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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 LLP and Bristows LLP) on behalf of Google LLC & Others

1 Monday, 29 June 2026
 2 (10.30 am)
 3 (Proceedings delayed)
 4 (10.35 am)
 5 THE CHAIRMAN: Good morning.
 6 Housekeeping
 7 As we are going into a new week and a 3 area of
 8 evidence, I will repeat the warning that I gave at
 9 the outset of this Trial to the effect that
 10 the proceedings are live streamed, except when we hear
 11 confidential material and then have to turn off the live
 12 stream. It is strictly forbidden for anyone to make any
 13 unauthorised recording of the proceedings or to take any
 14 image of the proceedings and doing so is a contempt of
 15 court and punishable as such.
 16 We have received a confidential note following
 17 certain queries raised when Mr McGurk was addressing us
 18 on behalf of Google and I take it that the Claimants
 19 have been given a copy of that. We received that just
 20 a very short time ago. We have read it fairly quickly.
 21 But Mr McGurk, this was given following exchanges
 22 with you when you were addressing us explaining
 23 Algorithm A. We have to say, we do not think that
 24 paragraph 4 of this note, which I am not going to read
 25 out, I do not want to go into closed session, does

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1 actually answer the fairly simple question, I think
 2 that, we raised regarding Amazon. In the transcript of
 3 Day 3, it is page 10, lines 3 to 6, was what we were
 4 asking. This was in confidential session. The answer
 5 that you gave — and I do not know if we can bring that
 6 up so that it is not universally visible, it is part of
 7 the confidential section of the transcript — I think at
 8 lines — I have not got it in front of me now, about
 9 lines 21 to the bottom of that page and then on to
 10 page 11, lines 11 to 12, and you said you were going to
 11 check. I do not think it is addressed here,
 12 the specific question regarding Amazon.
 13 MR MCGURK: (Off microphone — inaudible) I do not have
 14 (inaudible). May I, over the course of the morning,
 15 look at that, take instructions and if there is
 16 something to add to this that does provide —
 17 THE CHAIRMAN: Yes, well, it was a sort of "yes" or "no"
 18 question, and either it does or it does not. That is
 19 all we wanted to know.
 20 The other matter, which we can raise with Mr Kim,
 21 regarding the Panda algorithm, which is in paragraph 11
 22 of the note, we are still a bit unclear having regard to
 23 what Mr Kim says at paragraph 220 of his statement.
 24 This was a particular question about queries, the nature
 25 of queries. That is all I will say at the moment.

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1 MR MCGURK: Can I come back to you on the former, hopefully
 2 with a yes or no, and on the latter, if you are asking
 3 us to revise this and address paragraph 220 —
 4 THE CHAIRMAN: Yes, we just want to make sure we have
 5 understood the position clearly. Thank you.
 6 Then, Mr Pickford, I think we said that you can open
 7 or give this, as it were, additional part of your
 8 opening regarding Foundem for about 20 minutes.
 9 Opening submissions by MR PICKFORD (continued)
 10 MR PICKFORD: Thank you. Yes, thank you.
 11 Sir, members of the Tribunal, Mr West ended his
 12 submissions on Tuesday last week with a small surprise.
 13 He fully delegated in his skeleton argument at
 14 paragraph 1 {A1/2/3} Foundem's case on the Post—Decision
 15 counterfactual to Kelkoo, but in his submissions he
 16 sought to explain what he said were the differences
 17 between Foundem and Kelkoo, so I will address that.
 18 Mr West effectively made two points.
 19 First, he told you that Google's 2012 exploratory
 20 commitments proposal for the Product Universal was, and
 21 I quote, "Very similar to scenarios 1 and 2 [as]
 22 advanced by Foundem and Kelkoo [for their
 23 counterfactuals]". Now, what Google was proposing is
 24 set out in a document that Mr West took you to.
 25 The document is to be found at {J2A/54}. Could we go,

3

1 please, to {J2A/54/5} of that. So one sees here, at
 2 paragraph 2, first bullet, that what Google was
 3 proposing was as follows:
 4 "Links to rival vertical search sites. Google
 5 proposes to display up to three, algorithmically
 6 selected links to rival 'vertical' search sites within
 7 Google's Product and Local Universal Results. This
 8 would give users another clearly marked way to reach
 9 competing 'vertical' search services via Google's
 10 Product and Local Universal Results."
 11 Then, if we go, please, to the picture that you were
 12 shown last week, that is at {J2A/54/14} of this
 13 document.
 14 THE CHAIRMAN: Can you just remind me, what — because there
 15 were a series of proposed commitments, which —
 16 MR PICKFORD: There were.
 17 THE CHAIRMAN: What is the date of this one? This is 2012,
 18 is it?
 19 MR PICKFORD: This is 2012. I think that this was the first
 20 of the three.
 21 THE CHAIRMAN: Yes.
 22 MR PICKFORD: This was not in fact a — I think a formal —
 23 what there was is there were three iterations that were
 24 discussed and then ultimately there was one that was put
 25 forward and we were told that that was not going to be

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1 satisfactory .
 2 THE CHAIRMAN: Yes.
 3 MR PICKFORD: So we saw, I believe, this picture,
 4 the "Shopping results for lcd tvs", and what one sees on
 5 here is the usual Product Universal, which is, in this
 6 case, five TVs and those link through to Google's
 7 results . Then underneath, as promised by Google, there
 8 were then three additional links to CSSs. Now, it says
 9 "Amazon" because this is 2012 and at this point Google
 10 was arguing that Amazon was part of the CSS market and
 11 we had not had the Decision and it had not lost that
 12 point yet. So that is to explain why Amazon is
 13 mentioned there. But their links are to "Amazon,
 14 SupaPrice, or Kelkoo". So those were the three links
 15 that were being proposed and they were additional to
 16 the main pictures that went through to Google.
 17 One can see why, given the reasoning that
 18 I explained that the Commission ultimately adopts in
 19 the Decision, that was not satisfactory to
 20 the Commission. But it is entirely unlike the proposals
 21 that are now made by Foundem and Kelkoo, because
 22 the whole concept behind their counterfactual 2 is that
 23 if you click on the rich results , that takes you through
 24 to rival CSSs, not just Google's, and the point about
 25 this was that it took you through to Google's. So this

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1 proposal was nothing like their counterfactual 2.
 2 As regards counterfactual 1, of course,
 3 the Claimants' counterfactual 1 involves removing
 4 the box of rich results altogether, and I am afraid we
 5 simply do not understand how Foundem says that that is
 6 very similar to presenting a box of rich results . That
 7 does not make any sense to us. So that is the first
 8 point.
 9 Secondly, Mr West sought to advance a case that
 10 under scenarios 3a and 3b Google cannot auction access
 11 to the box but must instead have a low fixed fee, and he
 12 suggested I think the fee of 1 cent per PLA. So what he
 13 is saying there in that submission is that for
 14 the purpose of a counterfactual, Google cannot charge
 15 because charging by auction is abusive. That is what is
 16 implicit in that case.
 17 Now, I am going to put to one side for a moment
 18 the first procedural problem with that submission, which
 19 is that Foundem, in addition to delegating
 20 the Post-Decision counterfactual case to Kelkoo, also
 21 delegated the continuing abuse case to Kelkoo and Kelkoo
 22 does not advance a case that the auction mechanism is
 23 abusive, so Mr West should not only be taking points on
 24 the Post-Decision counterfactual, we say still less
 25 should he be taking points on the counterfactual based

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1 on a continuing abuse allegation that neither Kelkoo,
 2 nor he actually directly pursue. So that is the first
 3 point, but I will obviously deal with it on substance as
 4 well.
 5 So turning to the substance of his point, I say all
 6 of the points that he relied upon in support of his case
 7 in this regard are without merit and I have got four
 8 main points to make.
 9 The first is that Mr West referred to an SSO which
 10 he said Google --- sorry, which --- and in that SSO it
 11 suggests that Google should charge a flat fixed fee of
 12 1 cent per PLA. But, of course, that idea never made it
 13 into the Decision, so the fact that the Commission
 14 raised the idea and then dropped it in the Decision is
 15 a point that goes against Mr West. It certainly cannot
 16 support him.
 17 The second point is that he submitted that charging
 18 according to willingness to pay would not offer enough
 19 free traffic to CSSs and he said, well --- and free
 20 traffic was a relevant issue in the Decision. But the
 21 problem with that is that that submission confuses
 22 the two distinct elements of departure from competition
 23 on the merits that I showed the Tribunal last week.
 24 The two elements are, first, that one needs unjustified
 25 discrimination, and second, that that unjustified

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1 discrimination needs to take place in certain wider
 2 circumstances, certain wider factual circumstances where
 3 it is considered to be a sufficient competition problem.
 4 Now, the relevance of the free traffic in
 5 the Commission's Decision arises under the second limb
 6 in that test, once the unjustified discrimination had
 7 already been established. The Commission never found
 8 that there was a freestanding obligation to provide CSSs
 9 like Foundem with free traffic, and I explained in my
 10 opening last week that there is in fact none in law.
 11 So the third point that Mr West relied upon is, he
 12 sought to argue, as far as we understood it, that an
 13 auction is inherently discriminatory, but he appears in
 14 this respect to be under a misapprehension that
 15 the motivating force for EU and UK competition law is to
 16 promote the pricing of scarce resources, such as
 17 appearing on the PLA, at fixed prices that are
 18 determined by the courts rather than by markets.
 19 Implicit in his case seems to be that if you are a small
 20 entrant, you might be less able to compete to pay for
 21 that scarce resource than a better-resourced rival. My
 22 response to that is, yes, that is a market economy in
 23 action, and Mr West has not shown you any authority to
 24 suggest that an auction in that context could possibly
 25 be a breach of competition law.

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1 Now, that then takes me to my fourth and final point
2 on Mr West's discrimination submission which loops back
3 to a wider issue in this case which we discussed last
4 week and this is the biggest of all the points. I have
5 got the following short observations on the indirect
6 discrimination topic that we touched on in questions
7 from the Tribunal last week.

8 In the shopping space, Google operates as a platform
9 for multiple stakeholders who have often competing
10 interests. It was a point I made about users and
11 merchants and a host of different intermediaries all
12 having potentially conflicting interests. Now, Google's
13 commercial success is dependent to a large degree on
14 finding means of balancing the complex interactions
15 between those interests. But the lodestar that guides
16 it is seeking, as best it can, to give its users what
17 they want and it does that through algorithms which are
18 based on several hundred different signals and all of
19 those algorithms operate together as a whole. The core
20 idea behind them is to find proxies for things that
21 indicate that users are likely to prefer one site to
22 another.

23 Now, in this case, because of the nature of
24 the arguments that we are considering, you are being
25 given a necessarily tiny snapshot of just two particular

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1 algorithms within that much, much bigger picture. Now,
2 it is obviously legitimate and correct for the Tribunal
3 to interrogate as a matter of fact how those algorithms
4 work so that when it considers the legal issues in this
5 case, it properly understands what they do and how they
6 do it, and that was obviously the subject of the note
7 that you were discussing with Mr McGurk.

8 Where, as a matter of law, we will ultimately be
9 urging the Tribunal to tread lightly is where one moves
10 to the issue of indirect discrimination between third
11 parties under the algorithms, and in that regard my
12 submissions break down into two sub-parts.

13 The first is this. We say Foundem have not
14 identified a proper legal basis for its claim in this
15 respect. Now, in this context, Sir, I believe it was
16 you that mentioned to me last week Article 102(c) of
17 the Treaty. Unfortunately, that is not in
18 the authorities bundle and I think that reflects
19 the fact that Foundem itself does not cite it. But what
20 we can find, what I have found is section 18 of
21 the Competition Act that is quoted in the Streetmap case
22 and it is in the same terms, obviously subject to
23 the territorial jurisdiction.

