of clicks, but
 20 the top 40 is by traffic, which means clicks.
 21 THE CHAIRMAN: That is available from?
 22 A. Yes, so if you go to the bottom of the table, there's
 23 a reference, and that's a 26MB Comedy Ltd file that
 24 I was --
 25 THE CHAIRMAN: Yes, the number of clicks comes from Google.

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1 MS ROSE: From Oxera.
 2 A. Yes, well that's -- yes, so that's -- that's our
 3 analysis of that dataset, which is a 26MB data file.
 4 THE CHAIRMAN: So the number of clicks you get from Google,
 5 was my understanding, I think we asked you this, but
 6 whether it is self-service or managed and how, in other
 7 words, the two right-hand columns, the business model
 8 and pricing structure, that you got from the public
 9 information?
 10 A. Yes, correct.
 11 MR JOWELL: The point I was putting to you is clicks do not
 12 always reflect revenue, do they, relative revenue?
 13 A. I'm thinking -- can you specify, revenue to whom?
 14 Q. Well, Mr Hunt asked for a breakdown in the revenue and
 15 clicks split between the managed and self-service
 16 models.
 17 A. Yes.
 18 Q. You cannot derive from these how much -- that this is
 19 necessarily the -- if you were to order these --
 20 A. Oh, you mean revenue earned by the CSS?
 21 Q. Yes, earned by the CSS, yes.
 22 A. Okay. Yes, no, that's correct. So what the data tells
 23 us is the click -- the click-throughs, because that's on
 24 a box hosted by Google and Google has that data. What
 25 it doesn't then tell us is, based on whatever

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1 the business model is and whatever the fee structure is
 2 for the CSS, how much revenue do they earn for any
 3 individual click or in total. So, yes, I'd agree with
 4 that statement.
 5 THE CHAIRMAN: So the top 40 by revenue might not be
 6 the same as the top 40 by clicks? You may not have
 7 known that, but it might --
 8 A. Yes, I think that's fair, yes. Yes, I think that's --
 9 I think that's a fair -- that's a fair statement.
 10 MR JOWELL: You cannot derive from this the proportion even
 11 of clicks that are managed as opposed to self-service,
 12 can you, because so many -- for one thing, so many of
 13 these are -- do both?
 14 A. I'm not sure that's quite right. I mean, there are
 15 a number where we felt able to conclude that they were
 16 either one or the other, and so -- because I think it's
 17 nine managed, nine self-service, and then either -- and
 18 then 13 that are both and then the remainder are --
 19 Q. Yes.
 20 A. -- it's unclear. So certainly what one can do is,
 21 you know, subject to that classification, you can then
 22 say, well, this proportion of clicks are associated with
 23 what we think are managed, this proportion is associated
 24 with self-service, and then -- then in -- then the group
 25 where you don't know, or both, then in a sense you can

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1 -- because we can't split, those go somewhere in
 2 the middle.
 3 Q. That is right. Assuming, of course, that you have
 4 correctly categorised all of these?
 5 A. Yes.
 6 Q. Now, not on your list, of course, is Google Shopping
 7 Europe, as we have just discussed, and that is by far,
 8 or was in 2023 certainly by far the largest, was it not?
 9 It accounted for over 50% of clicks?
 10 A. It is a large -- a large entity, yes. I'd have to check
 11 exactly on the data, but it is -- it is a very large
 12 percentage.
 13 Q. The largest?
 14 A. Yes, it's larger than -- than any one individual of
 15 the top 40 at that time.
 16 Q. Indeed, I think we will find when we get your document
 17 -- we believe we will find that it accounts for over 50%
 18 of the clicks in 2023, the relevant year?
 19 A. I'd have to check precisely, because the numbers change
 20 fairly rapidly, but if -- if -- if -- you warrant that
 21 to me, I'm not -- I'm not --
 22 Q. Yes, but in any event, it very largely operates under
 23 the self-service model, does it not?
 24 A. Yes, that's my understanding.
 25 Q. Now, you are aware that before the Remedy was adopted,

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1 there were advertising agencies that performed some of
 2 the functions that CSSs now perform under the managed
 3 model; correct?
 4 A. Sorry, can you just say that again?
 5 Q. I said: were you aware that before the Remedy was
 6 adopted, there were advertising agencies that performed
 7 some of the same functions that CSSs -- so-called CSSs
 8 now perform under the managed model?
 9 A. Yes, yes, they performed some of the same functions.
 10 Q. Can I remind you of a document that I showed
 11 Mr Braendle; I think he was not aware of it. It is at
 12 {M1/489}.
 13 This is "A guide for Agencies to set up for success
 14 with Shopping Ads as a Comparison Shopping Service."
 15 It is a Google document.
 16 If we go to {M1/489/3}, you can see the thrust of
 17 it. It says:
 18 "You now have more choices to participate in
 19 Shopping ads.
 20 " ...
 21 "You have the chance to become a CSS yourself, by
 22 avoiding GSE commissions."
 23 You can see there are a diagram as to how an agency
 24 is effectively becoming a CSS, yes?
 25 A. Yes.

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1 Q. If we go to {M1/489/4}, we see it offers advice for
 2 agencies interested in running a test, yes?
 3 A. Yes, it does.
 4 Q. So you can see that, at least at one stage, Google was
 5 positively encouraging advertising agencies to become --
 6 to transform themselves into supposed CSSs, yes?
 7 A. Yes, this slide deck does appear to be aimed at
 8 encouraging ad agencies to consider adopting a CSS
 9 model.
 10 Q. Yes.
 11 Now, are you aware that some of those on your list
 12 that now operate the managed model were previously
 13 advertising agencies that then became CSSs effectively
 14 in order to obtain extra revenue under the Remedy?
 15 A. Yes, I was aware of that.
 16 Q. So if we take, for example, Shoptimised. If we go back
 17 to your table on {13/2/112}, please, Shoptimised is
 18 the [redacted].
 19 Now, are you aware that that actually operates
 20 I think it is four CSS networks to increase visibility?
 21 I think you mention one of them, which is CrowdShopper,
 22 but there are others, Find the Trend, High Street One
 23 and Cascade Shopping, were you aware of that?
 24 A. No, I don't think I was aware of the other ones. So
 25 I was aware -- obviously aware of CrowdShopper because

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1 they're on here. Well, I don't know, are we allowed to
 2 stay that? It's in yellow.
 3 Q. Oh, forgive me, yes.
 4 A. Anyway --
 5 Q. I do not think it is a secret that they exist.
 6 But have you checked out the quality of their
 7 websites at all?
 8 A. I've certainly tested various of them. So, for example,
 9 I was looking at Idealo, although they're not on this
 10 list because they don't participate. I was looking at
 11 Redbrain as well.
 12 Q. Yes, but if I was to suggest to you that the quality of
 13 the Shoptimised website suggests that they are very
 14 rudimentary, would you have a view either way?
 15 A. I mean, as an economist, I'm not sure I'm well placed to
 16 offer a view on, in a sense, sort of survey evidence, as
 17 it were, on the quality or not of each of these
 18 websites.
 19 Q. If we go to another example on your list, Shopping.com,
 20 if we go to {K2/80}, please, which I think -- this is
 21 the evidence that you rely on.
 22 A. Mm-hm.
 23 Q. Well, actually, before we do that, can we perhaps go
 24 back to the previous page {13/2/112}. Let me just
 25 remind you. If you look at, I think it's footnote 130,

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1 if we could just look down, you see the evidence in
 2 relation to Shopping.com. You say:
 3 "The website suggests that [it] evolved from
 4 a self-service model to managed model where ..."
 5 You see it says:
 6 "... 'the major advantage of using [redacted] is
 7 that you do not have to write your own product
 8 description for product feeds. This is because
 9 [redacted] provides a common description at the top of
 10 the advertisement page'."
 11 So that seems to be what you are basing your
 12 categorisation on, or your -- perhaps, to be fair, your
 13 assistant was?
 14 A. Mm-hm. Yes.
 15 Q. If we go then -- if we go to the document --
 16 THE CHAIRMAN: Just before we go off, just for the future of
 17 this case, why are these details confidential? I mean,
 18 the name, the website, the business models publicly --
 19 are from a public source, you say it is all from public
 20 source other than that they are within the top 40, but
 21 even that?
 22 A. Well, yes, I think it's -- I mean, I --
 23 THE CHAIRMAN: It may not have been your decision.
 24 A. No, no, the confidentiality markings were not done --
 25 done by me.

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1 THE CHAIRMAN: Not done by you.
 2 A. No.
 3 THE CHAIRMAN: Well, at some point, if that can be
 4 clarified, because it does not seem to me that it is any
 5 justification for that being confidential.
 6 MR JOWELL: It can only be the ranking.
 7 MR PICKFORD: My understanding is it is the ranking.
 8 THE CHAIRMAN: What, that they are the -- that this lot are
 9 the 40 largest by number of clicks?
 10 MR PICKFORD: No, I do not think that is confidential. It
 11 is the fact that there is an order here.
 12 THE CHAIRMAN: Well, there is not, I think. We are waiting
 13 to hear that, but okay, the order might be. I can see
 14 that when we get the details, which Mr Noble's
 15 colleagues are gathering of the number of clicks, that
 16 number will be confidential. That I fully understand.
 17 But the fact that all of these are in the top -- these
 18 constitute the top 40, excluding GSE, that is not
 19 confidential, I would have thought.
 20 MR PICKFORD: I do not think so. Can I just take
 21 instructions on --
 22 THE CHAIRMAN: Yes. Well, we do not need to know this
 23 immediately, but just it is something it would be
 24 helpful to know --
 25 MR PICKFORD: Of course.

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1 THE CHAIRMAN: -- because some weight is being placed on
 2 this table.
 3 Yes, just pause a moment.
 4 MR JOWELL: Yes, of course.
 5 (Pause)
 6 MR PICKFORD: What I can say now is that but for this table,
 7 CSSs do not know how they rank relative to one another.
 8 That is commercially confidential information.
 9 THE CHAIRMAN: Right.
 10 MR PICKFORD: So were it to be disclosed how -- who is above
 11 whom in this table, that would be adding new information
 12 into the competitive environment that it currently does
 13 not have.
 14 THE CHAIRMAN: No, I understand that the further information
 15 that we are going to receive is confidential.
 16 MR PICKFORD: Yes. Well --
 17 THE CHAIRMAN: That I appreciate, but --
 18 MR PICKFORD: It is -- no, it is not just the further
 19 information, it is the fact that this table -- I mean,
 20 I can say this, this table is ranked. I think we are
 21 going to be able to give you the letter that --
 22 THE CHAIRMAN: Ah.
 23 MR PICKFORD: -- very shortly that says that.
 24 THE CHAIRMAN: But we do not know on what basis?
 25 MR PICKFORD: No, on the basis of number of -- volume of

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1 traffic , on clicks . So that was what the witness's
 2 understanding was. He was then unsure, he was
 3 challenged about it and he said, "Well, okay, I will
 4 check", and we are about to -- or rather his firm are
 5 about to send a letter , or very shortly , to say it is
 6 indeed what it purports to be, it is ranked by number of
 7 clicks and therefore traffic .
 8 So that is why the ordering is --
 9 THE CHAIRMAN: Yes, I understand.
 10 MR PICKFORD: -- confidential and the relative positioning
 11 of --
 12 MR JOWELL: Well, I am going to try to avoid --
 13 THE CHAIRMAN: Yes, okay.
 14 MR PICKFORD: -- CSSs.
 15 MR JOWELL: We have seen where Shopping.com is, we do not
 16 need to mention it. Insofar as it has found its way
 17 into the transcript , that should presumably then be
 18 expunged.
 19 But what I wanted to show was the basis on which it
 20 has been assessed as being a managed service only, and
 21 I do not think that that is in any way confidential,
 22 because it all comes from information that is in
 23 the public domain.
 24 THE CHAIRMAN: Yes.
 25 MR JOWELL: So if I can show you that, it is at {K2/80}, and

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1 this seems to be the document, and I think the bit that
 2 is quoted in your footnote is just under the -- it is
 3 round about the middle of the page, underneath the
 4 heading, "Shopping.com feeds", where it says:
 5 "The major advantage of using Shopping.com is that
 6 you do not have to write your own product description
 7 for product feeds. This is because Shopping.com
 8 provides a common description at the top of
 9 the advertisement page. So makes your job as well as
 10 ours easy."
 11 Now, I can understand that superficially that
 12 suggests that they are doing something more than in
 13 the model that is purely a pass-through,
 14 the self-service model, but if we look at this page, can
 15 I just observe a few things about it to you and see if
 16 you agree. The top-left, it says:
 17 "Search engine Genie."
 18 So this seems to be a third-party site, it is not
 19 actually Shopping.com's own site; is that correct?
 20 A. I don't know whether it is a third-party site. I mean,
 21 I think the thing I'd observe about it, which I think
 22 goes directly to your point about whether we're talking
 23 about a managed or a self-service model, is that the way
 24 the text goes on at the bottom of the page to describe
 25 how it is that merchants interact with Shopping.com is

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1 that they are interacting with Shopping.com and
 2 uploading material to them, and I infer from -- then
 3 what happens is that there's an upload from Shopping.com
 4 to Google's system and that's different from the way you
 5 would interact with a self-service, because with
 6 self-service you're engaging with the Google interface,
 7 in a sense just almost logging in as if you were
 8 Shopping.com, and that's not -- that isn't what I think
 9 is happening here.
 10 Q. Right, but let us just understand that. If we just look
 11 at, first of all , where this comes from, it does seem to
 12 be -- it is labelled "Search engine Genie", so it seems
 13 to be from a third-party source, not from Shopping.com
 14 itself ?
 15 A. Oh, so your point is that the webpage itself is a --
 16 Q. Yes.
 17 A. -- description of what Shopping.com does --
 18 Q. Yes, by a third party, yes.
 19 A. -- and you're suggesting that this is not from
 20 Shopping.com.
 21 Q. Shopping.com itself, yes.
 22 A. Yes, I think that's -- I think that is a fair summary,
 23 yes.
 24 Q. Do you see, at the top right, there is a phone number,
 25 that suggests that it is an American number, or

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1 certainly not a UK number; correct?
 2 A. Yes, I mean, the "+1" code is the north Atlantic --
 3 sorry, the North American dialling code, which includes
 4 Canada as well as the US.
 5 Q. Yes.
 6 If we look at the paragraph below the paragraph that
 7 you quote in the footnote, it talks about a minimum
 8 deposit the \$200?
 9 A. Yes.
 10 Q. So this seems to be a description of how Shopping.com
 11 operates in the United States, does it not?
 12 A. Not -- well, not necessarily, because it's got a little
 13 flag at the top of the page with a US and Canadian flag,
 14 which is consistent with the phone number, but it's also
 15 got what I think is a UK flag. I'm not quite sure what
 16 the right-hand flag is. My pub quiz abilities aren't
 17 good enough for that, but, anyway ... yes, so, it does
 18 have a number of flags at the top which --
 19 Q. It is India, I am told.
 20 A. India, okay.
 21 Q. This does not -- I mean, there is nothing in here that
 22 I see that tells us that this is exclusively a managed
 23 model and certainly not exclusively a managed model in
 24 the United Kingdom or Europe.
 25 A. Well, I mean, I'd certainly say that we -- that

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1 the challenge with doing this analysis is that the -- we
 2 have to rely on public information. We don't -- we
 3 don't know, and I believe Google doesn't know, what
 4 model people use, and so what we've attempted to do is,
 5 to the best of our abilities, to gather publicly
 6 available information about what it is, you know,
 7 the best available descriptions of these different
 8 websites. This is the one we were able to identify for
 9 Shopping.com, and, you know, my -- my -- you know,
 10 the conclusion we drew in the report and the conclusion
 11 that I continue to draw now is -- is that
 12 the information available on this webpage leads me to
 13 the conclusion that they are operating a managed model,
 14 because there's no reference to, in a sense, people
 15 engaging with the Google self-service portal.
 16 Q. But it does not tell you that this is exclusively
 17 a managed model. I mean, this is just a description of
 18 one of the services that Shopping.com -- on
 19 a third-party website that Shopping.com offers. It does
 20 not tell you that they do not offer a self-service
 21 model, does it?
 22 A. Well, it does not positively disavow the existence of
 23 a self-service model, I would agree with that statement,
 24 yes. It does, in my interpretation, positively
 25 articulate what I interpret to be a form of managed

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1 model.
 2 Q. Well, if we go back to {13/2/112}, if we look again at
 3 your footnote 130, what is written there is, it says:
 4 "The website suggests that Shopping.com evolved from
 5 a self-service model to a managed model ..."
 6 Which suggests that you thought that it did have
 7 a self-service model and then it evolved to a managed
 8 model. So do you have any idea why you thought that, or
 9 those that wrote this report or assisted you with this
 10 report thought that?
 11 A. I would have -- I would have to re-review that page to
 12 be sure why we -- why we drew that conclusion.
 13 Q. Yes.
 14 You see, I suggest that there is no basis for
 15 suggesting that they do not also have a self-service
 16 model based on this material.
 17 A. I mean, I think I've answered that question in the sense
 18 that I don't -- I don't think the -- that the page,
 19 particularly the bottom part of that page, I think that
 20 positively articulates what is a managed model.
 21 Q. That is as far as one can go, is it, a third-party site
 22 has written something that suggests that they may have
 23 a managed model?
 24 A. Yes, I mean, that -- I think that -- that is --
 25 a third-party site has written things about

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1 Shopping.com, we've used that to try and draw inferences
 2 about, well, what model does Shopping.com offer.
 3 Q. But there is nothing there that suggests that they have
 4 evolved from a self-service model to having an
 5 exclusively managed model, is there?
 6 A. I -- I think -- I think that is fair comment about,
 7 you know, that first sentence. It's -- I'd need to
 8 re-review the page, but having reviewed what we have
 9 just looked at, it's not obvious to me that there --
 10 you know, in a sense, there is a description of
 11 a timeline, that it describes an evolution.
 12 Q. So can I suggest to you more generally that this process
 13 of looking at these things in the public domain is just
 14 not a terribly reliable basis for forming a view as to
 15 what sort of models these companies operate under?
 16 A. I mean, it's -- I -- I think we've tried hard to arrive
 17 at what is the conclusion based on the evidence that
 18 we've got. Obviously it would be great if Google could
 19 have told us the answer to this. As I understand it,
 20 Google can't tell us the answers to that, and so we have
 21 to rely on the CSS --
 22 Q. You say you have to. I mean, you could have called them
 23 up, right, and asked them, or written them an email?
 24 There is nothing to prohibit you writing to them to say,
 25 "What sorts of models do you operate under", is there?

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1 A. Yes, we could have done that.
 2 Q. I would like to hand over now to Ms Love, who will be
 3 asking questions on the counterfactual.
 4 THE CHAIRMAN: Can I just ask, following up that last
 5 answer, why did you not?
 6 A. We felt at the time that the public domain information
 7 was sufficient to be able to draw the conclusions.
 8 THE CHAIRMAN: So with Shopping.com, you felt comfortable
 9 relying on what Shopping Genie told merchants, how it
 10 could help them use Shopping.com?
 11 A. I think the -- I mean, I -- what -- one constraint we
 12 were under at the time is we had around six weeks to
 13 prepare the report, and so we had to work very fast.
 14 I think, had we had more time, I think it's a fair
 15 comment that, you know, further work could have been
 16 done, whether that's phone calls or emails.
 17 PROFESSOR SMITH: Can I ask a parallel question?
 18 Yesterday, you responded to a question about
 19 the nature of the websites that these CSSs had to -- you
 20 reminded us that CSSs had to have a website --
 21 A. Yes.
 22 PROFESSOR SMITH: -- in order to participate in
 23 the competition. Did you or your team look at
 24 the websites of any of these people?
 25 A. Yes, we did.

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1 PROFESSOR SMITH: Did you form a view that they were
 2 satisfactory price comparison websites?
 3 A. I mean, yes. I mean, they -- they all, on their face,
 4 appeared to meet the minimum criteria.
 5 PROFESSOR SMITH: The minimum criteria includes showing
 6 alternative sources of the products with alternative
 7 prices?
 8 A. Yes.
 9 PROFESSOR SMITH: Thank you.
 10 Cross-examination by MS LOVE
 11 MS LOVE: Mr Noble, I am going to start by picking up on one
 12 short, discrete point, which is that you said on
 13 {Day13MT1/161} that you thought that you recalled seeing
 14 something in Mr Stables' evidence about there having
 15 been some CLA-type ads on publisher sites. Do you
 16 recall that? We do not need the precise wording, but do
 17 you recall the --
 18 A. Yes, I do.
 19 Q. We -- well, those behind me have searched in vain for
 20 where that might be in Mr Stables' evidence and we have
 21 not been able to identify it. Have you been able to do
 22 so?
 23 A. Yes, I have. It wasn't in Mr Stables' evidence is
 24 the first point to make, it was in Raff 5, it's
 25 paragraph 59 to 62.

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1 Q. Now, sir, members of the Tribunal, Mr Pickford explained
 2 at the outset of his cross-examination in relation to
 3 the counterfactual that Mr Hunt had covered a very large
 4 amount of contemporaneous material -- sorry, he said
 5 this at the end -- but in the light of the Tribunal's
 6 indication, he was not going to be going through it.
 7 The position is somewhat different for Mr Noble in that
 8 there have been, I think, only five contemporaneous
 9 documents cited in section 6 of your report, all of
 10 which postdate the Decision but, by analogy, I am also
 11 not going to be going through each of those individual
 12 pieces of evidence. Instead I am going to ask a small
 13 number of questions on the individual counterfactual
 14 scenarios.
 15 So we are going to start with scenarios 1 and 2,
 16 the counterfactual that was implicitly adopted by
 17 the Commission.
 18 A. Yes.
 19 Q. In relation to demotions, you helpfully clarified
 20 yesterday that you are essentially in agreement with us
 21 that if Google's actual algorithms had not been lawful,
 22 it would have modified them, it would have adjusted them
 23 to moderate their effects on comparison shopping
 24 services, yes?
 25 A. Well, I guess, just thinking about the framework in

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1 which I'm meant to think about this, my understanding
 2 was that the Chair described it as, you know, first, one
 3 asks the question is it legal, then is it technically
 4 feasible, and only then do we get into the --
 5 essentially the commercial rationality which one part of
 6 is then the incentives. So if we're in that last part,
 7 then, yes, I can --
 8 Q. I am not asking you to comment on the technical
 9 feasibilities --
 10 A. Yes.
 11 Q. -- of moderating algorithms.
 12 That would have meant that CSSs, or at least good
 13 quality, non-spammy CSSs, would have appeared in
 14 the organic results if they had had relevant results for
 15 shopping queries, yes?
 16 A. So --
 17 Q. If the algorithms had been moderated to adjust their
 18 effects on CSSs?
 19 A. Yes -- well, yes, it's -- they -- they would not have
 20 been demoted and therefore they may have ranked.
 21 The extent to which they would have would then have
 22 depended on, you know, the various factors on
 23 the website.
 24 Q. So that leaves the main difference between scenario 1
 25 and scenario 2, which is whether, if Google did not have

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1 a shopping box reserved for its own CSS, it would have
 2 wished to take steps to make comparison shopping results
 3 on the SERP look more attractive with the enhanced
 4 display features, yes? That is the dividing line
 5 between the two?
 6 A. Yes.
 7 Q. You explained, yesterday, that your main issue with
 8 scenario 2, with making these comparison shopping
 9 results more attractive, is that it involves Google
 10 giving up premium space on the SERP free, yes?
 11 A. Yes.
 12 Q. Now, in the real world, Google obviously did give up
 13 that space free until 2013, because, as you yourself
 14 emphasised, it is very clear from the evidence that
 15 keeping the shopping starts on Google was seen as a key
 16 goal during the Decision Period, yes?
 17 A. So, factually, yes, it did do that, and one of
 18 the factors that appears to have driven that is indeed
 19 the shopping starts, yes.
 20 Q. That is even at a cost of \$100/200 million a year in
 21 cannibalisation, yes?
 22 A. Yes, although the other point that I emphasised in that
 23 answer is that what we know is there were two incentives
 24 at play --
 25 Q. We are as one, Mr Noble. We are going right there.

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1 Can I ask you to have a look at {Day14MT1}, so
 2 yesterday, starting at {Day14MT1/49:22}.
 3 A. Sorry, which line?
 4 Q. Line 22:
 5 "I think there are two incentives at play for
 6 Google ..."
 7 A. Ah, yes. Yes, that is what I was referring to.
 8 Q. Then if we go over the page to {Day14MT1/50}, just to
 9 refresh your memory about what you said. If you just
 10 read it to yourself.
 11 A. Mm-hm.
 12 Q. Let us know when you are ready to flick on to page
 13 {Day14MT1/51}.
 14 A. Yes.
 15 Q. Down to the bottom of that answer, line 21.
 16 A. So keep going until 21?
 17 Q. To line 21, yes.
 18 (Pause)
 19 A. Yes.
 20 Q. Right. So, Mr Noble, I just want to explore here
 21 the two different points, the two different incentives
 22 that you are referring to, all right?
 23 So first and foremost, there is the question of
 24 Google's ability to monetise the SERP, to make money out
 25 of running Google's search, yes?