24 So please could we turn to {AB2A/11/10}.

25 THE CHAIRMAN: This is not for the case itself, it is

10

1 just —

2 MR PICKFORD: This is not for the case itself, this is just
3 because this is the only place that I could find in
4 the bundle that actually set out in terms effectively —
5 well, it is section 18.

6 THE CHAIRMAN: Yes.

7 MR PICKFORD: So you are welcome obviously to look at it in
8 something like the Purple Book if that is more
9 convenient.

10 So if we look at subsection (2) sub-subsection (c),
11 the abuse that is being considered there may consist of
12 — and I quote:

13 "Applying dissimilar conditions to equivalent
14 transactions with other trading parties, thereby placing
15 them at a competitive disadvantage."

16 What we say about that is, Article 102(c) has no
17 application to a complaint of third party and third
18 party indirect discrimination in relation to Google's
19 generic results for two reasons. The first is that
20 the websites there are not trading parties and Google
21 has not entered into transactions with them. The second
22 is —

23 THE CHAIRMAN: Third party websites like Foundem, you
24 mean —

25 MR PICKFORD: Yes.

11

1 THE CHAIRMAN: — are not trading parties?

2 MR PICKFORD: Yes, but if — because what Google does in
3 relation to generic results is cover the entire web,
4 effectively. It is not like the case where there is
5 a contract effectively to appear, which is what you have
6 in the box.

7 MS ROSE: In relation to the auction result.

8 MR PICKFORD: Yes. Yes, very much so.

9 The second point is that, because of the way it is
10 put in terms of applying dissimilar conditions to
11 equivalent transactions, 102(c) does not, in my
12 submission, cover indirect discrimination, it is focused
13 on direct discrimination. So my first point is we are
14 not actually in Article 102(c) territory.

15 Now, I accept, of course, that the examples given in
16 the Treaty and in section 18 are not exhaustive, but my
17 starting point is that this provision does not do
18 the job.

19 So then one thinks: well, what other areas do we
20 know in terms of the development of discrimination
21 within a competition context that might apply? Of
22 course, one then thinks: well, what about the Decision?
23 But we are not within the theory in the Decision either,
24 because the theory in the Decision is about
25 discrimination in the form of the dominant undertaking

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1 itself leveraging its dominance from one market into
2 another so as to prejudice rivals as compared to itself,
3 and that is not what the complaint of third party on
4 third party discrimination involves.

5 So the first part of my submission then is that it
6 is incumbent on Foundem to show you a proper legal basis
7 for the type of discrimination that they are alleging
8 when they make that complaint about third party to third
9 party indirect discrimination and thus far they have
10 failed to do that. I say this, that there are strong
11 public policy considerations in fact for not expanding
12 competition law in this way, and I would like to give
13 you an example.

14 Let us suppose that Netflix is dominant in streaming
15 for the sake of my argument. Now, Netflix likes to put
16 on big budget shows that it thinks users will enjoy,
17 with high production values. Now, that indirectly
18 discriminates against new entrant film makers with whom
19 Netflix does not trade, who do not have the big budgets
20 to enable them to compete in that way. Now, I say if
21 Netflix's indirectly discriminatory preference for big
22 budget films were amenable to review by a court under
23 competition law, then the court is going to need to
24 decide whether, in seeking to satisfy its users, its
25 consumers, Netflix has sufficiently taken into account

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1 the interests of 3 entrants with whom it does not even
2 trade when it is deciding how much it is going to spend
3 on its content. In my submission, that is an expansion
4 of competition law too far, but it is what one would
5 naturally get if one allows claims for indirect third
6 party to third party discrimination where the parties
7 may not even have a trading relationship with
8 the dominant undertaking. In my submission, it would be
9 extraordinarily expansive.

10 Another example might be, say, a water company. Let
11 us suppose a water company is dominant within its
12 particular area and it prefers to subcontract with
13 engineers who have a proven track record, say, of
14 five years. Now, that indirectly discriminates against
15 any 3 entrant engineering company that cannot satisfy
16 that criteria. Again, is it really right that the court
17 should be drawn into an argument about that to decide
18 whether, well, is that sufficiently justified or not?
19 In my submission, that is taking the courts into an area
20 that they have not yet ever been involved in for good
21 reason. So that is my first point in relation to this
22 — the nature of this type of claim that is being
23 advanced by Foundem.

24 THE CHAIRMAN: Well, that would be a direct trading party —
25 partner, your water company.

14

1 MR PICKFORD: Well, it is —

2 THE CHAIRMAN: I mean, if you have a dominant company that
3 takes all its supplies from one source and cuts out all
4 other suppliers and that therefore severely disrupts
5 the supply market and distorts competition in the supply
6 market, that would be an abuse, would it not, unless it
7 is objectively justified?

8 MR PICKFORD: No, I do not accept that it would be because,
9 in my submission, I certainly do not accept that —
10 well, I have two parts to my submissions. My first is
11 it is actually outside competition law. But I take your
12 point, Sir, that we are slightly further down the scale
13 in terms of trading parties because there is at least
14 one trading party in that example. Of course,
15 the complaint — my hypothetical complainant is not
16 a trading party in that example, my hypothetical
17 complainant is someone who says, "I want to get a look
18 in". So there is a difference and in my submission it
19 would not apply.

20 But my second point is that, if competition law does
21 apply in this context, then we are entering into fresh
22 legal ground and I say that the court, this Tribunal
23 will need to tread very, very carefully, and it is very
24 important not to be tempted to second guess Google's
25 algorithmic choices by reference to whether the Tribunal

15

1 thinks that there might be an alternative form of
2 algorithm that the Tribunal considers might have an
3 indirect effect that was more favourable to 3 entrants.
4 I have just got four short points to support that.

5 First, because any different algorithm will almost
6 certainly also have a different impact on users, on
7 merchants, on other intermediaries and as between
8 different CSSs, all of whom have their own legitimate
9 interests.

10 The second point is because changes to one signal
11 amongst several hundred signals would have unknown
12 consequences in terms of the interactions between them.
13 That is why, when Google brings out algorithmic changes,
14 it tests them empirically in small controlled
15 experiments. One cannot simply employ deductive
16 reasoning to work out the impact of an algorithmic
17 change.

18 Third, because, as a matter of law, we say that even
19 if Google is under an obligation not to discriminate in
20 its search rankings between third parties, Google does
21 not have a positive obligation under competition law to
22 promote 3 entry, and one reason for that is that, if one
23 goes down that road, I ask the question, how does one
24 determine how much 3 entry is enough? A second reason
25 is that an obligation to promote 3 entry by, say, CSSs

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1 could very easily cut across the interests of users, as
 2 I mentioned in my first sub—point, and therefore
 3 Google's own legitimate interests as well.
 4 Then, fourth and finally, what I tentatively suggest
 5 as the test that might apply here in this 3 ground that
 6 we are breaking is that if one were to find that
 7 something were to be abusive, the test would need to be,
 8 firstly, that Google's conduct has been shown to have
 9 the indirect discriminatory effect; second, that Google
 10 has acted arbitrarily in the sense of its objective
 11 either being illegitimate or the means by which it
 12 sought to achieve it having no connection to
 13 the objective; and third, that there has been
 14 a significant impact, per the kind of traffic diversion
 15 test that the Commission invoked in Google Shopping.
 16 I say that any other standard for assessing indirect
 17 discrimination of this kind would be too exacting,
 18 because it would make the extraordinarily complex
 19 technical decision—making that Google engages in when
 20 not only developing algorithms, but constantly refining
 21 them simply too difficult and it would draw the court
 22 into second—guessing technical decisions in a way that
 23 would take it outside being a court enforcing
 24 competition law and into the realms of some sort of
 25 surrogate regulator.

17

1 I was very kindly offered the opportunity of that
 2 time and those are my submissions.
 3 THE CHAIRMAN: Thank you. That is very helpful.
 4 MR PICKFORD: Thank you.
 5 THE CHAIRMAN: Yes, Mr West.
 6 MR WEST: Just before I call Ms Raff, my instructions are
 7 that the 2012 discussion paper is not the first one of
 8 Google's offers of Commitments to the Commission. So
 9 perhaps we could clarify that in due course.
 10 THE CHAIRMAN: Yes, I think Mr Pickford said he was not
 11 quite sure but he thought —
 12 MR PICKFORD: It is definitely not the last iteration,
 13 because I know what that looked like —
 14 THE CHAIRMAN: 2012. The 2012 paper, is it not?
 15 MR PICKFORD: Yes. I mean, it is one of the first two.
 16 I am not sure —
 17 MR WEST: I do not — it is actually not any of the three.
 18 All three of them, I understand, were based on an
 19 auction so this predates any of the formal offers —
 20 MR PICKFORD: Right. Well, there we go.
 21 THE CHAIRMAN: Yes.
 22 MR PICKFORD: No part of my submission turns on any of that,
 23 but ...
 24 THE CHAIRMAN: This is {J2A/54}.
 25 Yes, thank you.

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1 MR WEST: On that basis, I propose to call Ms Shivaun Raff.
 2 MS SHIVAUN EDWINA RAFF (affirmed)
 3 THE CHAIRMAN: Do sit down, Ms Raff.
 4 Examination—in—chief by MR WEST
 5 MR WEST: Could Ms Raff be shown H2A, B, tab 3.
 6 A. I've got H2A/1.
 7 Q. H2A—B/3 [sic].
 8 I think on the screen is {H2B/3}. H2A—B/3 we are
 9 looking for. It is possible that H2A and H2B are
 10 different, so could we try {H2A/3}.
 11 THE CHAIRMAN: I think it is H2A and then there is slash 1.
 12 A. Yes, thank you. {H2A/3/1}.
 13 MR WEST: Yes, that is right, tab 3.
 14 THE CHAIRMAN: Then there is also slash 3, I think. {H2A/3}
 15 comes first, does it not?
 16 MR WEST: {H2A/3} actually comes first, yes.
 17 Ms Raff, is this your Replacement Fifth Witness
 18 Statement?
 19 A. Yes, it is.
 20 Q. Could you be shown {H2A/3/63}.
 21 A. Yes.
 22 Q. Is that your signature?
 23 A. Yes, it is.
 24 Q. Are the contents of that statement true to the best of
 25 your knowledge and belief?