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1 A. Yes, yes.
 2 Q. That is done through AdWords?
 3 A. It -- well, it's done -- it's done through whatever
 4 monetisation mechanism that Google uses to monetise an
 5 increase in the volume of general search and if that is
 6 primarily AdWords, then it's AdWords, yes.
 7 Q. Cannibalisation is about the effect on that of giving up
 8 the premium real estate, the premium space on the SERP,
 9 yes?
 10 A. Yes, because the cannibalisation effect is that you --
 11 for any given number of clicks, you essentially reduce
 12 the click rate on whatever advertising that you have,
 13 you know, for example, AdWords.
 14 Q. Now, were you here this morning, when Mr Jowell showed
 15 Mr Hunt the document from 24 October 2008?
 16 A. Yes.
 17 Q. I think it is at {M1/197}, if we could just look at it
 18 very briefly.
 19 We see there the first bullet point about the OneBox
 20 being:
 21 "... a critical component of the strategy to
 22 increase Google's revenue ..."
 23 Just to explore the size of that "critical
 24 component", I am going to ask if we can go to {M1/380}.
 25 Now, this is a 2011 presentation that Mr Jowell

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1 explored with Mr Goodrow on Day 9.
 2 Could we go to slide 57 in it, please, to which
 3 Mr Goodrow was taken {M1/380/57}. I am sorry, this is
 4 somewhat difficult to read, but if you have a look at
 5 that.
 6 Then, possibly easier to read, if we go to
 7 the transcript {Day9MT1/112}, please.
 8 THE CHAIRMAN: This was an internal Google strategy
 9 document?
 10 MS LOVE: Yes, sir.
 11 Can I ask you to read lines 5 through to 16.
 12 A. So 5 to 16?
 13 Q. Yes.
 14 (Pause)
 15 A. Yes, I've read that.
 16 Q. So Mr Goodrow has confirmed that if keeping shopping
 17 starts on Google by having a Product Universal, which of
 18 course was free, brings only a very small, a 0.1%
 19 incremental increase in traffic, that alone negates all
 20 the lost ad revenue, yes?
 21 A. Yes, so what I believe he's calculating here is
 22 the critical, almost what you might call a generation
 23 factor, that in order for it to be worth losing in
 24 the short run, because I think what that chart was
 25 showing, in the short run you lose and in the long run

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1 you gain, that in order to make it worth losing
 2 the several hundred million, that you need to
 3 essentially -- and that's what I was referring to about
 4 pushing out the demand curve, that you need to push out
 5 the demand curve, and this is then an empirical measure
 6 of by how much you would have to push out the demand
 7 curve to then essentially, in the long run, make that an
 8 attractive proposition for Google.
 9 Q. Precisely, Mr Noble. So if you are looking at
 10 the question of the incentive to have this premium real
 11 estate for shopping to push out the demand curve, as you
 12 have put it, growing general search traffic, looking at
 13 Google's incentives from the perspective of monetising
 14 Google Search, it will pay for itself if you achieve
 15 only a very modest extra percentage of shopping starts
 16 on Google, yes?
 17 You have no reason to doubt these numbers?
 18 A. No, I've no reason to doubt that the -- that this may
 19 well represent a reasonable empirical contemporaneous
 20 measure of -- of the scale of that effect.
 21 Q. You have no reason to think it would be materially
 22 different in scale in the counterfactual, do you?
 23 A. For that factor --
 24 Q. Yes.
 25 A. -- I've no particular reason to think that will be

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1 different . But I would just say, from an optimisation
 2 perspective, there is -- there remains an important
 3 difference .
 4 Q. We are coming to that now.
 5 A. Yes, okay.
 6 Q. That is the separate question of Google's potential
 7 ability down the line to monetise its comparison
 8 shopping service, yes? Your point that you were making,
 9 your second incentive, is that whatever Google does to
 10 make comparison shopping on the SERP bigger and better
 11 and nicer, if it cannot abusively self-preference in
 12 a lawful counterfactual and reap all the rewards, then
 13 it may be a bit less willing to do that, because it has
 14 got to also include other comparison shopping services'
 15 results , yes?
 16 A. Yes, because there are two incentive mechanisms at play.
 17 One is the feedback loop on the -- on the SERP, and then
 18 the other one is the -- the fact that you are giving
 19 free traffic to somebody. In the factual, that somebody
 20 was you, and so you can expect that you would -- if your
 21 plan was to monetise at some point in the future, which
 22 it often is for Google, because one gets the eyeballs
 23 first and then one monetises later, but in
 24 the counterfactual, you wouldn't do that because that
 25 wouldn't be lawful and instead you would then say, well,

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1 what thing might I do, and incentivise you -- you know,
 2 you would then be comparing, do I still invest, as
 3 I described it, and -- with the -- a significant
 4 proportion of that investment going to people that
 5 aren't you, or do you seek to monetise sooner by
 6 charging either immediately or at some earlier date than
 7 you did in the factual . I think the -- I think the --
 8 the key thing that one needs to bear in mind in that
 9 calculation is : what quality of shopping experience
 10 could it have created had it sought to, you know,
 11 monetise or not monetise with third parties at that
 12 time?
 13 Q. Well, it is interesting , Mr Noble, that you have
 14 mentioned quality of shopping experience, because I just
 15 wanted to show you a couple of pieces of evidence about
 16 Google's enthusiasm for showing other CSSs' results and
 17 its views about their quality . I am just going to show
 18 you them and then I will ask you whether you had
 19 considered them when expressing the views in your first
 20 report.
 21 Now, the first is from the evidence of Mr Goodrow,
 22 and could I ask for document {N/267}, please. I am
 23 afraid we are going to have to zoom in a bit.
 24 Could I ask you, please, Mr Noble, just to have
 25 a look at the first half of that, below:

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1 "These are my notes."
 2 A. Where does it say ...? Ah, there we go, sorry, yes,
 3 yes, now I see it .
 4 Q. Notes from a Search Product Strategy meeting in 2009.
 5 (Pause)
 6 A. Yes.
 7 Q. To round this off, if we go to {Day9MT1/137}, please.
 8 Thank you.
 9 You can see what Mr Goodrow said about it to
 10 Mr Jowell in oral evidence starting at line 15.
 11 (Pause)
 12 Then I think you need to go over the page
 13 {Day9MT1/138}.
 14 Can I ask you to read down to Mr Goodrow's answer on
 15 line 23:
 16 "That was the idea of a shopping mode."
 17 A. Sorry, down to line 23?
 18 Q. Yes.
 19 (Pause)
 20 A. Yes.
 21 Q. So what Mr Goodrow was contemplating, in fact, what, on
 22 his words, he was arguing for in 2009, was to return
 23 results on the general results page in a shopping mode
 24 in which there would be "a whole list of producty,
 25 shopping-looking results" with images and potentially

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1 including results from other CSSs.
 2 Is that something you considered when you were
 3 writing your first report?
 4 A. I mean, I didn't consider the transcript , obviously, but
 5 I did look at the emails, yes.
 6 Q. Okay.
 7 Then the next one that I wanted to mention was
 8 Mr Kalyanpur's evidence. Mr Kalyanpur was the main
 9 engineer at Google who was responsible for the diversity
 10 algorithm, or to give it its more accurate name,
 11 the comparison shopping service demotion algorithm,
 12 which was implemented just before the start of
 13 the Decision Period, and he concluded that users
 14 liked --
 15 THE CHAIRMAN: Just to be clear, this was in the US --
 16 MS LOVE: Yes.
 17 THE CHAIRMAN: Yes, so nothing to do with the Decision?
 18 MS LOVE: No.
 19 But the proposition is that he concluded that users
 20 liked comparison search -- comparison shopping results
 21 and so the right thing to do was to show at least
 22 the top two such results in the general search results
 23 page without demoting them.
 24 Can I ask you, for that, to look at {M1/96/3},
 25 please. Sorry, we are going to have to zoom in a bit.

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1 Here, the words:
 2 "A positive eval at last!"
 3 "-- The changes I made to this experiment were to
 4 'keep two' comparison shopping results and to demote
 5 off-country results when the query is strongly
 6 commercial."
 7 Now, Mr Noble, of course the Tribunal will be
 8 forming its own view of Mr Goodrow's and Mr Kalyanpur's
 9 evidence. My point is simply that there are at least
 10 some examples from the relevant period of Google
 11 recognising that its users like and value results from
 12 other CSSs and being prepared to keep those results on
 13 the SERP even when they did not have to. Do you agree?
 14 A. Yes, I mean, those -- those emails and the exchanges are
 15 consistent with the fact that if you present high
 16 quality shopping results, then that's consistent with
 17 achieving that first incentive mechanism, which is that
 18 you can make Google a place to do shopping starts.
 19 That's -- that's consistent with that.
 20 The only -- the only footnote -- and it may be
 21 a footnote -- is that I do recall Mr Kalyanpur making
 22 some quite important points about how there was feedback
 23 specifically to the US about how some of the shopping
 24 pages -- sorry, the Google results pages have become
 25 sort of overwhelmed with comparison shopping results and

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1 that his -- his actions were primarily focused on
 2 the US, I think he mentioned some blog posts that were
 3 about that, and the impression I gathered -- and
 4 although, I mean, ultimately it will be for the Tribunal
 5 to draw its view -- was that he was describing what was
 6 primarily a US problem and it wasn't -- it wasn't so
 7 pronounced in Europe.
 8 Q. I fully appreciate that, Mr Noble, but the proposition
 9 I am on is willingness within Google, even when they did
 10 not have to, to keep other CSS results on the SERP.
 11 I think we are agreed on that.
 12 So if we move on to scenario 3, I am going to start
 13 with 3b, because where the discussion came out yesterday
 14 I think is relatively straightforward in terms of
 15 the economic evidence. You relied in your report in
 16 support of the quality control and technical concerns
 17 largely on the evidence of Mr Friedman, did you not?
 18 A. Yes, yes.
 19 Q. You did so before having heard Mr Friedman's oral
 20 evidence?
 21 A. Yes, yes.
 22 Q. Necessarily?
 23 A. Yes, that's right.
 24 Q. Of course, Mr Friedman discussed in his evidence query
 25 time call outs, sandbox -- I am sorry, sandboxing, not

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1 sandboxes, and Google Cloud, and I think we are all in
 2 agreement that the Tribunal is as well placed as you or
 3 I to assess that evidence and form a view on those
 4 stated concerns, yes?
 5 A. I mean, I think -- I think it was made clear that
 6 the Tribunal is better placed than I am, so, yes --
 7 Q. At least as well placed.
 8 A. Yes.
 9 Q. So I am going to focus on 3a.
 10 You said on Monday that there were three groups of
 11 evidence about whether users liked having links to CSSs
 12 on the SERP, and by that you meant, firstly, what you
 13 called the de-linking experiment. Secondly, the real
 14 world commercial decision of Google, and I think by that
 15 you mean the practice that unfolded over the period up
 16 to 2012 of showing increasing numbers of catalog variant
 17 Product Universals, yes?
 18 A. Yes, it was the -- and the offer variant.
 19 Q. Yes.
 20 Then the third piece of evidence you referred to was
 21 the CLA experiment, the test from 2022?
 22 A. Yes.
 23 Q. There is three points on that evidence I wanted to
 24 explore with you.
 25 The first is whether those are indeed literally

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1 the only three bits of evidence that we have about what
 2 users -- what consumers valued looking at across
 3 the relevant period, and I noted that you did not refer
 4 to what we have just been looking at, which is
 5 Mr Kalyanpur's evidence from his repeated attempt to get
 6 positive rater results from the diversity algorithm, did
 7 you?
 8 A. No, I mean, I'd certainly -- I think the way I was
 9 describing that was that I was primarily describing
 10 a decision framework that one could use to help you
 11 evaluate the evidence, and I think I'd sort of broadly
 12 grouped things into those three, but I don't -- I don't
 13 -- I wouldn't suggest that there's not -- there may be
 14 a fourth -- a fourth category, or indeed a fifth.
 15 Q. There may be many others, Mr Noble.
 16 Can I just ask, if we look briefly at {M1/96/5}, and
 17 again, appreciating that this is the US, with that
 18 caveat, we are focusing on what evidence there is about
 19 what users like. I think -- sorry, the formatting here
 20 is horrible, but you will see:
 21 "The final philosophical question is whether direct
 22 retailer results are better than 'indirect'
 23 comparison shopping results. Mostly the raters appear
 24 to prefer comparison shopping results but on some
 25 queries they seem to like it if the right 'brand name'

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1 site was in the top results ."
 2 Another aspect of that, just briefly , is whether --
 3 you referred to "the de-linking experiment" singular.
 4 Can I ask you please to have a look at {M1/390}, please.
 5 (Off microphone - inaudible):
 6 "Linking them leads to a poor shopping experience,
 7 as demonstrated by the de-linking experiment, sessions
 8 analysis , user observations, and other evidence."
 9 That was explored with Mr Goodrow in
 10 cross-examination. So I think you have accepted this
 11 already, but there were not literally just those three
 12 pieces of evidence, were there?
 13 A. No, no. No, I think it's fair to say there are -- there
 14 are other groups, but I think one can still use
 15 the framework that I described, which is, you know:
 16 is it an experiment, does it have images and to whom are
 17 you linking , is it to Google or is it to a third party?
 18 Q. Well, Mr Noble, in relation to that first point, "is it
 19 an experiment", that brings me on to the next point,
 20 which is you said: is it an experiment and, if so, is it
 21 a good one. When we are trying to work out what would
 22 have happened in a lawful counterfactual as well as
 23 the question, well, was it a good experiment, there is
 24 a question also, is there not, what Google was thinking
 25 and what conclusions Google was drawing at the time from

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1 the experiment, or to be more accurate, what conclusions
 2 Googlers, individuals in Google, were drawing from it?
 3 Because if Google was thinking about users' preferences
 4 in a certain way back in the real world from 2008, there
 5 is no particular reason to think it would have had very
 6 different thoughts in the counterfactual even if it did
 7 not have the same freedom to take advantage of its near
 8 monopoly in general search and self-preference, is
 9 there?
 10 A. I mean, I think it's -- I think it would be true that to
 11 the extent that what people are describing is , you know,
 12 their interpretation or their understanding or their
 13 view of user preferences, then, yes, I think -- I think
 14 that's a fair statement.
 15 Q. Do you recall Mr Goodrow's very clear evidence that in
 16 his view -- and he said this as the Engineering Manager
 17 for Google Product Search and a former Director of
 18 Search Engine Software for Amazon -- he had a very
 19 strong view that what people wanted was a shopping
 20 experience, did he not?
 21 A. Yes.
 22 Q. Yes.
 23 A. Then, if he said that, yes.
 24 Q. His team acted consistently with that view, at least up
 25 to 2013, with their catalog variant, did they not?

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1 A. Yes, although I think I would draw a distinction between
 2 in a sense I think almost categories of evidence.
 3 I mean -- and here, I'm thinking purely as an empiricist
 4 that one -- one -- one has got in a sense what I would
 5 call experiments, where one is examining an empirical
 6 analysis , usually -- you know, Google often calls it
 7 "sxs", side by side, so it's trying -- and you know,
 8 it's essentially trying to tell empirically is this
 9 thing better or is that thing better, and then one can
 10 see the results of that, you know, you get statistics
 11 from that. Then I think one can independently review
 12 those statistics and think: well, what does that tell
 13 us, how attractive is one option? That's where the 12
 14 times delta comes from on the CLA/PLA. But -- so -- so
 15 there's that first category, which is in a sense
 16 experimental data; there's a second category which is
 17 then business decisions , which generally, you know, and
 18 it's borne out by the -- by the evidence I think here is
 19 that those are the products of multiple people's views,
 20 you know, at the time. You know, it's not one person or
 21 another, but, you know, collectively they debate and
 22 then they arrive at a conclusion and then they do
 23 something and you can usually draw some inference
 24 from: they did this rather than that. That might tell
 25 you something about the balance of the evidence,

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1 the balance of opinions.
 2 Then there's the third -- the third kind of category
 3 which is sort of almost more individual examples
 4 of: this person thought that on that day. Of course,
 5 you know, I think one -- obviously, you know, if -- if
 6 -- if that is what they thought on that day, that is
 7 what they thought, but I think one needs to see that in
 8 the -- in the context of: other people may have thought
 9 other things at that time. Hence, why often there's
 10 a vigorous debate, we see that quite regularly in
 11 the emails and the document exchanges.
 12 Q. Mr Noble, that was a very complex and long answer, but
 13 my question was perhaps a simpler one, which is that
 14 Mr Goodrow is not just any individual, he is basically
 15 the person who was actually running Google's CSS, he was
 16 the Engineering Manager for Google Product Search. He
 17 is of the clear view that people wanted this richer
 18 shopping experience and his team acted consistently with
 19 that view up until at least 2013, did they not?
 20 A. I mean -- I mean, factually, if that's what he said and
 21 that's what the evidence shows, then, yes, that must be
 22 true.
 23 Q. Well, can I ask you to see {Day9MT1/114}, please.
 24 If we look at the Chair's question, and this is
 25 asking basically : well, what happens with the catalog if

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1 people type in a particular product, say a Canon XP5.
 2 Can I ask you to have a look at Mr Goodrow's response
 3 there.
 4 A. So that's in row 11?
 5 Q. Yes.
 6 (Pause)
 7 He is basically explaining that even if you are
 8 confident, even if you are someone who is right at
 9 the bottom of the shopping funnel, as it were, they are
 10 still going to get taken to the comparison shopping
 11 site?
 12 A. Yes.
 13 Q. If you go over to the next page {Day9MT1/115} -- (off
 14 microphone - inaudible) -- discussion.
 15 (Pause)
 16 A. Just to be clear, what -- what has been described on
 17 this page is what one sees one -- one has clicked
 18 through a link on the OneBox. You're then seeing --
 19 Q. (Off microphone - inaudible).
 20 A. Yes.
 21 Q. So, at the risk of misusing economic terms, what we are
 22 seeing here is a pretty strong revealed preference, or
 23 a pretty strong revealed belief by those who are running
 24 Google Product Search of the virtues of that richer
 25 comparison shopping experience, yes, because even when

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1 you know exactly what product someone is after, you
 2 still want to take them through to the full website?
 3 A. I mean, I think -- I think I would describe it as
 4 a description of why it is that they undertook the real
 5 world business decision that they did. Yes, I wouldn't
 6 call it "revealed preference". "Revealed preference"
 7 for me would be more like the data shared by Mr Hunt
 8 which shows you how often offer variants and product
 9 variants are shown.
 10 Q. As I said, at the risk of misusing the term.
 11 So, Mr Noble, that brings me to my third and final
 12 point in relation to 3a, which is the CLA experiment
 13 from 2022.
 14 A. Mm-hm.
 15 Q. You kindly volunteered on a couple of occasions to
 16 discuss it and you were not taken up on that offer by
 17 the Tribunal.
 18 In your report, you basically accepted Mr Braendle's
 19 evidence without needing to see any of the underlying
 20 test documents, but happily, we now have them, and you
 21 have also had the chance to hear Mr Braendle and
 22 Mr Friedman's oral evidence on this so-called
 23 experiment, have you not?
 24 A. Yes.
 25 Q. Now, I just want to confirm a few points with you.

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1 It is the case, is it not, that the CLA tab has
 2 generally been behind the default PLA one, so very few
 3 users will have seen CLAs at all?
 4 A. Fact -- factually, yes, I think that's correct.
 5 Q. It is also the case, is it not, that the CLA format
 6 shows us lots of small pictures and no prices, is it
 7 not?
 8 A. Yes, I think that's -- that's factually correct.
 9 Q. It is also the case that that format has not really been
 10 improved, whereas PLAs have now been iterated on and
 11 refined for more than a decade, is it not?
 12 A. That -- that's a statement I'm less clear on about
 13 whether it has or hasn't.
 14 Q. That was explored with Mr Braendle --
 15 A. Okay.
 16 Q. -- the Tribunal has heard his evidence.
 17 A. Yes.
 18 Q. Now, it is also the case, is it not, that Kelkoo
 19 suggested in May 2022 some improvements to the CLA
 20 format, like making the logos of the CSSs more visible
 21 and showing prices, did they not?
 22 A. Yes, I believe that's correct.
 23 Q. Mr Braendle's evidence was that at least some
 24 enhancements could have been made, was it not?
 25 A. Yes, I believe it was.

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1 Q. You will also, I assume, have seen or read that Germany
 2 was thought to be the country in which this experiment
 3 might have had the best chance of success?
 4 A. Yes, I believe there was a "bubble" comment from one,
 5 possibly anonymous, reviewer that made that suggestion,
 6 although we may -- I can't recall, we may know
 7 the identity of them.
 8 Q. Mr Friedman explained that that was not pursued for
 9 reasons that are covered by legal privilege, did he not?
 10 A. Yes.
 11 Q. You know that Mr Friedman accepted in his evidence that
 12 CSSs have had substantially less data to improve
 13 the effectiveness of CLAs?
 14 A. Yes, I believe that's their evidence.
 15 Q. You have heard from Mr Braendle that he thought it would
 16 be fair to tell CSSs in advance about the experiment so
 17 that they could make the most of it, did he not?
 18 A. Yes, I believe there's a document that sets that out.
 19 Q. But that did not happen, did it?
 20 A. Factually, that's my understanding, it did not happen.
 21 Q. Mr Noble, I suppose what I want to know is if a member
 22 of your team in Oxera brought you this as a proposed
 23 experiment saying we are going to see whether it is
 24 possible that ads linking to CSSs could be a runner,
 25 would you have said to them, "Well, you know, great,

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1 this looks really well designed and fair?"

2 A. I think what I would have said to them is that it's --

3 one needs to think very carefully about which country

4 you're going to do it in, which I think, from my

5 understanding of the factual evidence, they did, and

6 they chose, I believe, Netherlands and the UK, which

7 I think -- you know, from my perspective as someone

8 who's designed experiments like this before, the UK

9 seems like a reasonable choice because it's one of

10 the two largest markets for comparison shopping in

11 Europe, but, you know, the other one is Germany.

12 Obviously that wasn't chosen, I don't know why that

13 wasn't chosen. I think the other important point to

14 bear in mind with this is that the -- there's often

15 a question mark about how quickly you can do something

16 versus, in a sense how well you can do it.

17 Q. But, Mr Noble, assume that, in your Oxera team, you have

18 the luxury of not worrying about a couple of extra weeks

19 or months on this.

20 A. I mean, if one -- if one has unlimited time and budget,

21 then obviously one can try and do a bigger, better, more

22 refined analysis, yes, that's sure. But one always has

23 time constraints and budget constraints and effort

24 constraints, and so I think -- in a sense, I've never

25 seen a survey or an experiment that I would almost

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1 regard as could not yet be improved at least somewhat.

2 Q. "At least somewhat?"

3 A. Yes.

4 Q. Would you put this in the "at least somewhat" or

5 slightly more than somewhat, maybe a few images and

6 prices, category?

7 A. I mean, I would -- I mean, perhaps I can put it this

8 way, I would not -- I would not call this a sort of gold

9 standard, but I think in terms of the -- almost

10 the quality that it's here, the -- it's more of a silver

11 standard piece of evidence. But I think silver is still

12 pretty high up the list, because one always has to

13 evaluate the evidence against, you know: well, what

14 other evidence do we have? The reason it's still very

15 good is because you are comparing, side-by-side

16 essentially, or two -- two equivalent formats, and

17 you're looking at their relative performance. Now,

18 obviously the -- the closer these two are together,

19 the more that -- the results of the performance,

20 the more plausible it is that the result is being

21 affected by one of these factors. You know, perhaps you

22 could improve the design, you could make the pictures

23 bigger or you could have chosen a difficult country, but

24 the further apart they are, the less plausible it is

25 that -- you know, for example, with you have got a 12

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1 times better performance in Germany than you would have

2 in the UK --

3 Q. Mr Noble, I am sorry to interrupt you, but that is

4 talking about the outcome, right?

5 A. Yes.

6 Q. I did not ask you about the outcome. I asked you about

7 the design, the ex ante question. I think you have

8 agreed with me that this was not the gold standard. We

9 can --

10 A. No, I --

11 Q. -- diverge about which metal we are thereafter.

12 A. Yes, I would agree it's not the gold standard, and in my

13 evaluation, ex ante, without knowing the answer to

14 the survey, I would say I'd class it as a silver

15 standard piece of work.

16 MS ROSE: Can I just ask you a question about this?

17 One of the things that is puzzling is

18 the implication from Google is that the outcome of this

19 experiment is so catastrophic for the CLA that the gulf

20 -- the delta is so huge that you would not even attempt

21 it as your default and yet we know that under

22 Product Universal they were increasingly using

23 the catalog view. I find it very hard to kind of

24 reconcile those two, because if there is some inherent

25 reason why consumers want to go direct to the product

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1 site and not to a CSS, then why would you get such

2 a different view of consumer preferences in 2010 from

3 2020?

4 A. Well, I think -- I think one of the issues may be to do

5 with, in a sense, who's controlling the experience,

6 because we know with the catalog and the offer variants

7 that -- which is the third sort of dimension of my

8 classification, that Google was linking to itself, and

9 so -- because what we do know is that the CLA/PLA

10 experiment, it did take place in the context of linking

11 to third parties and it did take place in the context of

12 the GDPR and other restrictions that meant whether you

13 could or couldn't pass on private information and so on,

14 and so that -- that -- in a sense, the -- factually,

15 that has the prospect that it can affect the results of

16 it.

17 MS ROSE: So that might actually be a bigger structural

18 problem with the experiment than the points that Ms Love

19 has been putting to you?

20 A. It -- well, I mean, it could be an issue with it, but

21 I think --

22 MS ROSE: So if you used an IPA you would not have that

23 problem, would you?