19

1 A. Yes, they're true to the best of my knowledge and
 2 belief.
 3 Q. Could you then be shown {H2A/1}.
 4 A. Yes.
 5 Q. Of the same bundle.
 6 Is this your Sixth Witness Statement?
 7 A. Yes, it is.
 8 Q. Could you be shown {H2A/1/17}.
 9 A. Yes.
 10 Q. Again, is that your signature?
 11 A. Yes, it is.
 12 Q. Are the contents of this statement true to the best of
 13 your knowledge and belief?
 14 A. Yes, these are true to the best of my knowledge and
 15 belief.
 16 Q. Are these statements the evidence you wish to give in
 17 these proceedings?
 18 A. Yes.
 19 MR WEST: Members of the Tribunal, Ms Raff has given
 20 a number of other statements on interlocutory matters —
 21 THE CHAIRMAN: Yes.
 22 MR WEST: — but I was not proposing to ask her to attest
 23 those, just her Trial witness —
 24 THE CHAIRMAN: Yes, if there were going to be any questions
 25 on them, they can be introduced then, but it seems

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1 unlikely .
 2 Can I ask about confidentiality? In the Fifth
 3 Statement at {H2A/3}, there is — as Ms Raff knows,
 4 because she has been in court, I think, throughout, we
 5 have two levels of confidentiality . There is a little
 6 bit at the end on page {H2A/3/62} which is what we have
 7 called "LEO Confidential", and there are just eight
 8 words there that are highlighted in blue. I am not sure
 9 why the first word is confidential at all , and I am
 10 slightly surprised that the rest is LEO Confidential as
 11 opposed to simply Confidential. It makes no sense to me
 12 at all . But I do not think we need take up, we can
 13 think about that outside. But there are a whole lot of
 14 other passages, round about page {H2A/3/22–23} to
 15 {H2A/3/25} and on to {H2A/3/26}, which are really
 16 quoting from letters or emails or requests that passed
 17 between Foundem and the Commission and I just do not
 18 understand at the moment why those are confidential at
 19 all .
 20 MR WEST: I understand the position is that they were marked
 21 as confidential in — by Google and that these have
 22 simply been carried over where they have quoted from
 23 into the witness statement.
 24 THE CHAIRMAN: Well, this is Ms Raff giving evidence about
 25 what she or Foundem said to the Commission, and if she

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1 wishes it to be confidential , she can no doubt explain
 2 why, but I do not see on what basis Google can claim
 3 that this is confidential ; it is not their
 4 correspondence, is it?
 5 MR WEST: Sounds right to me, when your Lordship said —
 6 (Off microphone discussion)
 7 THE CHAIRMAN: These are all what Foundem said to
 8 the Commission or to Google.
 9 MR WEST: Mainly to Google here, I think, yes.
 10 THE CHAIRMAN: Yes.
 11 Do you wish, on instructions, to make — I do not
 12 know about — obviously I have not gone to
 13 the underlying documents, but as evidence here, do you
 14 wish to maintain those as confidential?
 15 MR WEST: No. The claims are not our claims of
 16 confidentiality —
 17 THE CHAIRMAN: They are not your claims.
 18 MR WEST: — and it is difficult to see how they can be
 19 maintained if they are inter partes communications.
 20 THE CHAIRMAN: No.
 21 Mr McGurk, on what basis should this be treated as
 22 confidential?
 23 MR MCGURK: (Off microphone — inaudible) Well, first of all,
 24 some of what is marked confidential arises from quotes
 25 taken from disclosure documents.

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1 THE CHAIRMAN: Yes, but they are Foundem documents, are they
 2 not?
 3 MR MCGURK: (Off microphone) No, they are not.
 4 A. So —
 5 THE CHAIRMAN: Well, just — no, please, just listen.
 6 Well, I mean, if I am on page [sic] 45 {H2A/3/20}:
 7 "On 29 June ... we submitted a reconsideration
 8 request ... setting out our belief ... and politely
 9 asking Google ..."
 10 I mean, this is what Foundem sent to Google.
 11 MR MCGURK: It has not been brought up on screen.
 12 THE CHAIRMAN: Paragraph 45 on page 20, {H2A/3/20}. There
 13 we are. Thank you.
 14 Yes, of course it was disclosed as part of
 15 the proceedings to you, but how is that confidential?
 16 MR MCGURK: (Off microphone) First of all, I am not
 17 proposing to go to anything confidential (inaudible)
 18 today.
 19 THE CHAIRMAN: Yes.
 20 MR MCGURK: Some of these are taken, you see from the quote
 21 marks, from disclosure documents which are confidential.
 22 If and insofar as confidentiality — further
 23 confidentiality markings can be removed, we will have
 24 a conversation with Foundem's lawyers about that, but it
 25 will not arise for the purposes of today.

23

1 THE CHAIRMAN: Well, unless some questions are asked by
 2 the Tribunal. I mean, you can go on the next page
 3 {H2A/3/21}, at the top, (a):
 4 " ... we submitted a ... Reconsideration Request ..."
 5 Quotes from Foundem's document:
 6 "We asked ... someone at Google [to do this]."
 7 Similarly in (b).
 8 Over the page {H2A/3/22}, (d):
 9 " ... we submitted another reconsideration
 10 request ... "
 11 So, I mean, these are all documents from Foundem.
 12 MR MCGURK: Yes.
 13 THE CHAIRMAN: That were sent to Google.
 14 MR MCGURK: Well, there is a catch up problem here, Sir,
 15 because I am told that the underlying documents have
 16 been re-reviewed and redesignated, the underlying
 17 documents from which these yellow mark quotes are taken
 18 from, and it seems that the current witness statement
 19 has not caught up with the re-review and
 20 the redesignation.
 21 THE CHAIRMAN: Fine. Well, it seems to me that it was
 22 virtually none of that section, if any, that was
 23 confidential , but perhaps someone can look at that
 24 fairly quickly in your team, because unnecessary claims
 25 to confidentiality just cause problems.

24

1 MR MCGURK: (Off microphone) Yes.
 2 Just a final point on that, I understand it would
 3 have been for Hausfeld to do (inaudible) marking in
 4 light of Google's re-review and redesignations.
 5 THE CHAIRMAN: Yes.
 6 MR MCGURK: We are not going to object to any removal of
 7 those markings in accordance with the re-review and
 8 redesignation.
 9 THE CHAIRMAN: Yes. Well, we can just be told at some point
 10 that they are not confidential. There will be a similar
 11 — some similar points on Mr Raff's statement.
 12 So, sorry about that, Ms Raff. The point being
 13 that, as you will have seen, and you are in the LEO
 14 ring, we then have to — if there are questions, we have
 15 to ask people to leave the court, we have to turn off
 16 the live stream and so on, and we want to avoid that as
 17 much as possible. So I was just seeking to clear that
 18 up.
 19 MS ROSE: The transcriber seems to be having some difficulty
 20 hearing counsel.
 21 THE CHAIRMAN: Thank you.
 22 MR MCGURK: I hope this is better. Maybe this could be
 23 turned up a bit, because it is still a distance from me.
 24 Cross-examination by MR MCGURK
 25 Good morning, Ms Raff.

25

1 A. Morning.
 2 Q. Have you and your husband had witness training?
 3 A. Yes.
 4 Q. Can we go, please, into your First Trial Witness
 5 Statement. It is at {H2A/3/3}.
 6 A. Yes.
 7 Q. Paragraph 2, in the last sentence you tell us that:
 8 "Where I refer to 'we' in this statement, I am
 9 referring to Foundem, or to me and Adam."
 10 Then if we turn over the page {H2A/3/4} to
 11 paragraph 5 of your statement, you say:
 12 "Adam Raff and I are a married couple, as well as
 13 co-founders of Foundem. As such, every major decision
 14 relevant to our business and the ... Commission's ...
 15 investigation ... was made jointly."
 16 Is that correct?
 17 A. Yes.
 18 Q. Now, you have worked extremely closely with your husband
 19 on all things relevant to your business right up to
 20 the present day, have you not?
 21 A. We do have some distinct areas of responsibility, so
 22 there are certain things that I tend to do that I will
 23 not bring Adam into the loop for unless something pops
 24 up as being particularly significant.
 25 Q. Yes, I have picked a few of those up from your

26

1 statement. So the primary exception to the point you
 2 make in paragraph 5 is set out in the middle of this
 3 paragraph 5, where you tell us:
 4 "The primary exception to this close collaboration
 5 has been certain telephone calls and administrative
 6 emails, which tended to be undertaken by myself."
 7 So to your point, issues on those matters would be
 8 matters for you, not Mr Raff?
 9 A. Yes, and there are other things as well. I didn't give
 10 you an exhaustive list in my witness statement, because
 11 that might have got a bit boring.
 12 Q. No, well, paragraph 12 {H2A/3/7}, you give us some more
 13 of those examples. You say that you had primary
 14 responsibility for business development and matters such
 15 as contracts, invoicing and accounts; is that correct?
 16 A. That is correct, yes.
 17 Q. In the penultimate sentence of paragraph 5 of your
 18 statement {H2A/3/4}, you say:
 19 "As a result, almost all of the significant elements
 20 of our witness statements will have been discussed with
 21 each other on many occasions prior to commencing this
 22 exercise."
 23 So am I right to take it from those passages I have
 24 just shown you to — taken you to that, with
 25 the exception of those matters in paragraphs 5 and 12

27

1 for which you had sole or prime responsibility, you and
 2 your husband can speak to all the major issues that
 3 arise in these proceedings and which you have covered
 4 between you across your Trial witness statements?
 5 A. So the significant elements, yes. There might be a few
 6 things that you touch upon today where I will say
 7 possibly Adam is better placed to answer that, but
 8 I will do my best to answer —
 9 Q. Understood.
 10 A. — to the best of my ability.
 11 Q. Thank you.
 12 Can we then turn to {J2B/5/1}, please.
 13 This, Ms Raff, is Foundem's business plan and it is
 14 dated February 2005; that is correct, is it not?
 15 A. If that's the date on it, then that's probably correct.
 16 Q. Yes. It may be blurred, but take from me this is your
 17 February 2005 statement.
 18 A. Is this the one that I referred to in my witness
 19 statement, because we disclosed lots of different
 20 versions of this business plan?
 21 Q. Well, you disclosed two, but this is — just to situate
 22 you in time, this is the version that you finalised in
 23 February 2005 before your second US trip in March 2005.
 24 A. Thank you.
 25 Q. Now, I wanted just to take you to this because it is

28

1 a detailed contemporaneous account of what Foundem's
2 business strategy was at this stage. Now, you and
3 I will come on and talk about why the business strategy
4 pivoted in March/April 2005, but for the moment, I just
5 want to focus on the thinking behind your plans as
6 articulated in this version of the document. Is that
7 understood?

8 A. Yes, thank you.

9 Q. So page 1 states — we might need to blow it up a bit:
10 "This document has been prepared by Infederation ...
11 and is being provided to a limited number of persons
12 solely as a guide for the purpose of giving background
13 information to enable recipients to assess whether they
14 wish to enter into discussions with Infederation
15 regarding potential investment opportunities in
16 Infederation."

17 Do you see that?

18 A. Yes.

19 Q. So, as we have just discussed, this was the version of
20 the plan in place just before you and your husband
21 embarked on your second US trip in March 2005, was it
22 not?

23 A. I guess so.

24 Q. So this was the thinking that was being presented to
25 potential investors in Foundem, was it not?

29

1 A. Yes.

2 Q. Evidently, as this tells us, it was prepared for
3 the purpose of seeking investment in Foundem, was it
4 not?

5 A. That's correct. Angel investment at that stage. Early
6 stage investment.

7 Q. Can we turn to page {J2B/5/3} in this business plan.
8 Turning down to the fifth paragraph, do you see it
9 states:

10 "WebSentient's distributed search technology sits
11 within a content provider's existing Web—infrastructure
12 and accesses their existing data repositories, without
13 requiring their modification or augmentation.
14 Advertising ... within ... WebSentient—enabled
15 classified service thus requires little effort or
16 investment; substantially less than is required by
17 current classified services."

18 Now, you refer to it as a "distributed search
19 technology", elsewhere I have seen you refer to it as
20 a "federated search technology"; is that right?

21 A. Yes. So when we say "federated", there is a server and
22 then there are aggregators that are individual
23 aggregators per content source and that can be
24 geographically distributed, it can be — sit at, for
25 example, next to the database of an estate agent and

30

1 query that database, so that's what we mean by
2 "distributed", yes.

3 Q. Yes. Well, let us have a look at how it looks
4 pictorially. If we go to {J2B/5/16} of this plan, you
5 have given us a very helpful figure at the top of
6 the page, if we could blow that up. It is figure 2—12
7 [sic]. We can see how it was intended to work.

8 The central host sits at the bottom and the clients, who
9 you would serve through this technology, sit at the top.

10 Let us just call them "merchants" for now, because that
11 is what we are principally engaged in considering. So
12 how this would work is that WebSentient would be
13 configured within those merchants' own systems to enable
14 data in those merchants' databases to be returned to
15 the central host; that is broadly correct, is it not?

16 A. It can be, yes. That is one of the ways it can work.

17 Q. So, in essence, the intention was that each merchant
18 would download or install your WebSentient technology
19 onto their own existing system; that is right, is it
20 not?

21 A. That was one of the two options is that it could be
22 distributed, and then the other was that you could have
23 a client for a particular data source but that client
24 could be up at our servers. So there were two options.
25 You could distribute it, or you could have it in our

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1 core servers. It still does work as a sort of central
2 host and then a client per data source, it's just
3 whether it's geographically located on those servers or
4 the others — or ours.

5 Q. But on the former model, it follows that once a merchant
6 had installed WebSentient within its own system and
7 configured it to provide its data to you, at that stage,
8 on that basis, you would have a direct relationship with
9 that merchant who downloaded and started to use your
10 technology, would you not?

11 A. Absolutely. I would not expect them to install our
12 client unless we had a relationship with them.

13 Q. No, we are fully agreed on that.

14 Can we turn then back to {J2B/5/3} of the business
15 plan. I want to just look at the last paragraph and
16 the second—to—last and last sentences, if we could make
17 those a bit clearer. Thank you.

18 You tell us that:

19 "WebSentient is the right technology at the right
20 time. [WebSentient] can be deployed as both a service
21 (providing a one—stop, multi—domain classified service
22 in its own right), and as a technology (by licensing its
23 applications to existing classified services)."

24 Then if we just go over the page {J2B/5/4} to finish
25 this, in the third line you say:

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1 " Initially , Infederation ... plans to license
 2 WebSentient to existing classified services within
 3 a small set of target domains and territories."
 4 I just wanted to ask you three questions about that,
 5 Ms Raff.
 6 First of all , when you refer to " classified " as
 7 distinct from general search services , you are referring
 8 both to CSSs, like Kelkoo, but you are also referring to
 9 other verticals , like Asserta and AutoTrader who
 10 operated in the property and automobile domains; that is
 11 correct , is it not?
 12 A. That is correct . So back in 2005, this was so
 13 cutting—edge that the nomenclature had not yet settled
 14 and so we were using the old bricks and mortar
 15 " classified services " nomenclature because that was
 16 better understood by the kind of people that this
 17 business plan was written for, but, of course, that has
 18 since transitioned to vertical search. So when you read
 19 classifieds , you can translate it to vertical search.
 20 Q. That is very helpful .
 21 The second question on this passage, this business
 22 plan — and we are going to come back and discuss it in
 23 more detail, but this business plan envisaged a phase 1
 24 and a phase 2 at that point in time, did it not?
 25 A. Yes, at that point in time, there was a phase 1 and

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1 a phase 2.
 2 Q. Yes, and the phase 1 plan at that point in time was to
 3 seek to licence your technology to several classifieds
 4 including CSSs, was it not?
 5 A. Yes, so specific verticals — shall we translate to
 6 verticals ?
 7 Q. Well, I was going to focus on CSSs, but I am also going
 8 to cover the fact that you say it was a one—stop model.
 9 A. Instead of using the word "classified" shall we
 10 standardise on "verticals"? Would that be okay?
 11 Q. If you wish.
 12 A. Thank you.
 13 So, yes, various verticals , but also publishers .
 14 Q. Yes, we will have a discussion about your publisher
 15 business.
 16 A. Yeah.
 17 Q. Staying with the verticals as we are now calling them,
 18 classifieds / verticals , the aim of licensing in this
 19 phase 1 was to obtain market penetration that would
 20 enable your WebSentient technology to become
 21 the industry standard for vertical search across all
 22 those domains; that was the aim, was it not?
 23 A. Yes.
 24 Q. The third question on this passage, you also intended,
 25 as we have just discussed, to be a one—stop vertical

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1 service , and just for the benefit of the Tribunal,
 2 the aim was to present WebSentient to multiple domains
 3 and say this is — this should be the industry standard
 4 for vertical search and data retrieval not just in
 5 relation to products, but jobs, cars, travel; that is
 6 what you mean by a one—stop multi—vertical, do you not?
 7 A. I think you're concatenating two different things. So
 8 on the one hand, if we're talking about the licensing
 9 model, our technology is entirely configurable, so
 10 specialising to a particular vertical is not bespoke
 11 code, it's to do with configuration and so that means we
 12 had the potential to licence our technology to flight
 13 search services , property search services , job search
 14 services . So that's the licensing . That wouldn't be
 15 a one—stop vertical search service , that would be
 16 licensing to multiple classifieds .
 17 Q. You are quite right .
 18 A. The second part of the vision is that because it's so
 19 configurable and scalable and automated, you have
 20 the potential to create a service that is a service that
 21 is based on that WebSentient technology that is
 22 a multi—domain single service, yes, and that was what we
 23 did in fact build, that is Foundem — was Foundem.
 24 Q. I was very much hoping not to confuse those stages,
 25 because, just to introduce this further, phase 1 was

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1 the licensing phase and phase 2, just to be clear , was
 2 when you might launch as either a multi—domain service
 3 or potentially more narrowly as a CSS, but —
 4 A. But as soon as you say "one—stop vertical search
 5 service" or "one—stop shop", you're talking about that
 6 phase where you are building a service —
 7 Q. Yes, we are agreed.
 8 A. — based on that technology. Correct.
 9 THE CHAIRMAN: So the aim of the one—stop, that was phase 2?
 10 A. It was phase 2. At this precise moment in
 11 February 2005, before we had gone for our second US
 12 trip , yes.
 13 MR MCGURK: We will come back to phase 2 and potentially
 14 launching as a multi—vertical or a single vertical . But
 15 staying in phase 1, if we look at the last sentence on
 16 page 4 here, you are saying:
 17 "Infederation ... is currently seeking funding of up
 18 to £1M to accelerate and complete its development effort
 19 and bring WebSentient to market."
 20 So you are telling your potential investors that
 21 WebSentient was still being developed in February 2005,
 22 are you not?
 23 A. Yes. In February 2005, that was slightly maybe out of
 24 date. It might have been a sentence that had been
 25 sitting in there for a while.

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1 Q. But you gave this document to your potential investors
 2 in the States, did you not?
 3 A. No. No, no, no. We didn't — we didn't give this
 4 document to anyone in the States.
 5 Q. But you gave it to people who you were hoping would
 6 invest in your business? That was the point of
 7 the remark on page 1, was it not?
 8 A. But the trip to the States was not seeking investment.
 9 The trip to the States was due diligence to see whether
 10 anybody else was building anything similar and also to
 11 explore potential licensing opportunities with people
 12 like Yahoo!, etc.
 13 Q. Yes, we will —
 14 A. So we definitely didn't give this business plan to
 15 anyone in the US.
 16 Q. Well, let us focus on what you are saying and what we
 17 can read.
 18 A. Yes.
 19 Q. You were seeking up to 1 million to, as you put
 20 it, "accelerate and complete its development effort and
 21 bring WebSentient to [the] market". So the investment
 22 was being sought in part to "accelerate and complete"
 23 the development of the technology WebSentient at this
 24 point; that is right, is it not?
 25 A. That is correct, yes.

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1 Q. Investment was very important to the plan, at least as
 2 conceived and presented in this document at this point
 3 in time, was it not?
 4 A. For plan A, yes.
 5 Q. Now, can we go to {J2B/5/7} of this document, please,
 6 and paragraph 2, under section 2.3.
 7 So you see the heading "Search Engines ...", then
 8 you tell us:
 9 "Keywords are Insufficient to Accurately Assess
 10 Relevance: while a search engine's crawler, index, and
 11 ranking mechanisms are well equipped to gather,
 12 recognise, and process the words that comprise a
 13 particular web page or document, they are poorly
 14 equipped to interpret the meaning of the content that is
 15 made up of those words. A search engine's reliance on
 16 a handful of inherently vague and ambiguous keywords as
 17 its sole means of assessing relevance is often
 18 inadequate. As a result, many searches return millions
 19 of ultimately irrelevant results."
 20 So first of all, Ms Raff, it was not true even at —
 21 this is not a criticism, but it was not true at
 22 February 2005 that general search services, like Google,
 23 were only relying on keywords for search, were they?
 24 A. So you have to bear in mind that this statement is in
 25 the context of a vertical search service, so what we

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1 were setting out here was the difference between
 2 a horizontal search engine which crawls and discovers
 3 webpages using just hyperlinks, I'm going to call them
 4 "links" from now on, and brings those pages back to its
 5 index and indexes the words on them, and a vertical
 6 search service, which is parameterised. So, for
 7 example, if you're looking for a property, there will be
 8 a parameter for number of bedrooms, there will be
 9 a parameter for location, and what we're saying here is
 10 that when you are doing a vertical search for property,
 11 for example, keywords don't do it, you need to have
 12 the parameterised search.
 13 Q. But you are still saying Google's search services —
 14 general search services, like Google, were only relying
 15 on keywords for search. But, for example, you must have
 16 known at the time, because Google told this publicly,
 17 that PageRank, for example, assessment of
 18 authoritativeness of inbound links, was another means by
 19 which Google was undertaking generic search services; do
 20 you recall that?
 21 A. Oh, yes, absolutely, but this is about the difference
 22 between keywords versus parameterised search.
 23 Q. Well, let us — we will come back to that, certainly,
 24 but this seems to suggest that general search services
 25 could only provide generic search results and were not

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1 capable of doing the sort of vertical parameterised
 2 search that you are discussing, but that was not true
 3 either, was it?
 4 A. Well, I'm talking about a horizontal search service
 5 here, so you're right that Google had built itself —
 6 was in the process of entering various vertical search
 7 markets, which is why we're all here today, but I'm
 8 talking specifically about a horizontal search engine as
 9 defined, for example, in the Decision, and I'm setting
 10 aside the vertical search services that Google was in
 11 the process of building and launching at the same time.
 12 So I think it is fair to say — I think this still holds
 13 true, to be honest, because a horizontal search service
 14 crawls webpages, brings back copies of those webpages
 15 into their very, very highly — I don't want to be
 16 insulting to Google, highly optimised and incredibly
 17 speedy index, but it's indexed based on keywords, and
 18 you're right, at the point where someone puts in
 19 a query, it does weight those results on things like
 20 PageRank, etc, how often the word occurs, etc.
 21 Q. We have got to be careful.
 22 A. Okay, sorry. Oh, sorry. I think everybody knows that.
 23 Anyway, so crawling index and ranking mechanisms
 24 are — for a horizontal search service, are different to
 25 the parameterised searches of a vertical search service.

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1 I still — I still would stand by that.
 2 Q. Well, we may have to agree to disagree.
 3 But can we move forward, given time, and turn to
 4 page —
 5 A. Sorry, I will try and be more precise and short in my
 6 answers.
 7 Q. I am very grateful.
 8 {J2B/5/21} of this takes us to the "Business Model"
 9 that you had set out in February 2005. Under 3.1,
 10 I just want to show you a few passages. You first of
 11 all say:
 12 "[Foundem] could retain exclusive use ..."
 13 This is phase 1, so this is the licensing to
 14 classifieds, or as we are now calling them,
 15 the verticals. You say:
 16 "Infederation ... could retain exclusive use of its
 17 proprietary WebSentient technology and launch a 3,
 18 multi-domain classified service. WebSentient's
 19 economies of scale, superior search capabilities, and
 20 ability to integrate unlimited numbers of content
 21 providers across unlimited domains would, we believe,
 22 provide Infederation with category killing advantages
 23 over any competitors. But WebSentient is a cooperative
 24 medium; significant numbers of content providers must
 25 choose to actively participate before it can be

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1 effective. This critical —mass issue is barrier—to—entry
 2 common to many classified—style services, and indeed any
 3 service that essentially constitutes a network.
 4 Overcoming this barrier would require extensive sales
 5 and marketing resources and a prolonged, disciplined,
 6 focus on a small and carefully selected number of
 7 domains."
 8 So what — pausing there — this recognises is that
 9 you, Foundem, I think we can agree this, are very
 10 unlikely, on your own, at this stage to get a critical
 11 mass of individual merchants to adopt WebSentient. That
 12 is the problem you are alluding to in this paragraph, is
 13 it not?
 14 A. Yes, you're right, and this was the thing that changed
 15 after our first — our second US visit.
 16 Q. Well, we are coming back to —
 17 A. You'll come back to that.
 18 Q. We're coming back to the change. But —
 19 A. Because what was shifting under us, which we hadn't
 20 quite realised when we wrote that paragraph, is that —
 21 the rise of the affiliate network which took away that
 22 barrier to entry.
 23 Q. Well, we are going to cover the rise of the affiliate —
 24 THE CHAIRMAN: Just to be clear, this was your thinking at
 25 the time? This is February '05.