24 A. I mean, I think the proposed solution to that was if

25 Google essentially hosts this thing on behalf of other

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1 people, then it may be able to essentially --
 2 MS ROSE: So then you might be able to replicate your
 3 catalog view?
 4 A. Yes, although you can get a rough and ready adjustment
 5 factor to the CLA/PLA analysis to say, well, okay, let's
 6 suppose that every single time that somebody clicked on
 7 this, they had a really poor experience and that factor
 8 alone is what, you know, might be causing
 9 the differences here, and so what you might do is to
 10 say, well, okay, let's take the 30% factor --
 11 MS ROSE: 35%.
 12 A. 35%, and you say, well, okay, let's suppose every single
 13 time that happened it's a very poor experience and that
 14 drives down the performance of the CLA, you can
 15 essentially uprate the number, the performance factor --
 16 MS ROSE: That is assuming a linear relationship.
 17 A. It does assume a linear relationship.
 18 MS ROSE: But we know that people get very impatient online,
 19 so, in fact ...
 20 A. Yes, yes, that's fair. I think -- I guess the question
 21 I'm trying to ask myself is: could that factor alone
 22 result in a 12 times delta? I think, very rough and
 23 readily, it's not obvious to me why it would cause such
 24 a big delta.
 25 MS ROSE: But that brings me back then to my first question,

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1 because if you say -- when I first asked you, you said,
 2 well, it may be that it is explained by the privacy
 3 issue.
 4 A. Mm-hm.
 5 MS ROSE: But now you are saying actually you do not think
 6 it is explained by the privacy issue. So what is
 7 the difference?
 8 A. No, so I think what you were saying was why is it
 9 that --
 10 MS ROSE: Yes.
 11 A. -- they did -- no, I think what I'm trying to say is
 12 that one of the reasons why the CLA/PLA experiment may
 13 have given those different results is because of
 14 the privacy issue, which I think is -- was present in
 15 that and in a sense you know isn't present in
 16 the commercial decisions.
 17 I think then what I'm saying is, well, can you kind
 18 of adjust the CLA/PLA 12 times the ratio to try and take
 19 account of that and see: well, could that alone be
 20 the sole reason why you get such a big difference? So
 21 my answer to that second question is it's not obvious to
 22 me that you would increase the CLA performance by
 23 a factor of 12 just because of that, because in a sense
 24 30%, one-third of the queries are potentially affected
 25 by that, you invert that and then you say, well, let's

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1 uprate this by a factor of 1 over 0.6 and so that would
 2 be a factor of 1.6, so you would increase -- you know,
 3 I'm trying to do the maths in my head, but it's
 4 certainly not going to take you all the way up to a 12
 5 times increase.
 6 MS LOVE: It might have helped, Mr Noble, if the CSSs had
 7 been told that this was coming, might it not? They
 8 could have prepared.
 9 A. It's -- I mean, it's possible that that could have
 10 influenced the outcome.
 11 Q. It might also have helped if people had not spent more
 12 than a decade getting used to clicking and going
 13 straight through to a merchant?
 14 A. So this is -- this is the point about the endogenous
 15 user, user behaviour? Yes, although I think when one
 16 thinks about that factor, we need to distinguish between
 17 the extent to which there's Google almost like
 18 abuse-specific induced behaviour versus all the other
 19 factors that are going on in the world that in a sense
 20 might result in people wanting to do that anyway.
 21 Q. You cannot find a meaningful way of stripping that out,
 22 so do 1.6 or 2 or numerically adjust for that level --
 23 A. As I sit here now, I don't have an adjustment factor
 24 I can give you for that, no.
 25 Q. So to say 12 times one versus the other, against that

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1 context, to rely on the outcome in that way, I mean,
 2 that is, (inaudible), that is using the statistics as
 3 a drunk uses a lamp post, for support, not illumination,
 4 you just cannot tell, can you?
 5 A. I mean, in my experience, I guess I can draw on my -- on
 6 my experience, I would be surprised if you had such
 7 a large effect as that, but I can't -- I can't give you
 8 a statistic or a -- or a data point that -- that firms
 9 that up.
 10 MS LOVE: I have no further questions. Mr West may have
 11 some questions for you. Thank you.
 12 MR WEST: Would that be an appropriate point for a brief
 13 break, because a reference was made to some evidence of
 14 Ms Raff?
 15 THE CHAIRMAN: Yes, break now and --
 16 Approximately how long do you think, Mr West?
 17 MR WEST: Certainly not more than an hour.
 18 THE CHAIRMAN: Yes, I hope not, because Mr Pickford has
 19 something to raise with the Tribunal.
 20 MR WEST: Yes. I will be as quick as I can.
 21 THE CHAIRMAN: I thought you told us you would be about --
 22 MR WEST: I thought I said not more than an hour, but ...
 23 THE CHAIRMAN: Well, yes, give some thought to that. We do
 24 not know, of course, how long the -- we have no idea
 25 what Mr Pickford has up his sleeve, but --

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1 MR PICKFORD: I think, about -- well, so, firstly, I will
 2 need some re-examination time.
 3 THE CHAIRMAN: Yes.
 4 MR PICKFORD: There were some questions I wanted to
 5 re-examine on from the Tribunal's questions from
 6 the concurrent evidence.
 7 THE CHAIRMAN: Yes.
 8 MR PICKFORD: A few.
 9 Then my particular point, I think sort of 15 minutes
 10 will be sufficient to deal with those.
 11 THE CHAIRMAN: Okay, yes.
 12 We will come back at half past, take a shorter
 13 break.
 14 (3.23 pm)
 15 (A short break)
 16 (3.35 pm)
 17 THE CHAIRMAN: Yes, I should just say, we do have to rise at
 18 5 o'clock today, so please bear that in mind, all of
 19 you.
 20 Cross-examination by MR WEST
 21 MR WEST: Mr Noble, could I just ask you one question about,
 22 going back to your annex 13 at {13/2/112}.
 23 A. Yes.
 24 Q. You will see there is a reference -- I will not say in
 25 which order -- but to someone called Croud Inc, spelt

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1 C-R-O-U-D?
 2 A. Yes.
 3 Q. We did hear some earlier evidence about this.
 4 Could we look at {J2A/83/3}.
 5 The second half of this page is some marketing
 6 material from that company setting out an example of
 7 a PLA with links from this CSSs; do you see that?
 8 A. Yes.
 9 Q. In response to a query for "moss bros suits". This is
 10 a document written by Foundem, and what one sees, if you
 11 click on the "By Croud" link is over the page on
 12 {J2A/83/4}, and you will see at the top, the links are
 13 in fact not to menswear, but to DVDs for the TV
 14 programme "Suits". Was this one of the CSSs that you
 15 verified?
 16 A. Yes, and I would say, I mean, the issue here looks as
 17 though it's very similar to the issue that was
 18 highlighted about -- in the CLAs, that the response
 19 that's been provided on the CSS website here is in
 20 response to the word "suits", but it looks as though
 21 it's about films called "Suits" as opposed to a physical
 22 item, you know, a man's suit.
 23 Q. Well, exactly, yes.
 24 THE CHAIRMAN: But this is clicking on the "By Croud" at
 25 the bottom of the Moss Bros suit, yes?

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1 MR WEST: Yes.
 2 So this looks like an example of one of these
 3 participants in the Remedy which does not provide a high
 4 quality CSS webpage?
 5 A. Well, I mean, if, by "high quality", we use the process
 6 that Google was using to evaluate the responses it got
 7 when it was -- in the slide deck that it looks at
 8 responses for the CLAs, then -- then -- and Google
 9 concluded in that that if you got a response like this,
 10 it was a -- it was a weak response, then -- then in
 11 a sense that -- this is consistent with that.
 12 Q. Could I ask you how your evidence ties in with
 13 the Commission's rulings on market definition.
 14 You agree that general search services are in
 15 a different market to specialised search services; is
 16 that right?
 17 A. Well, I mean, I'm taking that as given. I haven't -- as
 18 I said, I haven't done a market definition exercise, and
 19 the Commission concluded that they are separate relevant
 20 markets, so, yes, I mean, I agree that's what
 21 the Commission did.
 22 Q. If we look at how the Commission did it, at {BA/2/8},
 23 when it was looking at general search services, at
 24 Recital 12, this is referring to Google's general search
 25 algorithms, and says they are:

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1 "... designed to rank pages containing any possible
 2 content."
 3 So that is a characteristic of general search
 4 services, would you agree?
 5 A. Yes.
 6 Q. At Recital 15, over the page {BA/2/9}, they are
 7 generated by crawling, indexing and serving. That is
 8 general search services; that is right, is it not?
 9 A. Yes, yes.
 10 Q. There is a separate market for general search services,
 11 as we see at Recital 154 on page {BA/2/29}.
 12 A. Yes.
 13 Q. That is separate to specialised search services, yes?
 14 A. Yes, yes.
 15 Q. We can see if we look at Recitals 166 on {BA/2/31} --
 16 A. Although, I mean, strictly speaking, the Commission only
 17 defines one specialised search service market, it
 18 defines the --
 19 Q. Yes, but it defines the general search as separate to
 20 specialised search?
 21 A. Yes, correct.
 22 Q. One finds, again, those corresponding characteristics,
 23 first, that specialised search services is limited to
 24 a narrow category of results, 167 --
 25 THE CHAIRMAN: Well, we have covered all of this, have we

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1 not?

2 MR WEST: Yes, I am just trying to examine how Mr Noble's

3 evidence relates to this. If --

4 THE CHAIRMAN: Well, then, if there is a bit of his evidence

5 you want to ask about, why do you not go straight to

6 that, but ...

7 MR WEST: It was suggested to Mr Hunt, yesterday, in

8 cross-examination, that AdWords supplies, or may supply

9 comparison functionality to users, but, again, I suggest

10 to you, Mr Noble, that that is not correct, because, as

11 the Commission found, users do not perceive advertising

12 as a service to them. Would you agree with that?

13 A. I'd draw a distinction between two things. One is that

14 something can provide comparison, I would say, but that

15 doesn't necessarily mean it's in the same relevant

16 market. I mean, I used the example of trains from

17 Oxford. You know, you can look at -- you can stand on

18 the platform there and you can examine two metal things

19 on wheels, they're both trains, but they may not be in

20 the same relevant market as one another. So in a sense,

21 I think that the -- that's why I think there is a subtle

22 distinction between the two. The two are obviously

23 closely interrelated to one another, but I think just

24 because something provides some form of comparison

25 doesn't necessarily mean it is or isn't a comparison

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1 search service.

2 Q. If we go back to the Shopping Units as they were in

3 existence between 2013 and 2017, we have got an example

4 at slide 5 of the images annex, {A1/3/5}, and we can see

5 that those provided relatively limited

6 comparison shopping functionality, did they not?

7 A. Sorry, the proposition is that they?

8 Q. Well, this particular search is for a "canon 70d", so it

9 is a very specific search?

10 A. Yes.

11 Q. So, as it happens, these are all the same product, but

12 that would not always be the case, would it, depending

13 on the nature of the search?

14 A. No, it will depend on the -- on the nature of

15 the search.

16 Q. We see there is no filtering functionality here?

17 A. Is there filtering?

18 Q. That is right, is it not?

19 A. Sorry, where?

20 Q. There is -- well, we do not see it, because there is

21 not --

22 A. Oh, sorry, there isn't? Sorry, I thought you said there

23 is. No, no, I don't see a filtering function here.

24 Q. But it is not the case, is it, that in order to be

25 a CSS, the CSS must be able to show different offers for

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1 one and the same product?

2 THE CHAIRMAN: Mr West, we have been over all of this,

3 twice, I think, in the hot tub and then again in some

4 cross-examination already, and the question of what is

5 a CSS, Mr Noble has recognised, is ultimately a question

6 of law given that we start with the binding decision

7 for the Tribunal. So exploring all this, if -- as one

8 might need to do if we did not have any decision and we

9 had to define markets and we had to define what things

10 are, but that is not, perhaps thankfully, where we are

11 in this case. So I do not think we need to go into all

12 of this again.

13 We know, as both experts confirmed in the hot tub,

14 they take a different view as to whether the box,

15 whether it is the SU or the Remedy Box, should be

16 regarded as a CSS or not, and that will be for us to

17 decide.

18 MR WEST: Well, Mr Noble has expressed some views as to

19 the relevance of filtering functionality -- and that is

20 something which is addressed.

21 THE CHAIRMAN: Yes, and we have been over that and we

22 understand that, and so has Mr Hunt, and we have got

23 that and we can see what is included and what is not.

24 I do not think it is really going to help us to take

25 this further. It is --

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1 MR WEST: Well, in my submission, there are findings in

2 the Decision and in the General Court about this.

3 THE CHAIRMAN: Yes.

4 MR WEST: But if it is thought more appropriate for those to

5 be made by way of submissions, as long as no one is

6 going to say, "Well, why was not any of this to

7 Mr Noble", I will move on.

8 THE CHAIRMAN: You can move on. You need not worry about

9 that.

10 MR WEST: Could we perhaps look at one specific point in

11 the joint expert statement, paragraph -- page 34

12 {14/4/34}.

13 Your column to the right-hand side, Mr Noble, you

14 say:

15 "Mr Hunt argues ... the 'CM-SU' is an economic

16 substitute for CSSs hosted on standalone websites and

17 should therefore be regarded as part of Google's CSS ...

18 While there may be some degree of demand-side

19 substitutability, that does not mean that two services

20 are the same, or belong to the same product market, but

21 rather can be complementary ..."

22 So what you are referring to there by the two

23 products are the box on the page and a standalone CSS;

24 is that right?

25 A. Yes, I think what I'm referring to there is -- is

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1 the box on the -- on the SERP and the SERP page as
 2 a whole relative to the standalone CSS website.
 3 Q. Is that right, because the quote you give there is from
 4 Mr Hunt talking about the CM-SU on the one hand and
 5 a standalone website on the other? Do you see that?
 6 A. Yes.
 7 Q. You were accepting there that there is some demand-side
 8 substitutability between the two; is that right?
 9 A. Well, I say "there may be some ... demand-side
 10 substitutability".
 11 Q. But then you say:
 12 "... the ... Decision treats that ... as limited and
 13 complementary, rather than ... removing
 14 the distinction ..."
 15 You refer to three specific Recitals there.
 16 A. Yes.
 17 Q. One might give the impression that the Recitals -- one
 18 might get the impression the Recitals to which you refer
 19 are also distinguishing between the box on the page and
 20 the standalone website. Is that what you were trying to
 21 convey?
 22 A. Well, I think -- I think I'm drawing on the Commission's
 23 analysis of demand-side substitution between SERP
 24 results and standalone CSS offerings.
 25 Q. If we go to Recital 174 {BA/2/33}, it says:

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1 "... even though search results provided by
 2 a general search service may sometimes overlap with
 3 the results provided by a specialised search service,
 4 the two types of search services act as complements
 5 rather than substitutes."
 6 So, there, the Commission is distinguishing between
 7 general and specific search services, is it not --
 8 A. Yes, that is right, yes.
 9 Q. -- it is not distinguishing between the box and
 10 a separate website?
 11 A. Yes, that's correct.
 12 Q. So the argument that you make, whereby the Commission is
 13 distinguishing between these two, would only hold if
 14 the boxes are part of a general search service?
 15 A. Sorry, just -- can you just repeat that? The --
 16 Q. The proposition you were advancing back in the JES,
 17 which we looked at a second ago, whereby the Commission
 18 distinguishes between the box and the separate website,
 19 which is what Mr Hunt was talking about, would only hold
 20 if the box is considered to be part of a general search
 21 service?
 22 A. Well, I'm not sure that is quite right, because I mean,
 23 I think the point I'm alluding to here is that
 24 the Commission Decision provides us with some useful
 25 guide points in terms of the degree of demand-side

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1 substitutability that exists in essence between two
 2 things that it defines as separate relevant markets, and
 3 I'm trying to use that to help inform this debate.
 4 Now, I think if -- if -- my inference is that if
 5 the Commission Decision had already answered that much
 6 narrower question of, is this box in this market or that
 7 market, then it would have -- it would have said so in
 8 here, and so I think -- I think it's right that this --
 9 this does not give you a black and white answer on that.
 10 So in a sense what I'm trying to do is to use
 11 the insight of demand-side substitutability to help us
 12 understand the extent to which the box may or may not be
 13 in -- in one market or the other.
 14 Q. Did your analysis of what the Decision decides about
 15 that also include what the General Court said about it?
 16 A. Yes, I mean, I have looked -- I mean, I have referred
 17 here specifically to the Decision, but I've looked at
 18 all the subsequent judgments as well.
 19 Q. Well, I think that is a matter for submissions.
 20 But you say yourself you have not carried out any
 21 full market definition analysis?
 22 A. Yes, that's correct.
 23 Q. So we do not find a snip test, for example, in your --
 24 A. No --
 25 Q. -- evidence?

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1 A. -- and you don't find one, strictly speaking, in
 2 the Commission's Decision either, because that was an
 3 argument that Google made and the Commission rejected.
 4 Q. So you are not seeking to distinguish or to -- to --
 5 Sorry, my friend is raising a point.
 6 MR PICKFORD: Excuse me, I beg your pardon and sorry to
 7 interrupt.
 8 I have been asked if I could have a five-minute
 9 adjournment to communicate with Foundem. There is
 10 a good reason for it. I would not ask otherwise,
 11 but ...
 12 THE CHAIRMAN: No, we will respect that. You would like
 13 five minutes?
 14 MR PICKFORD: Five minutes should be quite adequate. Thank
 15 you.
 16 (3.51 pm)
 17 (A short break)
 18 (3.56 pm)
 19 MR PICKFORD: I am very grateful --
 20 THE CHAIRMAN: Yes.
 21 MR PICKFORD: -- sir. The situation is that Google and
 22 Foundem have reached a settlement of Foundem's claim in
 23 the UK Shopping Proceedings. The terms of
 24 the settlement are confidential, but a consent order
 25 inviting the dismissal of the claim by the Tribunal will

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1 be filed today.
 2 MR WEST: That is also my understanding and I have no --
 3 nothing further to add.
 4 THE CHAIRMAN: On that basis, I assume you have no further
 5 questions?
 6 MR WEST: I think I will stop there.
 7 THE CHAIRMAN: Yes, so we move to re-examination then.
 8 MR PICKFORD: Thank you, sir.
 9 MR WEST: Could my team perhaps simply be released?
 10 THE CHAIRMAN: I think you should -- you can certainly be
 11 released. Yes, let us just wait a moment.
 12 (Pause)
 13 Yes, Mr Pickford.
 14 Re-examination by MR PICKFORD
 15 MR PICKFORD: Thank you.
 16 So you were asked, Mr Noble, on Monday about an
 17 algorithm which is prone to demote CSSs and does demote
 18 them and whether that potentially affects competition,
 19 and you responded that if everyone is in the same
 20 situation, then, in a sense, the playing field is level.
 21 You recall --
 22 A. Yes.
 23 Q. -- that?
 24 A. Yes.
 25 Q. Can you explain in a little more detail what you mean by

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1 if everybody is in the same situation?
 2 A. So -- so what I mean by that is that if you are
 3 equivalently -- well, sorry, we're thinking here only of
 4 demotion. So if you are equivalently demoting all CSSs,
 5 then in a sense the degree to which competition occurs
 6 in the CSS market is -- it may be affected by that,
 7 because one of the inputs of traffic into that market is
 8 reduced, but one would not expect that one would get
 9 a -- an outcome that reflects anything other than
 10 the competitive dynamics that exist between the players
 11 in the comparison search market that, you know, in
 12 a sense they compete on the merits within that market
 13 but they have a reduced flow of traffic coming in from
 14 that specific source.
 15 Q. When you say "equivalently demoting", do you mean
 16 demoting them to the same degree or subjecting them to
 17 the same demotion rule, or do you mean something
 18 different again from either of those?
 19 A. It's subjecting them to the same demotion rule.
 20 Q. Now, some questions from the Tribunal were put to you
 21 specifically about Panda, and I would like to show you
 22 some data about Panda and then ask you a question
 23 about it.
 24 Could we go, please, to {M2/852/1}.
 25 So this is an internal Google document entitled:

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1 "Competitive Health of the Shopping Aggregation
 2 Space."
 3 From July 2015.
 4 Have you seen this document at all before, do you
 5 know?
 6 A. Yes, I think so. That was a while ago.
 7 Q. Yes.
 8 Could we go, please, to {M2/852/14}.
 9 There is a section that begins:
 10 "Understanding the evolution of the shopping
 11 aggregation space."
 12 Could I ask you please to read underneath that,
 13 where it says:
 14 "Organic traffic evolution."
 15 Then there is a paragraph and then there is another
 16 paragraph with 1, 2, 3, could I just ask you to read
 17 that. That is the context for what I am going to show
 18 you in a moment.
 19 (Pause)
 20 A. Yes.
 21 Q. Then if we can go to the next page, please, {M2/852/15},
 22 we see a chart there for "2010 clicks" and "2014
 23 clicks", and we see a key, "Entrants", "Losers" and
 24 "Winners"; do you see that?
 25 A. Yes.

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1 Q. Then if we could go on to look at some further -- two
 2 further tables before I ask you the question.
 3 There is table 9 sets out the "Identity of top
 4 losing sites and key data". That is on {M2/852/17}.
 5 A. Yes.
 6 Q. Do you see that table?
 7 A. Yes.
 8 Q. Then if we keep going and we come to another table,
 9 which is table 11 {M2/852/19}, which is the "Identity of
 10 top winner sites and key data"; do you see that?
 11 A. Yes.
 12 Q. My question is that, on the assumption that -- as in
 13 the question that was put to you -- that CSSs are prone
 14 to demotion by Panda but on the assumption that this
 15 data is correct, i.e. that there may be winners and
 16 losers, and I am not asking you to comment on that
 17 because it is not for you to do that, what if anything
 18 does that tell you about how such algorithms affect
 19 competition? Do you have anything to add to the point
 20 that you made to the Tribunal in relation to my first
 21 question?
 22 THE CHAIRMAN: You say this is in relation to Panda?
 23 MR PICKFORD: This is in relation to Panda, yes.
 24 THE CHAIRMAN: This is 2010?
 25 MR PICKFORD: It is 2015. It is comparing 2010 --

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1 THE CHAIRMAN: With 2015?
 2 MR PICKFORD: -- with 2014 in fact.
 3 THE CHAIRMAN: I see.
 4 A. Yes, so you've got very differing outcomes. They're
 5 based on the -- you know, looking at this data, you've
 6 got some sites that have lost a very substantial amount
 7 of traffic and some sites that have gained a substantial
 8 amount of traffic.
 9 Q. Does that -- what, if anything, does that tell us in
 10 relation to the competition and the competitive impacts
 11 of Panda?
 12 A. Well, it tells us that you've got a heterogeneous effect
 13 across different participants in the comparison search
 14 market, because you've got some winners, you've got some
 15 losers, you haven't just got one or the other.
 16 Q. You referred in your evidence to some charts showing
 17 shares of traffic from the Remedy Box as between Google
 18 and its rivals. Do you recall that? You said "I think
 19 I've got some charts on this", but you --
 20 A. Yes, yes, yes.
 21 Q. -- were not sure where they were?
 22 A. Yes, I recall that, yes.
 23 Q. Could we go, please, to {I3/2/117}.
 24 This is in the annexes to your report.
 25 A. Yes.

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1 Q. We have some figures that begin at A14.1 and they keep
 2 ongoing because they are for different countries within
 3 the EEA; do you see that?
 4 A. Yes.
 5 Q. Is this or is this not the series of charts that you
 6 were referring to?
 7 A. Yes, it is.
 8 Q. Could you just explain them to the Tribunal, please,
 9 what each of the bars represent and what you took from
 10 these graphs? If you need the operator to move forward
 11 through the slides, just please ask them to do so.
 12 A. Yes, so on the left-hand side, you see the infringement
 13 period and you see the -- it's a bit hard to see
 14 the colours because of the way the confidentiality
 15 marking has been put, but the sort of black/dark blue
 16 bars are the volume traffic gained to rival CSSs. Then,
 17 on the right-hand side of the chart, you see
 18 the Post-Decision Period, and you've got then three
 19 colours, I think it is -- no, sorry, you've still got
 20 the SERP traffic from them, which is the dark coloured
 21 bars, which is at a -- at a particular level, and then
 22 you've got the green colour, which is rival CSSs,
 23 the traffic that they're gaining from PLAs in the Remedy
 24 Box --
 25 MS ROSE: So it is traffic not going to the CSSs but going

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1 to the merchants?
 2 A. Yes, so when someone clicks on it, it is -- you are
 3 being directed to a merchant, yes, correct.
 4 THE CHAIRMAN: The blue is going to GSE?
 5 A. There's -- there's two bits of blue, so you can just
 6 about see the light blue, prior to the "Missing data"
 7 period, which is Google's standalone CSS traffic
 8 pre-the Remedy, and then you've got the traffic going to
 9 GSE from --
 10 MS ROSE: But again --
 11 Q. -- the Remedy Box.
 12 MS ROSE: -- that is actually going to merchants?
 13 A. Yes, that's -- that's -- that's -- that's PLAs in the
 14 Remedy Box that are attributed to GSE.
 15 MS ROSE: So does this break down traffic going to CSSs from
 16 CLAs or from the "By Kelkoo" tab?
 17 A. I --
 18 MS ROSE: Or is that included in the "Other SERP traffic"?
 19 A. I think it's included in this --
 20 MS ROSE: Does that come under "Other SERP ..." --
 21 A. -- because it's included in Remedy Box, so it's -- but
 22 I think --
 23 MS ROSE: Oh, I see.
 24 A. -- but it's --
 25 MS ROSE: So it would be tiny, tiny --