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1 A. Exactly.
 2 THE CHAIRMAN: But you say later it changed and counsel may
 3 come back to that.
 4 A. Yes, Sir, and I think I set this out —
 5 THE CHAIRMAN: In your statement.
 6 A. — more briefly maybe than I'm speaking now, in my
 7 witness statement.
 8 MR MCGURK: Well, maybe take it this way, Ms Raff, were you
 9 in court when Mr Jowell opened for Kelkoo last week?
 10 A. Yes.
 11 Q. Mr Jowell pointed out that considerable investment is
 12 required for a CSS to be able to obtain and maintain
 13 direct relationships with a very large number of
 14 merchants, not least because, as he told us, you would
 15 be negotiating and dealing with them individually.
 16 Mr Jowell was right about that, was he not?
 17 A. So you don't have to do that, that is an optimisation.
 18 So because of the rise of the affiliate networks and
 19 also — sorry — not just affiliate networks, but
 20 certain merchants offer their own affiliate programs,
 21 you do not have to have a person—to—person relationship,
 22 you can go and sign up to the affiliate networks. So —
 23 but as you get bigger and you get a larger volume of
 24 traffic and therefore you have more clout and
 25 the volumes make this economically worthwhile, at that

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1 point, the vision was — and we would have if we hadn't
 2 been crushed at birth by your anti—competitive
 3 practices — as you get bigger and you have more clout
 4 and more traffic, then it becomes
 5 economically worthwhile to not just use the automated
 6 affiliate commercial contract, but have your own
 7 negotiated relationships with the merchants. So that's
 8 the scale — at scale, that starts to become important.
 9 Q. Ms Raff, earlier, you said we have to very clearly
 10 distinguish between phase 1, which was licensing, and
 11 phase 2, which was moving into the CSS space.
 12 A. Yes, you're correct.
 13 Q. You have moved into the CSS phase and launching as a CSS
 14 in that answer and I am still in the licensing phase,
 15 which is what I took you to in this first paragraph.
 16 A. Right.
 17 Q. But going back to Mr Jowell's question, if you wanted to
 18 have a direct relationship, as many CSSs did with
 19 merchants, with hundreds or potentially thousands of
 20 merchants, you would need considerable investment
 21 because you would need a big sales and marketing team at
 22 the very least, you would have constant contact with
 23 your merchants; you would need significant investment if
 24 you were to go it alone on that basis, would you not?
 25 A. Well, it would be either investment or you follow

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1 the internet model of: you launch a service, you get
 2 organic traffic, you have a revenue stream as your
 3 organic traffic grows and you use that revenue stream
 4 instead of outside investment, you reinvest the revenue
 5 to build your market.
 6 Q. You are jumping forward to phase 2 again.
 7 A. Well, you asked me to answer the question —
 8 Q. Well, you are in phase 1 in this document.
 9 A. Right.
 10 Q. The point is you have recognised a critical —mass
 11 problem, and I am saying it is not old news because, as
 12 Mr Jowell tells us, there is still a critical —mass
 13 problem in that if you want to maintain a relationship
 14 with hundreds or thousands of merchants, it is going to
 15 take a lot of money and investment, is it not?
 16 A. But phase —
 17 THE CHAIRMAN: You say Ms Raff is jumping to phase 2. If
 18 you ask about this document, yes, one is in phase 1, but
 19 if you are pushing what Mr Jowell said for Kelkoo and
 20 say it is still the case, then you are going beyond
 21 phase 1 and talking about what is subsequently
 22 the position. So I do not think it is unfair of Ms Raff
 23 to say, well, either we are talking about things as they
 24 are now or you are talking about our thinking as it was
 25 in February 2005, when she is agreeing with you, at that

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1 point, they thought that was the case.
 2 MR MCGURK: Fair enough.
 3 Let us stay in the document —
 4 A. Actually, thank you so much, Sir, because I think your
 5 clarity has made me realise maybe what you're trying to
 6 get at.
 7 So, if we leap back to the phase 1, when I'm talking
 8 here about the "classified —style services", I'm talking
 9 about we would license to a single organisation and they
 10 would have the problem that they then needed lots and
 11 lots of merchants, because we're licensing our
 12 technology to them. So for phase 1, definitely we would
 13 not be having to go out and doing the —
 14 Q. No, we are agreed. We are agreed —
 15 A. — and actually, funnily enough, we did this in, I guess
 16 we could call it phase 3. So in 2006, after we were hit
 17 by the exclusionary Algorithm A penalty, we focused on
 18 building our publisher relationships and we weren't
 19 licensing the technology, but we were — we were giving
 20 these publishers our technology but we were hosting it
 21 and managing it, and we —
 22 Q. Well —
 23 A. — just let me finish this, Mr McGurk, because I think
 24 it goes exactly to your question.
 25 Q. No, no, it does not, we are in the publisher phase —

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1 A. Yes, yes, this is the publisher phase —
 2 Q. — which is stage 2, Ms Raff —
 3 A. So we were —
 4 Q. — I am still in phase 1 —
 5 A. We were taken — Bauer, who are Europe's leading
 6 magazine — independent magazine publisher, they wanted
 7 to launch a vertical search service for motorbike parts
 8 and accessories and they could do this because they had
 9 the UK's leading motorbike parts and accessories
 10 magazine, which sounds really niche, but it turns out
 11 it's massive. What we did was we did the building of
 12 the technology, but it was Bauer who went out to all
 13 the different merchants and established the commercial
 14 relationships, and you're right, even though they
 15 already had commercial relationships with those
 16 merchants because those merchants were advertising on
 17 the magazine, the developing the contracts for them to
 18 then advertise in our service definitely was a different
 19 effort.
 20 So if you take that, that would be directly portable
 21 back to this phase 1. So suppose we had gone and
 22 licensed the technology to Bauer, they would have gone
 23 and done the marketing and the commercial relationships
 24 with those merchants, just as they did later, and they
 25 had to have a disciplined focus on a specific domain

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1 that they already were in and leading in.
 2 Does that answer your question?
 3 Q. Not really, and it was a very, very long answer which
 4 has jumped ahead from my phase 1. I want to say this
 5 gently, I do not really want to constrain your evidence,
 6 but at the same time —
 7 A. I will try.
 8 Q. — if every answer you give is that long, I am going to
 9 have to apply for extra time to keep you in the box to
 10 cover what I need to cover, Ms Raff.
 11 A. I will do my best.
 12 Q. I am going to try and just do this chronologically, by
 13 reference to this document. We are staying in phase 1.
 14 Can we just pick up what you were intending to do at
 15 the second paragraph. You tell us:
 16 "Infederation believes that a different approach, at
 17 least initially, would allow it to more rapidly achieve
 18 its goals, while minimising the risks posed by the
 19 critical —mass issue and from any incumbent competition."
 20 So what you are essentially — and I think we have
 21 covered this and I think we will agree, what you were
 22 proposing to do to avoid this critical —mass problem of
 23 having to go and get all your own merchants was to use
 24 an existing classified in order to allow it to introduce
 25 it to all of its merchants; you would get market

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1 penetration, you could hook into their sales and
 2 marketing team and after a while people would become
 3 very familiar with Foundem's brand of vertical search.
 4 That was the aim in this phase 1, was it not?
 5 A. I think that last bit isn't right. You're right, so —
 6 so this was the — phase 1 was that we would license to
 7 those publishers who were already in those — in those
 8 domains, those vertical domains. I think, if you're
 9 licensing your technology in terms of the WebSentient
 10 technology —
 11 Q. Sorry, just to pick you up, you said "license to those
 12 publishers", but you are not licensing to publishers, we
 13 have agreed you are licensing to classifieds who we are
 14 calling verticals.
 15 A. Oh, yes, sorry, but quite often the publishers were
 16 the ones with classifieds, so for example —
 17 Q. You do not focus on classified — you do not focus on
 18 publishers here and I am trying to stay in 2005.
 19 A. Right.
 20 Q. You are aiming at the classifieds, who we are calling
 21 verticals at this point.
 22 A. Okay.
 23 Q. That is what I am asking you about.
 24 You are telling us the:
 25 "Classified services that license our

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1 technology ..."
 2 This is the third paragraph, Ms Raff:
 3 " ... will gain a considerably more efficient, cost—
 4 effective, timely, and accurate means of integrating
 5 their existing content providers, as well as the means
 6 by which to acquire and integrate many more. In return,
 7 Infederation will acquire an immediate revenue stream
 8 and market presence. In addition, this approach
 9 utilises a virtual sales force — the sales and
 10 marketing resources and considerable domain expertise of
 11 these classified services — to efficiently disseminate
 12 WebSentient technology."
 13 So just pausing there. The benefit to Foundem of
 14 this strategy as conceived at this point was that in
 15 circumstances where you did not, as you fairly
 16 acknowledged, have the sales and marketing resources to
 17 go and do this yourself, you could, through licensing,
 18 effectively rely upon a classified sales and marketing
 19 team to disseminate WebSentient to their merchants on
 20 your behalf; that is correct, is it not?
 21 A. Yes.
 22 Q. Now, can we read the first — well, so through
 23 licensing, just to follow through this, as we have — as
 24 I have put it, you could use a CSS as an incubator, and
 25 you further explain your thinking in paragraph —

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1 the end of that paragraph, where you say:
 2 " ... an existing classified service can neatly
 3 sidestep the critical —mass issue where Infederation ...
 4 cannot. By incrementally rolling —out WebSentient
 5 technology to both 3 and existing content providers,
 6 classified services can gradually improve the quality of
 7 their service without requiring a critical mass of
 8 WebSentient—enabled content providers."
 9 So, again, you are relying upon the classified to
 10 spread the word about WebSentient in phase 1,
 11 the licensing phase, are you not?
 12 A. So I think what this final sentence is saying is that if
 13 you have a particular vertical search service that's
 14 already functioning, they don't have to drop all of
 15 their current technology for integrating feeds and
 16 indexing it and normalising, etc, you can add fresh
 17 clients that are WebSentient, and because we're so
 18 configurable, we can take data in any format and then we
 19 can provide it to their central database in any format.
 20 That's what this sentence is about. It's about you can
 21 start — you can keep the service running but then
 22 incrementally add additional clients. It allows them to
 23 become a more comprehensive service because our
 24 technology could access data that other technology
 25 couldn't reach.