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1 A. -- so it's the total -- yes, but I think Mr Hunt's
 2 maths --
 3 MS ROSE: It will be the 1%?
 4 A. Yes, it's consistent with Mr Hunt's maths, so his 1% --
 5 THE CHAIRMAN: So just to understand it. If we are looking,
 6 I think, at Austria, as it happens, but --
 7 A. Yes. I mean, maybe if we scroll to the UK one.
 8 THE CHAIRMAN: Well, let us -- just so I understand it --
 9 A. Yes, yes.
 10 THE CHAIRMAN: -- (inaudible).
 11 So, in 2025, in Austria, some sort of -- [redacted]
 12 go through the Remedy Box to GSE; is that right?
 13 A. No, no, no --
 14 THE CHAIRMAN: Some --
 15 A. These are -- these are additive. So the amount that
 16 goes to GSE is the height --
 17 MS ROSE: That slice.
 18 A. -- of the blue bar, so they're stacked on top of each
 19 another.
 20 THE CHAIRMAN: They are stacked? They are not --
 21 A. Yes, they're not sat behind each other. So the dark
 22 colour at the bottom is the "Other SERP traffic" that's
 23 going to rival CSSs, then in a sense the height of
 24 the green bar that sits on top of that is then
 25 the amount of traffic that's going to rival CSSs through

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1 the Remedy Box.
 2 THE CHAIRMAN: So the [redacted] or [redacted] is the total
 3 number --
 4 A. Yes.
 5 THE CHAIRMAN: -- that is going to everyone?
 6 A. Precisely.
 7 MR PICKFORD: Could I just ask if we go to {13/2/123}
 8 because we might as well look at the --
 9 THE CHAIRMAN: Just one moment.
 10 PROFESSOR SMITH: So just before we leave this {13/2/117}.
 11 So, as I said yesterday, I am a bit colour-blind, so
 12 pardon me if I do not get the colour names right, but
 13 the greenish columns are rival CSSs Remedy Box including
 14 the "By CSS" link?
 15 A. Yes, it's all links that are in the Remedy Box.
 16 PROFESSOR SMITH: The GSE Remedy Box, similarly, is Remedy
 17 Box including the Google links in the Remedy Box?
 18 A. Yes, yes.
 19 PROFESSOR SMITH: But there is no traffic reported here from
 20 anybody who clicks on the Google Shopping property,
 21 nothing corresponding to the light grey pre- -- well,
 22 I mean, let us not detain ourselves on -- any time on
 23 this, because it is not very -- there is an ambiguity
 24 there.
 25 A. Yes.

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1 PROFESSOR SMITH: Pardon me, Mr Pickford.
 2 MR PICKFORD: No, thank you very much, Professor.
 3 I was simply, because I thought it might be of more
 4 help to everyone to look at the UK one, I was going to
 5 move us to that, but --
 6 THE CHAIRMAN: Yes, just give us the page reference for
 7 the UK.
 8 MR PICKFORD: Yes, so the UK reference is {13/2/123}.
 9 I have no further questions, it was simply --
 10 THE CHAIRMAN: Yes, let us just look at it so we make sure
 11 we understand --
 12 MR PICKFORD: Sorry, no questions on this issue.
 13 THE CHAIRMAN: Yes, let us just look at it for a minute so
 14 we can understand it -- make sure we understand it.
 15 (Pause)
 16 So, pre- -- so, in the UK, from about 2013 until
 17 mid-2018 until the Remedy, there was virtually no
 18 traffic to rival CSSs from the SERP; is that right?
 19 A. It's a small amount of traffic. I mean, it's a little
 20 difficult to see it on this chart because it has a very
 21 different scale to the Austria one.
 22 THE CHAIRMAN: Yes.
 23 A. I see on the left-hand side it goes up to, well,
 24 essentially [redacted] clicks, whereas the Austrian one
 25 was I think only up to [redacted].

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1 MS ROSE: You see the significant impact of the pandemic on
 2 online shopping.
 3 THE CHAIRMAN: Yes, absolutely.
 4 MS ROSE: The annual peaks are presumably Christmas
 5 shopping?
 6 A. Yes, I think it's November and December that have
 7 the peaks.
 8 THE CHAIRMAN: Yes.
 9 MR PICKFORD: Thank you.
 10 You were asked by the Tribunal, I think it was on
 11 Monday, about whether Google's infringement would have
 12 affected the independent CSSs' ability to invest in
 13 improvements to their sites. Do you recall that
 14 question?
 15 A. Yes.
 16 Q. Now, I would like to put a hypothetical counterfactual
 17 to you and ask you a question about it. So I would like
 18 you to assume that a lawful counterfactual would still
 19 have seen Algorithm A and Panda applied, that is
 20 the first assumption, but that there would have been
 21 equal access for CSSs to a box where clicks lead to
 22 merchants, not to CSS sites. So those are the --
 23 A. Yes.
 24 Q. -- fundamentals of my assumptions that I am asking you
 25 to assume.

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1 Now, as regards the effect on investment by a CSS in
 2 its website, what, in your view, would be the delta
 3 between the factual and the counterfactual that I have
 4 set out under my assumptions?
 5 A. I don't think there would be much of a delta.
 6 Q. Now, it was put to you this afternoon by Ms Love that it
 7 was established that Google gave up the space for
 8 product results on its SERP for free until 2013 and you
 9 agreed with that; do you recall that?
 10 A. Yes.
 11 Q. Could we go, please, to {J2B/44/33}. Could I ask you to
 12 look at footnote 123, which the Tribunal will know is
 13 obviously one of my favourite footnotes.
 14 THE CHAIRMAN: Sorry, this document is?
 15 MR PICKFORD: So this document is the "Report on
 16 Technologies and Designs of Google's Product
 17 Results ~..."
 18 This was a Google submission to the Commission
 19 during the administrative procedure, I think, or was it
 20 the General Court? Sorry, I beg your pardon, this
 21 actually was submitted to the General Court. It was
 22 the factual annex in response to some questions from
 23 the General Court.
 24 Could you look at footnote 123, please.
 25 A. Yes.

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1 Q. Now, do you agree or disagree with Ms Love in the light
2 of that footnote? The footnote beginning:
3 "Product ads ..." --
4 A. Yes.
5 Q. --:
6 "... (also called PLAs) ..."
7 MS ROSE: Does this mean with images?
8 MR PICKFORD: It does, yes.
9 A. Yes, I mean, it certainly is -- appears inconsistent
10 with them only starting in 2013.
11 Q. Now, could we go, please -- Ms Love took you to
12 Mr Goodrow's evidence on Day 9 about a shopping mode;
13 you recall that?
14 A. Yes.
15 Q. I would like to go on to Mr Goodrow's conclusion that
16 she stopped short of. Could we go, please, to
17 the transcript {Day9MT1} --
18 THE CHAIRMAN: Just one moment.
19 MR PICKFORD: Yes, of course.
20 (Pause).
21 Thank you, sir.
22 So I was just putting to you -- I will just repeat
23 it again. Ms Love took you to Mr Goodrow's evidence and
24 I am going to take you to a couple of pages later. So
25 we are on {Day9MT1/144}, and this is at the end of --

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1 this is right at the end of the discussion that she was
2 referring to about shopping mode. The conclusion of
3 Mr Goodrow, he says, right at the end -- he has just
4 been discussing something call H product and then he
5 says:
6 "... without people adopting that ..."
7 This is line 12:
8 "... I don't see any way that could have actually
9 achieved this shopping vision."
10 Now, what bearing, if any, does that have on your
11 view, as an economist, about the proposal that was being
12 put to you by Ms Love?
13 A. I mean -- I mean, I guess it goes into the -- that
14 hierarchy of is it legal, is it technically feasible and
15 then what are the incentives based on that. I think
16 the way I understand what's being said here is that this
17 -- this doesn't seem to have been very technically
18 feasible and so you don't get on to the incentive
19 question.
20 Q. Now, finally, Ms Love put one more point on Mr Goodrow's
21 evidence to you about what one could infer for
22 the counterfactual and it was suggested that particular
23 weight should be given to Mr Goodrow's view; do you
24 remember that?
25 A. Yes, yes, because he was the head of that particular

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1 division.
2 Q. Yes, she -- quite.
3 Could we go, please, to page 142, lines 16 to 18
4 {Day9MT1/142:16-18}, and what we see there is
5 Mr Goodrow's view on what would have happened in
6 the counterfactual:
7 "... I think what Google would have done is gone to
8 the product lists ads approach, which was already
9 something that was being considered, getting rid of
10 the Product Universal all together and going to
11 product listing ads."
12 Is there anything that you are able to draw, in
13 terms of your analysis, from this further evidence?
14 A. Where are we on the page?
15 Q. So we are on the page about halfway down.
16 A. Ah, yes.
17 Q. So this is all part of the discussion that was being
18 put --
19 A. Yes.
20 Q. -- to Mr Goodrow and that Ms Love was then putting to
21 you.
22 A. Yes.
23 Q. Mr Goodrow was answering questions about the -- about
24 various alternatives that were being suggested here,
25 including that Google might have adopted this shopping

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1 mode, and then we see his response, which I think, in
2 fairness, you should see, because you were only shown
3 some of it, at the end of that passage and he says:
4 "... I think what Google would have done ..."
5 Down to the end of line 20. If you just want to
6 read that.
7 A. Yes.
8 (Pause)
9 Yes, I mean -- I mean, I think that's him describing
10 his view now of what he thinks he would have done then,
11 and in a sense, if -- if his view is to be given strong
12 weight because of his seniority, then that would apply
13 to this statement.
14 MR PICKFORD: I have no further questions.
15 THE CHAIRMAN: I think that last question about
16 the evaluation of the evidence is not really a question
17 for the expert.
18 MR PICKFORD: Well, it is -- the reason why I put it, sir,
19 is because Ms Love put large amounts of material to
20 the expert but, in my submission, did not fairly put the
21 evidence and so --
22 THE CHAIRMAN: I understand.
23 MR PICKFORD: -- I thought it was fair to put the conclusion
24 of that.
25 THE CHAIRMAN: Yes. Any more questions?

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1 MR PICKFORD: So I have no further questions for
 2 the witness.
 3 THE CHAIRMAN: Yes.
 4 Questions from THE TRIBUNAL
 5 Mr Noble, can I ask you to go again to that table we
 6 have spent a bit of time looking at I think which is --
 7 A. The annex 13 table.
 8 THE CHAIRMAN: -- the annex 13.1 table, which I think is
 9 at -- someone will give me the reference. It is an I
 10 reference, I think. I think it is {13/2/112} or 114.
 11 It is certainly {13/2}.
 12 A. Yes.
 13 THE CHAIRMAN: There we go, your table A13.1. Just asking
 14 you about the first four on that table --
 15 A. Yes.
 16 THE CHAIRMAN: -- can you help us, were each of those
 17 trading as CSSs before the Remedy? Take them in order.
 18 [Redacted], was that operating as a CSS before
 19 the Remedy?
 20 A. As I sit here right now, I don't know the answer to that
 21 question. It's --
 22 THE CHAIRMAN: Do you know it for any of the top four? In
 23 the UK, this is .
 24 A. I'm not sure I know the answer to that. I'm sorry.
 25 THE CHAIRMAN: Was that not something you looked at?

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1 A. Well, the -- no, because the -- I think what we were
 2 considering was the extent to which the business model
 3 was one type or the other, and I think one of the points
 4 that I don't think we quite came on to in the -- in
 5 the cross-examination was the evolution of ad agencies
 6 into CSSs, because I think my view of that is that, in
 7 a sense, that's quite a common thing that you see, that
 8 businesses that are in an adjacent market evolve their
 9 proposition, they develop new technology, whatever it
 10 is, they use their assets to do that, and so for my
 11 analysis of -- of almost like what are the sustainable
 12 business models under the Remedy, strictly it doesn't
 13 matter whether you are an existing player or a new
 14 entrant into that market, because the key question is,
 15 is it possible to achieve good outcomes using one model
 16 or the other, and the -- the proposition that I was
 17 evaluating -- trying to evaluate in part with this table
 18 was the suggestion from Mr Hunt that the only viable
 19 business model -- or the tendencies towards everybody
 20 becoming self-service, and I think that wasn't borne out
 21 by my research.
 22 THE CHAIRMAN: Yes, your focus was on the managed versus
 23 self-service.
 24 A. Yes, the managed versus self-service point.
 25 MR PICKFORD: I think there was a reference in your question

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1 to the name of a CSS and possibly some relevant
 2 information about where it was positioned. Could I ask
 3 for that to be struck?
 4 THE CHAIRMAN: Yes, we can do that. I think I mentioned
 5 a name. Yes, I mentioned one.
 6 MR PICKFORD: Yes.
 7 THE CHAIRMAN: So if we delete the name of that one from
 8 the --
 9 MR PICKFORD: Thank you, sir.
 10 THE CHAIRMAN: -- and just say the top four. Yes.
 11 MR PICKFORD: Thank you, sir.
 12 THE CHAIRMAN: Well, that concludes your evidence, Mr Noble,
 13 so you are --
 14 A. Thank you.
 15 THE CHAIRMAN: -- discharged as a witness, and Mr Hunt is
 16 also discharged.
 17 A. Thank you.
 18 (The witness withdrew)
 19 THE CHAIRMAN: Right, we will give Mr Noble a moment to
 20 leave the witness box and then, Mr Pickford, you want
 21 to --
 22 MR PICKFORD: Thank you.
 23 THE CHAIRMAN: -- address us about something.
 24 Housekeeping
 25 MR PICKFORD: So there are two points. One is a more

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1 controversial one, at least as between me and my learned
 2 friend, and one, as now, should be somewhat less
 3 controversial .
 4 So taking the first of those.
 5 THE CHAIRMAN: Yes.
 6 MR PICKFORD: There is a matter which has been causing
 7 Google increasing concern in relation to the way that
 8 Kelkoo is putting one aspect of its case. We have added
 9 some letters to the bundle which address it. I will
 10 give you the references. I am not asking you to turn
 11 them up, but I am just going to explain the point. So
 12 the reference -- for the reference, it is {L6/43} and
 13 {L6/44}, and the point is this, which is that Google has
 14 approached this case on the basis that
 15 the self-preferencing abuse that was found by
 16 the Tribunal was --
 17 THE CHAIRMAN: By the Commission.
 18 MR PICKFORD: By the Commission, obviously. That was found
 19 by the Commission was not one that was the result of an
 20 anti-competitive strategy, and the General Court found
 21 in terms in its judgment at 680 {BA/3/134} that:
 22 "... the Commission did not prove ... that there was
 23 a genuine intention to exclude competitors and
 24 a strategy devised to that effect."
 25 THE CHAIRMAN: Yes.

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1 MR PICKFORD: Now, Kelkoo originally had a pleaded claim
 2 that Google had an exclusionary strategy and engaged
 3 in -- and that there was a standalone claim in that
 4 respect, and then, on September 15th of last year, there
 5 was a consent order pursuant to which a number of things
 6 happened in relation to Kelkoo's claim. Firstly, there
 7 was a pre-Decision claim that was removed, and then
 8 secondly, its pleading was amended to remove certain
 9 allegations and one of those allegations that was
 10 removed was the allegation of a deliberate strategy.
 11 What Kelkoo made clear in a number of places in its
 12 pleadings thereafter was that its Decision Period claim
 13 was now pure follow-on and that its Post-Decision Period
 14 claim was effectively on the same basis, obviously not
 15 technically follow-on, because it is a later period, but
 16 it was not making any additional allegations beyond
 17 the nature of the abuse that was established in
 18 the Decision.
 19 So if I could just very briefly ask you to look at
 20 the amended pleading.
 21 THE CHAIRMAN: Yes, but can you give us the headline?
 22 MR PICKFORD: The headline, of course. The headline is
 23 this. I am not asking for a determination of the point
 24 that I am going to make, but I would just like to put it
 25 on the Tribunal's radar because, increasingly -- there

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1 was -- early on, there was a mention by Mr Jowell of
 2 strategy and I thought, "Shall I rise"? "No, I am not
 3 going to rise about that". You know, "The odd stray
 4 word, I have had plenty of stray words, we are not going
 5 to worry about". But we then wrote correspondence this
 6 week to just clarify with Kelkoo what their case was and
 7 say, "Are you actually now alleging X", and they said,
 8 "Yes, we are", and given that, I need to put on
 9 the Tribunal's radar that we do not accept that that is
 10 legitimate.
 11 Now, ultimately, for reasons of efficiency, I am
 12 content that this issue can be dealt with in closings
 13 and the Tribunal can rule on it in its judgment. I am
 14 not asking for anything more than that. But I think it
 15 is important, given the way it has arisen, that I just
 16 -- that I lay down a marker, because there has not been
 17 a marker before because we did not realise that this was
 18 what was now actually being said. So can I just very
 19 briefly show you the amended -- the amendment to
 20 the pleading to make good my point and then I can --
 21 THE CHAIRMAN: We do not think you need to.
 22 MR PICKFORD: Okay.
 23 THE CHAIRMAN: Do you want to mention the second point so we
 24 can deal with it?
 25 MR PICKFORD: Of course. In which case, the second point is

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1 about written closings and how many pages you would
 2 like.
 3 THE CHAIRMAN: Yes, we were going to come to that. Okay.
 4 We were going to say something about that.
 5 So Mr Jowell --
 6 MR JOWELL: Yes.
 7 THE CHAIRMAN: -- is that right, because --
 8 MR JOWELL: No, we do not --
 9 THE CHAIRMAN: -- it may be my failing, I had not picked up
 10 that there was a -- that Kelkoo was alleging that
 11 the abuse was a deliberate aim to strike at -- I mean,
 12 obviously self-preferencing has the effect of demoting
 13 others, but --
 14 MR JOWELL: No, I am afraid I think my learned friend has
 15 misread our correspondence and we would invite you just
 16 to read it. Of course we accept, first of all, that we
 17 do not have a claim for the Pre-Decision Period, and we
 18 also accept that, for the Decision Period, our claim is
 19 a follow-on claim and as such we do not need to
 20 establish that there was a deliberate strategy.
 21 But what was said to us in correspondence was
 22 that -- or we understood them to be saying in
 23 correspondence was that in some way that precludes us
 24 from investigating on the documents and in evidence and
 25 in submission what Google's business strategy was in

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1 these proceedings, and that is a very different
 2 proposition, because we say that obviously it is
 3 inevitable, in a consideration of the counterfactuals,
 4 that we do stray into what Google's wider business
 5 strategy was, and of course we accept that reading some
 6 of the documents, the contemporaneous documents that
 7 concern Google's strategy, may be awkward for them, but
 8 I am afraid that is what it is and we are entitled to
 9 make submissions on that insofar as it is relevant to
 10 the question of what Google would have done in
 11 the counterfactuals.
 12 I mean, there is an important general issue, which
 13 is this. I mean, my learned friend mentioned
 14 the General Court, and of course what the General Court
 15 also found, as did the Court of Justice, was that
 16 the two aspects of Google's conduct, the demotion and
 17 the promotion, were inextricably interlinked and they
 18 rejected Google's submission that somehow one could look
 19 at these as two discrete elements, and that is of course
 20 an important issue in these proceedings as well, and
 21 once one considers that one does get into this question
 22 of, well, to what extent was this an integrated abuse or
 23 can one split off, as they seek to again at this trial,
 24 the demotion element.
 25 MS ROSE: But you accept that a lawful counterfactual might

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1 be one that included the demoting algorithms, your
 2 option 3?
 3 MR JOWELL: That is a secondary case, in fact, because --
 4 THE CHAIRMAN: Your primary case is --
 5 MR JOWELL: -- our primary case is that you have to do both
 6 and that is -- but certainly as our alternative case we
 7 do adopt 3a and 3b, yes. That is an alternative case.
 8 THE CHAIRMAN: Yes, that was clear in your opening.
 9 MR JOWELL: Yes.
 10 THE CHAIRMAN: Your written opening.
 11 MR JOWELL: So I hope that clarifies it, but of course we
 12 might have to go back to it in submission.
 13 THE CHAIRMAN: So it is not -- there is no reliance on any
 14 strategies as making out a case of abuse?
 15 MR JOWELL: No, we do not need to.
 16 MR PICKFORD: Well, the difficulty -- unfortunately that
 17 does not meet the problem and the problem is this.
 18 There was a paragraph -- there were a number of
 19 paragraphs in Kelkoo's original pleading where they
 20 referred to a deliberate strategy and they said that
 21 they will contend at trial that Google followed such
 22 a deliberate strategy. They then struck those out.
 23 That was prior to Google submitting its evidence.
 24 Now, had we known that we were going to be meeting
 25 a case that we had a deliberately exclusionary strategy,

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1 we would have obviously considered that very carefully
 2 in the evidence that we adduced for the purposes of this
 3 trial. We, understandably, without waiving any
 4 privilege, can be expected to have taken account of
 5 the way that Kelkoo put its case, and in particular
 6 the things that it removed from its case, when we were
 7 choosing what evidence to provide for these proceedings
 8 and which witnesses were relevant. There is a real
 9 problem for us now. It is a real problem of basic
 10 fairness if we are now being expected to meet a case
 11 about our strategy which was not on the pleadings,
 12 indeed it was expressly struck from the pleadings. That
 13 goes to whether it is an abuse and it goes to whether it
 14 is just part of the background that they now want to
 15 rely on. So that is the point.
 16 THE CHAIRMAN: Well, the abuse in the Decision Period, there
 17 is no question whether it is an abuse, that is decided.
 18 MR PICKFORD: Yes.
 19 THE CHAIRMAN: The Post-Decision Period, it seems to me they
 20 cannot say, absent a strategy to exclude -- if it is not
 21 an abuse then it is only an abuse because there is some
 22 strategy.
 23 MR PICKFORD: Yes.
 24 THE CHAIRMAN: It is the same abuse continuing, or not
 25 effectively removed is I think what they are saying. It

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1 may not have been quite as serious as it was before in
 2 its effect, but there is still self-preferencing --
 3 MR PICKFORD: Yes.
 4 THE CHAIRMAN: -- and strategies does not come into it.
 5 MR PICKFORD: Yes.
 6 THE CHAIRMAN: I am still not quite clear from what
 7 Mr Jowell said what is the relevance.
 8 The counterfactual is simply to look at what would
 9 Google have had to do, and then what, if there are
 10 alternatives, what is the most likely thing it would
 11 have done if it had not been acting unlawfully. So what
 12 strategy it might have had in the actual world, why is
 13 that relevant to counterfactuals anyway?
 14 MR JOWELL: Well, I put it rather more broadly. I was not
 15 suggesting that the -- that having a deliberate strategy
 16 to exclude was necessarily relevant to Google's -- what
 17 Google would done in the counterfactuals, I accept that.
 18 My case is rather that one has to look at what were
 19 Google's strategies more generally, its business
 20 strategies, in deciding what -- you know, what it would
 21 have done. That was the point. But I also do say that,
 22 in considering the question of the interlinking of
 23 the two elements of the abuse, one does inevitably stray
 24 somewhat into looking at what people were considering at
 25 the time as regards Google's overall conduct.

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1 THE CHAIRMAN: I have to say, for myself, I am not convinced
 2 of that. I think that the only sensible way to deal
 3 with this is you put in your closing submissions, we
 4 will see how this features, and if it strays into areas
 5 that Mr Pickford says, "Well, we are embarrassed by
 6 that", because of the deletion of those paragraphs from
 7 your pleading, then we can rule that those points are
 8 not open to you. He has put down very clear express
 9 markers which you will no doubt take into account.
 10 MR JOWELL: Of course.
 11 THE CHAIRMAN: I do not see that it is, as I look it,
 12 relevant to counterfactuals at all, because in
 13 the counterfactual world their strategy would have had
 14 to be different, in any event, from whatever it might
 15 have been. Whether it goes into anything else, at
 16 the moment I am -- well, I will wait to see how you put
 17 it. I cannot quite see how it does, but if it does
 18 arise, then we understand Google's position and we will
 19 deal with it when we receive closings.
 20 MR JOWELL: Yes.
 21 THE CHAIRMAN: Good. Well, then we can deal with the final
 22 point that we were going to raise anyway, which is
 23 length of closings. I think both of you know that I am
 24 a strong believer in page limits and I find them helpful
 25 not only to the Tribunal but therefore to the parties.

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1 Now that there is only one pair of Claimants but
 2 singularly represented, the other thing we want to say,
 3 we would like a consolidated document that incorporates
 4 those parts of your openings that are useful and
 5 relevant and helpful so that we do not have to jump
 6 between the two.
 7 MR JOWELL: Yes.
 8 THE CHAIRMAN: On that basis -- and I think equal length
 9 now, clearly, for both sides -- if we had 150 pages
 10 each, would that seem sensible?
 11 MR JOWELL: That would seem sensible to us, yes.
 12 MR PICKFORD: We agree.
 13 THE CHAIRMAN: Excellent. That is a very good note on which
 14 to --
 15 MS ROSE: But that does not mean you have to have 150 pages.
 16 MR PICKFORD: But you can go there as well, yes.
 17 PROFESSOR SMITH: They might stop at 149.
 18 THE CHAIRMAN: Yes.
 19 We will not prescribe font size, but the usual
 20 1.5 spacing, certainly, and if we could get those in
 21 Word as well, that would be helpful, for obvious
 22 reasons.
 23 I think we then resume on -- is it -- I have not got
 24 my calendar with me. Is it the --
 25 PROFESSOR SMITH: The 27th.

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1 MS ROSE: It Monday, the --
 2 THE CHAIRMAN: Yes, on Monday week, which is 27 July, and we
 3 receive your closings by 5 pm on 22 July. You have now
 4 got an extra day, which I hope enables everyone to take
 5 the evening off and watch the football.
 6 MR PICKFORD: Thank you, sir.
 7 THE CHAIRMAN: We will see you at 10.30.
 8 (4.41 pm)
 9 (The Court adjourned until 10.30 am on Monday, 27 July 2026)
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