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1 Q. Well, you make that claim and we are going to test that
 2 today, but at section 3.2 on this page, and we are still
 3 in phase 1, the licensing phase, you also conceive of
 4 the prospect of licensing to general search services,
 5 and at section 3.2 you say, in that second paragraph:
 6 "Retaining a strong presence within the highly
 7 competitive search engine market requires considerable
 8 expertise and resources. It has not been a viable
 9 option for search engine providers to enter and compete
 10 within the complex and highly specialised classified
 11 market. As the web's first port of call for vast
 12 numbers of consumers, however, many search engines have
 13 forged a number of channel partnerships with selected
 14 classified services."
 15 Now, one of the partnerships forged which you are
 16 referring to was obviously Yahoo!'s purchase of Kelkoo;
 17 that is correct, is it not?
 18 You knew Yahoo! had purchased Kelkoo at the point at
 19 which you wrote this document, did you not?
 20 A. I'm desperately trying to push my mind back to 2005 —
 21 Q. Well, we will come — we will come back to —
 22 A. — so I'm not 100% certain who we were specifically
 23 thinking about at this point.
 24 Q. Well, let us take it forward and we will come back to
 25 that. But you say in that third paragraph that:

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1 "WebSentient technology alleviates many of
 2 the overheads currently associated with the provision of
 3 domain-specific search services that could, therefore,
 4 be employed by search engine providers to launch their
 5 own classified services, perhaps in a bid to own a share
 6 of the complete search space."
 7 So the point here, Ms Raff, is that WebSentient, as
 8 we have discussed, was not domain-specific but could be
 9 configured for all of those domains that we have touched
 10 upon, jobs, property, automobiles, products, and which
 11 you believed would be of particular interest to general
 12 search services that would wish to have specialised
 13 results across all of those domains on their search
 14 page; that is why they might be a licensing target too?
 15 A. That is correct, and in fact, I think it was on our
 16 first trip to the US, we met with both Google and Yahoo!
 17 to talk about, ironically — ironically, we were saying
 18 to Google that the natural next step for them was to
 19 enter vertical search. In retrospect, we probably
 20 shouldn't have done that.
 21 THE CHAIRMAN: Well, never mind the retrospect. The point
 22 that is being put to you is right, that is the thinking
 23 you had at the time?
 24 A. Yes, so at that point, as Mr McGurk has set out, we were
 25 aware of the fact that these horizontal search engines

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1 could only go so far and that the natural next step
 2 would be for them to expand into vertical search.
 3 MR MCGURK: Yes, so they were a target for licensing and
 4 acquisition, and we see that again most clearly in this
 5 fourth paragraph under 3.2, where you say:
 6 "Search Engine providers are therefore both
 7 prospective WebSentient licensees and strong candidates
 8 for Infederation Ltd's eventual acquisition."
 9 So the long and the short here is that if a general
 10 search service took a licence of WebSentient, or
 11 ultimately bought the technology, finding that it
 12 performs well across a range of domains, the next
 13 logical step for that general search service would be
 14 just to acquire it; that is what you are telling us, is
 15 it not?
 16 A. Yes.
 17 Q. Yes.
 18 Can we go to the top of page {J2B/5/23}, please.
 19 Now, in the second sentence, you summarise
 20 the proposed strategy of licensing to classified,
 21 saying:
 22 "By first licensing WebSentient technology to major
 23 incumbent classified services within selected vertical
 24 markets, Infederation will exploit these services'
 25 domain-specific expertise, sales and marketing resources

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1 and established consumer and content provider
 2 relationships, to achieve rapid market penetration and
 3 critical mass. Having established a critical mass, it
 4 can become an effective defensive barrier to potential
 5 competitors."
 6 Again, this was signalling your ambition for
 7 WebSentient technology to become the industry standard
 8 by which all classifieds / verticals would obtain and
 9 integrate data from clients; that is correct, is it not?
 10 A. So I think this is — this is talking about if other
 11 competitors came up behind us with similar technology.
 12 Q. No, it is not. That is the outturn of it, but you have
 13 to establish yourself as the industry standard for
 14 vertical search in the first place to be able to defend
 15 it.
 16 A. No, I — I disagree. No, what this is talking about is
 17 that you establish "rapid market penetration and
 18 critical mass", as in you have these services that are
 19 already doing a certain amount of work. You don't have
 20 to be — you definitely don't have to be an industry
 21 standard. It might be that because I'm from a technical
 22 background, I view industry standard as, you know, it's
 23 quite a tightly defined thing. So you don't have to be
 24 an industry standard in order to be an effective player.
 25 Industry standards are things like 3GSM, etc. So, no,

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1 definitely not talking about industry standard here, and
 2 it doesn't say "industry standard" anywhere, it's
 3 talking about market penetration —
 4 Q. Well, can I just disagree with you by looking at
 5 section 5 —
 6 A. — and critical mass.
 7 Q. — Ms Raff:
 8 "Infederation will ensure that ... WebSentient brand
 9 remains prominent within all of its distribution
 10 channels, and will seek to establish it as the de facto
 11 industry standard ..."
 12 A. Yes, and you'll see —
 13 Q. (Overspeaking) — completely the opposite —
 14 A. — that's a completely separate point. So if you go up
 15 a page, to whatever point we're talking about here,
 16 which is point 4, that is not talking about the industry
 17 standard. Point 5 is completely different.
 18 Q. Well, I disagree with that. But what you are saying is
 19 that the methodology of licensing through a classified
 20 who could introduce you —
 21 A. Rapid market — (overspeaking) —
 22 Q. — to merchants —
 23 A. — penetration and critical mass, as it says there.
 24 Q. — Just let me finish. You solve those problems and you
 25 thereby establish WebSentient as the industry standard

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1 for vertical search?

2 A. No, that's separate. You'll see that separate —

3 point 5 is separate and it says:

4 " ... and will seek to establish it as the de—facto

5 industry standard for contextual, parameterised search."

6 THE CHAIRMAN: Ms Raff, this is setting out various

7 strategies, is it not?

8 A. Yes.

9 THE CHAIRMAN: Is the point you are making that the strategy

10 in 5 is different from the strategy from which counsel

11 has been reading in 4?

12 A. Yes. I don't know what the heading is for 4, because he

13 has not gone there, but ...

14 THE CHAIRMAN: Yes, it is critical mass.

15 A. Ah, thank you.

16 THE CHAIRMAN: But at the same time, it is right, when one

17 looks at 5, that you also had a strategy of seeking to

18 become the de facto industry standard?

19 A. Exactly, but that was nothing — that was not necessary

20 for market entry and growth.

21 THE CHAIRMAN: Yes, but it was also a strategy worth

22 pursuing?

23 A. Yes, thank you.

24 MR MCGURK: Then we see how all of this comes together, at

25 least as you were conceiving of this plan at the time,

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1 in section 3.4, headed "Route to Market". At 3.4.1, if

2 we can move down in the document, "Phase 1: Launch

3 Strategy":

4 "Initially, Infederation will focus on achieving an

5 early market presence by licensing WebSentient ... to

6 one or more incumbent classified services within one of

7 three target domains."

8 Now, just pausing there. The target domains you had

9 in mind were the UK property domain; is that right?

10 A. I don't know. I can't remember.

11 Q. Well, at the bottom of the page, you see 3.4.1.1:

12 "Initial Target Domains and Customers."

13 A. Yeah.

14 Q. The first sub—heading is, "UK Property", is it not?

15 A. Yes.

16 Q. So that was one of the three target domains?

17 A. Brilliant. Are you going to take me to the second and

18 the third?

19 Q. If you will permit me. It is over the page, {J2B/5/24},

20 you see the second target domains were "European and US

21 Shopper Comparison" services, and the third target

22 domain was, halfway down the page, "Travel ..."; that is

23 correct, is it not?

24 A. Thank you.

25 Q. Then if we go back to 3.4.1 on page {J2B/5/23}, third

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1 paragraph at the bottom under 3.4.1, do you see you

2 explain why:

3 "Licensing WebSentient technology to incumbent

4 classified services, rather than launching it as

5 a classified service in its own right, has several

6 advantages ...

7 "Minimising the requirement for early capital

8 investment, by reducing operating costs and generating

9 early revenue."

10 I.e. licensing revenue.

11 Two:

12 "Effectively neutralising the critical —mass problem.

13 "Allowing a highly—scalable sales model that

14 achieves rapid growth of WebSentient's installed

15 Client—base by leveraging the resources and existing

16 relationships of its classified licensees."

17 So just a few questions on those — on that passage.

18 So in February 2005, the plan for phase 1,

19 therefore, was that Foundem would remain a technology

20 company seeking to licence its technology initially to

21 classifieds and perhaps ultimately to sell it, most

22 obviously to a general search service; that was the aim

23 at that point, was it not?

24 A. I'm really sorry, could you give me them one at a time

25 so I can say, because I think the third one is a bit

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1 dodgy?

2 Q. The plan for phase 1 was that Foundem would remain

3 a technology company and seek to licence its technology,

4 initially to classifieds and then potentially to

5 a general search service who could avail of WebSentient

6 on a multi—domain basis; that is correct, is it not?

7 A. Nearly correct. Initially to classifieds and/or general

8 search services. So when we went for our first US trip,

9 for example, we met with Google and Yahoo! — and we had

10 a meeting booked with Microsoft, we decided to go to

11 that. So both classifieds and general search services,

12 but apart from that, yes.

13 Q. The plan for phase 1, therefore, was not to transition

14 to and operate as a Foundem—branded multi—domain search

15 service or even, more narrowly, a Foundem—branded CSS;

16 that is correct, is it not?

17 A. At that point in February 2005, our priority was

18 the licensing model, that is correct.

19 Q. That suited you because, again, bringing this together,

20 and as you have recognised here and in this document, if

21 you were to pivot and try under your own steam to become

22 even a CSS operating on the basis of your own

23 WebSentient technology, that would require significant

24 investment because of the critical —mass problem and

25 because you did not at that stage have a sales and

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1 marketing team; that is fair, is it not?
 2 A. If we had launched our own CSS, our feeling at that
 3 point, although I think it was starting to be eroded,
 4 but, yes, what we're suggesting in this document is that
 5 to attain a critical mass of merchant — monetised
 6 merchant relationships back in February 2005 we thought
 7 would be challenging without a dedicated sales and
 8 marketing team.
 9 THE CHAIRMAN: Would that be a sensible point — we have run
 10 over a bit — to take a break?
 11 MR MCGURK: Yes, I am grateful, Sir.
 12 THE CHAIRMAN: Now, as you know, because you have been in
 13 the proceedings, we take a short break, but because you
 14 have started your evidence, you must not discuss
 15 the case with anyone else and we will be back in
 16 ten minutes.
 17 A. Thank you, Sir.
 18 (12.00 pm)
 19 (A short break)
 20 (12.13 pm)
 21 THE CHAIRMAN: Yes, Mr McGurk.
 22 MR MCGURK: Ms Raff, could we go back to the business plan,
 23 to {J2B/5/25}. I am going to move on now and talk about
 24 phase 2 of the proposed strategy of February 2005, it is
 25 under 3.4.2, and you say:

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1 "Phase 2 will commence when revenues allow, and
 2 includes the following options."
 3 Just pausing there. "When revenues allow", that is
 4 licensing revenues that you would earn from phase 1, is
 5 it not?
 6 A. Yes, although, interestingly, even in February 2005,
 7 that was slightly out of date. So, in our first visit
 8 to the US, we were effectively — we were effectively
 9 speaking about vapourware, so we had an idea we knew
 10 because we were technical that it was —
 11 Q. I do not think you are answering my question, Ms Raff.
 12 A. No, I think I am, because the thing about "when revenues
 13 allow" requires us to do — we have to have the revenues
 14 in order to do the pivot, and what I'm saying is that —
 15 well, okay, let's go with a "yes" and we'll maybe come
 16 to that next step.
 17 Q. We will come on to these points, I promise you.
 18 You are saying "when revenues allow", and as I read
 19 this document, that is principally the revenues you will
 20 generate in the phase 1 strategy, you will undertake
 21 the following options:
 22 "An incremental extension of Phase 1 — licensing to
 23 additional classified customers across additional
 24 domains and territories."
 25 So in other words, the first stage of phase 2 was

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1 that you would still remain a tech company and you would
 2 still continue to licence your technology, albeit to
 3 a wider set of verticals; that was the plan, was it not?
 4 A. Well, no, I think both of those bullets are there
 5 together. So half of phase 2 was to licence to
 6 additional classified customers.
 7 Q. I am going to get there. I am just taking it in stages.
 8 A. You said the first stage of phase 2, so you're putting
 9 an extra step in.
 10 Q. Well, no —
 11 A. So, yes, part of phase 2. So you're right, we had
 12 mentioned earlier, UK property, European and US
 13 comparison shopping, travel, that was sort of first
 14 phase of licensing, and you're right, the second phase
 15 of licensing would be to move into more esoteric CSSs,
 16 that's esoteric verticals.
 17 Q. Then the second stage of phase 2 refers to the second
 18 option of transitioning:
 19 "... from a pure technology provider towards that of
 20 a technology/service provider — launching a one-stop,
 21 multi-domain classified service, either on our own, or
 22 in partnership with an existing search provider
 23 (e.g. Yahoo!, Google, [Microsoft])."
 24 So just three quick questions on this.
 25 First, as you tell us, you saw yourselves as a pure

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1 technology provider at this stage, did you not?
 2 THE CHAIRMAN: When you say "at this stage", you mean up to
 3 this stage?
 4 MR MCGURK: Well, at the point at which this document is
 5 finalised in February 2005, yes.
 6 A. Yes, that is correct. We were — we were technically
 7 designing and building a technical piece of software.
 8 Q. Second, the transition to being a "one-stop,
 9 multi-domain classified" was being proposed on the basis
 10 that each of the verticals that Foundem would operate as
 11 a service provider would be powered by your WebSentient
 12 technology; that is right, is it not?
 13 A. Absolutely. It would be a service built on our
 14 technical platform.
 15 Q. The option of becoming a multi-domain classified running
 16 on WebSentient was, however, tied to the point you make
 17 in the first sentence, namely, that you would only
 18 commence this phase when revenues allow; that is right,
 19 is it not?
 20 A. And that's why I'm saying that, even at this point,
 21 things were shifting, because it also required us to
 22 complete building the technology, and as part of our
 23 focus between our first visit to the US and our second
 24 visit to the US, in order to focus the technical build
 25 on the key functionality that would be required for

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1 property, comparison shopping and travel, what we were
 2 doing internally at this point is using our technology
 3 to build these services, so that's what's going on in
 4 the background, yes.
 5 Q. You go on to say:
 6 "A transition from technology ..."
 7 I.e. from being a pure technology provider, as you
 8 put it:
 9 "... to service provider would offer
 10 Infederation ... the opportunity to earn a greater share
 11 of the revenues generated by WebSentient technology than
 12 will be afforded by the licensing model."
 13 Just pause there. That sentence makes, again, it
 14 absolutely clear that WebSentient would be the heart —
 15 would be at the heart of the service that you ended up
 16 launching in phase 2, would it not?
 17 A. Yeah, the technical platform that we — that we were
 18 building at that — at that moment, which we called
 19 WebSentient technology, that is correct.
 20 Q. You say:
 21 "This would require either a substantial injection
 22 of capital, or the sale of the company to a purchaser
 23 with sufficient existing resources."
 24 So, Ms Raff, you recognised that moving to becoming
 25 a full WebSentient powered multi-domain or even at

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1 WebSentient powered CSS would require proper and
 2 substantial resourcing, did you not?
 3 A. So it turns out that that was wrong and that is why we
 4 pivoted —
 5 THE CHAIRMAN: Without going — jumping forward, as at this
 6 point, your thinking here in February 2005, is
 7 the answer, "that is correct", that was your thinking at
 8 the time?
 9 A. That is correct. So when you raise money, you kind of
 10 have to say why you're raising it, and, yes, that would
 11 be what we would spend the money we were thinking of
 12 raising on.
 13 MR MCGURK: Yes.
 14 THE CHAIRMAN: You needed that money to develop —
 15 A. At that point —
 16 THE CHAIRMAN: — in that way, that was your understanding
 17 at the time?
 18 A. At that point, that's what we thought, yes. It turns
 19 out we were wrong.
 20 MR MCGURK: You said, at page 63 in the [draft] transcript,
 21 that you were still yet to complete the development of
 22 the technology at this stage, which is what you say on
 23 page 1 of this document. So the investment would very
 24 largely be needed to complete the build of WebSentient,
 25 would it not?

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1 A. That is correct.
 2 Q. Now, you went to the US in March 2005, you came back
 3 later that month, and as things transpired, Ms Raff, by
 4 the end of that month, the position was that not
 5 a single classified took a licence of your WebSentient
 6 technology, did they? You had not managed to licence
 7 WebSentient to anyone, had you?
 8 A. That is correct.
 9 Q. None of Yahoo!, Google, Microsoft, or any other general
 10 search service were seeking to invest in or acquire your
 11 technology at that point, were they?
 12 A. We were not asking the general search services to invest
 13 in or acquire our technology, we were looking to — so
 14 we were not suggesting that to them. We were (a) trying
 15 to find out if they were doing anything similar, and
 16 none of them were, and (b) we were looking at them as
 17 the people that we could license our technology to, and
 18 Yahoo! had interest and, back in the UK, Ask Jeeves was
 19 interested.
 20 Q. I am only picking up on the acquisition point, because
 21 I have already taken you to a couple of passages in this
 22 business plan which indicate the most likely exit
 23 strategy would be your acquisition by a general search
 24 service.
 25 A. Yes, but that was going to be quite a long way down

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1 the line. We hadn't finished building the technology at
 2 this point.
 3 Q. No, indeed, but the point nevertheless remains nobody
 4 had invested in your business by the end of March 2005,
 5 had they?
 6 A. I can't remember. There was a little bit of angel —
 7 there was a little bit of investment from family, but
 8 that doesn't count.
 9 Q. Yes. Well, let me refine my question —
 10 A. No, you're correct, we did not in the end take the early
 11 stage funding.
 12 Q. I am coming back to that in just two minutes, Ms Raff.
 13 But just focusing on the classifieds who were your
 14 target domains, as you set out in this document —
 15 A. Yes, they had not licensed it, that is correct.
 16 Q. — they did not take a licence. None of those
 17 classifieds invested in the technology either, did they?
 18 A. We weren't asking them to.
 19 Q. But in any event, that was the position as at the end of
 20 March, you had none of these classifieds or general
 21 search services proposing to invest in your company or
 22 your technology?
 23 A. No, but just to be clear, we weren't asking them to.
 24 Q. Well, I am not sure that that is true —
 25 A. We were looking to licence.

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1 Q. — I am going to come back to that Ms Raff. But in any
 2 event, you would have had no licensing revenue at that
 3 point?
 4 A. That is correct.
 5 Q. This had two consequences, and I am not being rude, but
 6 phase 1 of your business plan as conceived had failed
 7 completely, had it not?
 8 A. No.
 9 Q. You had not licensed your technology to any classified,
 10 any general search service and you were not making any
 11 licensing revenues. Your phase 1 failed, Ms Raff?
 12 A. Our phase 1 was in progress, because we were talking to
 13 potential licensors and they were — there was some
 14 interest. So there was some interest from Yahoo!, there
 15 was some interest from Ask Jeeves, there was some
 16 interest from a flight search service in the US. So it
 17 hadn't failed, no —
 18 Q. But all of that came to nothing?
 19 A. — we pivoted.
 20 Q. All of that came to nothing?
 21 A. Because we pivoted to plan B.
 22 Q. Well, let us come to the pivot in a moment.
 23 But this meant, on your respectfully correct
 24 analysis in this document, that the only other way you
 25 could transition to being a fully functioning

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1 multi-domain or even a fully functioning CSS operating
 2 by way of WebSentient would be to generate substantial
 3 capital investment to allow you to go it alone; that is
 4 right, is it not?
 5 A. But we did transition, Mr McGurk. We built and launched
 6 a service that had UK property and travel search,
 7 flight, hotels and rental cars, and we did a UK
 8 comparison shopping service, so we did transition.
 9 Q. Yes, you transition in a very different way to how you
 10 envisaged transitioning in this business plan, because
 11 instead of having hundreds and thousands of direct
 12 relationships with merchants who would download your
 13 WebSentient technology and feed back data to you, your
 14 pivot was to decide to launch on the basis of providing
 15 standardised affiliate feeds on your CSS; that is
 16 correct, is it not?
 17 A. So it is true that we pivoted based on the easy
 18 commercial relationship development path of affiliate
 19 networks, which was exploding over that period and which
 20 was exploding faster in the UK than anywhere else in
 21 the world.
 22 I definitely take issue with your final part of your
 23 sentence, where you say presenting "standardised
 24 affiliate feeds". That's totally inaccurate. We
 25 ingested the data, primarily affiliate feeds, but what

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1 is different about the different CSSs is that we then
 2 processed and normalised that — that data and presented
 3 it in a way that was different to other CSSs. So we did
 4 not present standardised affiliate feeds. We are not
 5 a — we were never a thin affiliate that just dumped an
 6 Amazon feed on — on pages. So, no, I totally disagree
 7 with that final sentence.
 8 Q. Just two points on that. "Standardised affiliate feeds"
 9 is a phrase that you use in your statement and we will
 10 come back to it.
 11 A. We could ingest standardised affiliate feeds. We did
 12 not present standardised affiliate feeds.
 13 Q. Well, we will look —
 14 A. There was a lot of very sophisticated technology between
 15 the back end of ingesting and the beautiful, rich, smart
 16 filtering, price history graphed, sexy, speedy CSS that
 17 was presented to users at the other end, just to be
 18 clear.
 19 Q. All right, well, we are going to test that, because
 20 I agree with none of that description.
 21 A. Okay.
 22 Q. Can I clarify a few things with you, Ms Raff.
 23 Just to be clear, your business plan indicated that
 24 becoming a full service CSS, as we have agreed, would be
 25 on the basis of your WebSentient technology, would it

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1 not?
 2 A. Yes.
 3 Q. Your pitch to being best in breed in vertical search was
 4 precisely because you could, as a multi-domain or a CSS,
 5 be utilising your own WebSentient technology; that is
 6 correct, is it not?
 7 A. Yes.
 8 Q. As we have seen, the full WebSentient experience
 9 requires you to have a direct relationship with your
 10 merchants who would download the data, that download
 11 the software and feed data back to you via that link to
 12 the central host? We have seen that.
 13 A. No, that is incorrect. That is one option is to have it
 14 distributed, but it's still — the WebSentient
 15 technology can also be based at our servers and doesn't
 16 have to be distributed.
 17 Q. Yes, but the point is you did not need to have a direct
 18 relationship with any single individual direct merchant
 19 in order to operate as a CSS on the basis of
 20 standardised affiliate feeds, did you?
 21 A. I'm sorry, say that one more time? I didn't need — we
 22 didn't need to ...?
 23 Q. You did not need to have a relationship — a direct
 24 relationship with even a single merchant in order to
 25 launch as a CSS that operated on the basis of affiliate

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1 feeds, did you?

2 A. So there are two halves to what an affiliate network

3 offers. So, on the one hand, the affiliate network

4 gathers and then you can pick up data feeds from

5 the affiliate network, but on the other hand,

6 the affiliate network brokers bespoke or standardised

7 commercial relationships with the merchants. So if you

8 have an affiliate relationship with a merchant, you do

9 have a commercial relationship with that merchant. You

10 normally, if you're applying — you normally have to

11 apply to the merchant to be — to be accepted onto their

12 affiliate program. So I'm just trying to make sure that

13 I'm not inaccurate when I answer. So we did in effect

14 have commercial relationships, but they were brokered by

15 the affiliate network. Then, of course, there were

16 certain merchants and merchant platforms that we did

17 have direct relationships with. So for example, Amazon,

18 that was a direct commercial relationship. Is that

19 answering your question?

20 Q. Not quite.

21 A. Okay.

22 Q. Most of your relationships with affiliate networks were

23 networks in relation to which, take TradeDoubler, you

24 would have the commercial relationship with TradeDoubler

25 and they would be acting on behalf of their merchants

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1 and it would be TradeDoubler who would be providing you

2 with the affiliate feeds, dealing with products from

3 the merchants on their books; that is right, is it not?

4 A. That is correct.

5 Q. So let us take John Lewis. Let us say, for argument's

6 sake, TradeDoubler was providing product data

7 information for, amongst others, John Lewis. So you

8 have a relationship with TradeDoubler, you did not have

9 a contract with John Lewis, did you?

10 A. That is correct. Although —

11 Q. You had no direct dealings with John Lewis at all, you

12 dealt with TradeDoubler, did you not?

13 A. No, that's not 100% correct. Sometimes — so — so

14 the first port of call might be TradeDoubler, but nearly

15 all of the merchants had some kind of a — I guess you

16 could call it a marketing manager or an affiliate

17 manager. So actually one did occasionally have direct

18 dealings with the merchants.

19 Q. I have read thousands of documents that have been

20 disclosed and that are in the Trial bundle and there is

21 not a single document where you have any interaction

22 with a — directly with a merchant who is being serviced

23 by an intermediary affiliate network, Ms Raff.

24 A. No, that is definitely wrong, and I don't have access to

25 Relativity. But if I had access to Relativity, I would

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1 be able to give you the documents.

2 THE CHAIRMAN: What is Relativity?

3 A. Oh, Relativity is like the nine circles of hell. It's

4 the soft — I think pretty much everyone in this court

5 room knows what Relativity is. It's basically where you

6 put all of your disclosure and then the theory is you

7 can search it to find certain things, but it's a dark

8 art, Sir.

9 THE CHAIRMAN: I see. So it is a sort of disclosure

10 management system of some kind?

11 A. That's — thank you, that's much better put than I put

12 it.

13 MR MCGURK: But to go back to my original question, you did

14 not need to have a direct contractual relationship with

15 a single merchant in order to operate as a CSS on

16 the basis of affiliate feeds, did you?

17 A. Well, I think you wouldn't want to be a CSS that didn't

18 have Amazon, and that was a direct relationship. But

19 I think it's true to say that the vast majority of our

20 commercial relationships were via affiliate networks,

21 yes, Mr McGurk.

22 Q. Yes, and with Amazon, so they ran their own affiliate

23 network, of course, as a platform.

24 Can we look at {M2/288/1}. Blow up the top half of

25 that document.

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1 "An Amazon Affiliate Blog", talking about the Amazon

2 affiliate network.

3 You see the top paragraph, last sentence, there is

4 reference to the fact that by this stage in 2008,

5 Amazon's affiliates already exceeded 2 million. So huge

6 numbers of people could sign up to these affiliate

7 programs and receive these standardised data feeds; that

8 is correct, is it not?

9 THE CHAIRMAN: Where are you in this?

10 MR MCGURK: First paragraph, top of the document.

11 THE CHAIRMAN: The thing beginning:

12 "So, how many ..."

13 MR MCGURK: Yes:

14 "... how many ... affiliates ..." —

15 THE CHAIRMAN: Yes, I see.

16 MR MCGURK: — "... are ... there?"

17 This is an internal Amazon blog, and the answer you

18 get there, in the last sentence of the first paragraph:

19 "... it was mentioned that they have 2 million

20 affiliates."

21 A. Is that date there — July 2008, is that the date of

22 this blog?

23 Q. Yes.

24 So it is right, is it not, that even with a first

25 party affiliate network, which Amazon was, there were

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1 huge numbers of people receiving these same standardised
 2 feeds? That is right, is it not?
 3 A. So I think it's important to remember that the vast
 4 majority of Amazon's affiliates will be non-search
 5 services. So they, for example, would do a post about
 6 — they wouldn't be using the data feeds, they would do
 7 a post about here are the ten — ten things my mother
 8 uses to pack for her cruise, and they would have
 9 specific links to specific Amazon products that they had
 10 gone and found. So a tiny percentage of that 2 million
 11 would be ingesting the feed and processing it.
 12 Q. Well, I am not sure where you get the tiny percentage.
 13 But in any event, if it is just 1,000 or 2,000 —
 14 A. Yes, absolutely.
 15 Q. — that would not be unreasonable. We see figures up to
 16 10,000, which is still a fraction of your 2 million.
 17 10,000 merchants on Amazon affiliates taking the same
 18 standardised feed that you are puts a premium on, if you
 19 are an aggregator, what sort of content you are wrapping
 20 around the information you get from the feeds; that is
 21 right, is it not?
 22 A. As a CSS, it puts a premium on how well we process it.
 23 So, for example, not just Amazon's feeds but all
 24 the feeds, are you processing this to take out
 25 the detritus, so when you look for a Fuji FinePix J50,

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1 do you get camera cases and books about cameras, or have
 2 you managed to prune out the detritus and you're only
 3 presenting offers for that camera, but at the same time
 4 you're grabbing the offers for that camera that some
 5 merchants have put in their sportswear directory —
 6 John Lewis was particularly crazy about this — and also
 7 some merchants call it a different thing. So what it
 8 does is it puts a premium on your processing and
 9 normalising technology to make sure that you are
 10 offering the most comprehensive product price comparison
 11 you possibly can. It does not put a premium on original
 12 content and buying guides, no.
 13 Q. Now, you have told us about your second trip to the US
 14 in March 2005. You have come back with no licensing
 15 deals, no investment, no offer to buy, but at this
 16 point, and you describe memorably in your statement
 17 the conversations you had with your husband on
 18 the plane, and in his memorable statement you decided to
 19 pivot and you politely declined angel investment and
 20 opted to go it on your own.
 21 Is it really true that at this point, where you are
 22 pivoting from being a tech provider to launching a CSS,
 23 you are declining the investment that your business plan
 24 would say would be necessary at the very least to
 25 complete your WebSentient technology, Ms Raff?

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1 A. Yes, because we had built way more of the technology
 2 than we thought would be possible by the time we went to
 3 our second visit to the US. So we had built enough
 4 technology that we had launched a really good travel
 5 search service, and so, yes, we did, we politely
 6 declined it.
 7 Q. Right, let us test that, but I want to take it in
 8 stages, first, by observing that Foundem was loss-making
 9 in 2004 and 2005, was it not?
 10 A. Yes.
 11 Q. So without capital investment, you could not complete
 12 the development of your WebSentient technology, which
 13 you told us before the break had not yet been finalised;
 14 that is right, is it not?
 15 A. Well, I think that has to be wrong, Mr McGurk, because
 16 we didn't take the investment, we did complete
 17 the technology and we did launch the service. So
 18 clearly we could complete it without the investment.
 19 Q. It is at page 63 in the [draft] transcript. You told us
 20 at this point in time you had not completed
 21 the development of your technology. So which is it?
 22 A. Well, we didn't need the money to complete it and you
 23 can tell that because we did complete it and we didn't
 24 take the investment. So, logically, I think we are
 25 right.

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1 Q. Well, hang on. Hang on. Page 1 of the business plan
 2 says you are seeking investment, page 4 says you are
 3 seeking up to 1 million, and the other passages I showed
 4 you indicate, because you were planning to licence this,
 5 you would not have the critical—mass problem, you would
 6 not have the need for a sales and marketing team, so all
 7 that is left that the £1 million that you were seeking
 8 could be earmarked for was the completion of your
 9 WebSentient technology; that is right, is it not?
 10 A. No, I think you're getting very confused. So the
 11 1 million was for plan A, which was going to licence
 12 the technology, so build the technology and licence it,
 13 and that required a sales and marketing team, even for
 14 the licensing of the technology.
 15 Q. Yes, but if you were going to hook into a CSS who was
 16 going to be an incubator for WebSentient, you would not
 17 be needing the £1 million for that because they would be
 18 doing it for you. They were going to solve
 19 the critical —mass problem for you. So then what is
 20 left? What do you need the £1 million for that you had
 21 earmarked? I am suggesting to you that your evidence
 22 before the break that you had not completed
 23 the development of your technology means that you were
 24 seeking investment to do precisely that, Ms Raff.
 25 A. So I think I did try to start saying, but you said that

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1 we'd get there, that of course by our second US trip, we
 2 had got much further with the build of our technology
 3 than we thought we would achieve when we first wrote
 4 this business plan, because ---
 5 THE CHAIRMAN: Ms Raff ---
 6 A. Yes.
 7 THE CHAIRMAN: --- I think it might be simplest if you just
 8 tell us, as you say, you did complete the technology.
 9 A. Yes.
 10 THE CHAIRMAN: How did you fund yourself to complete it?
 11 A. We --- we had a very small amount of investment from
 12 family and, I think I say in my witness statement, we
 13 had a developer or two and we focused on ... Between
 14 the first and the second trip, we built the underlying
 15 technology, but we were also building the top layer,
 16 which was the user-facing service, because that is
 17 a very good way of ensuring that you're building
 18 the right underlying technology is if you've got the top
 19 layer of the service. So by the time we went to our
 20 second US trip, we had an underlying set of technology
 21 that was built from the bottom up to be configurable and
 22 we'd already got a quite fully functional flight search
 23 domain, where, for example, you could --- it did all
 24 the dynamic --- the polling that you have to do with
 25 flight search, because it's live search, and you could

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1 search for business class or economy class. So by
 2 the time we went for our second US visit, we had built
 3 the core of our WebSentient technology and a user-facing
 4 service on top.
 5 Is that answering your question? I'm so sorry.
 6 MS ROSE: Was it funded by a loan or by investment or
 7 a combination?
 8 A. There was a small amount of family investment, and we
 9 were --- at that point, we were seeking the early-stage
 10 investment from some angel funders, but by the time we
 11 got back from our second US trip, we'd built enough of
 12 the technology ---
 13 MS ROSE: So how did you fund building the technology?
 14 A. Well, Adam and I were not on salaries and we had a small
 15 amount that we could pay our additional developers,
 16 because of course Adam and I are both from technical
 17 backgrounds, so we're developers too.
 18 MS ROSE: So you used your own resources?
 19 A. That's --- oh, yes, thank you, I should have said that
 20 about five minutes ago. I'm so sorry.
 21 THE CHAIRMAN: You did it mostly yourself?
 22 A. Yes. We're both from strong technical backgrounds.
 23 MR MCGURK: Being loss-making at this point ---
 24 A. Yes.
 25 Q. --- then without investment, you would not have had

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1 the funds to build a really attractive, content rich
 2 site that users might like to visit, did you?
 3 A. No, it was a very attractive, fully functional, very
 4 fast vertical search service.
 5 Q. Without investment, you would not have the funds to
 6 build a sales or marketing team that would manage any
 7 direct relationships that you might want to have with
 8 merchants, could you?
 9 A. No, but fortunately, affiliate networks were growing at
 10 exponential speed and so we were, at that point, able to
 11 use indirect relationships through the affiliate
 12 networks.
 13 Q. Without investment ---
 14 THE CHAIRMAN: We are going round in circles on this.
 15 First of all, a lot of the work was done by Mr and
 16 Ms Raff, who have got considerable technical expertise,
 17 and secondly, she has explained and accepted that
 18 the plan A, or --- as in the February 2005 business plan,
 19 would have needed investment, because it would have
 20 needed a marketing --- a sales and marketing team, but
 21 that when they came back from the States, and it is in
 22 her statement, they realised that using these affiliate
 23 managers, they did not need to go down that route.
 24 We have covered all of that.
 25 MR MCGURK: Well, can we move on to {M2/39/1}, please.

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1 This is an email from you. It is in April 2005, so
 2 it is after the US trip, and it is to Alan Wheatley and
 3 Richard Kilsby:
 4 "Please find attached all of the bits and pieces
 5 that were identified at our last meeting as
 6 prerequisites to signing the shareholder agreement."
 7 Point 2:
 8 "Amended investment agreement as per our
 9 discussion."
 10 Then in the last sentence you say:
 11 "If you have any comments on any of the attached, it
 12 would be good to discuss them during this week, in the
 13 hope that we can get together early next week for [a]
 14 signing ceremony!"
 15 So at this point, after your return from the US, you
 16 are still clearly seeking investment from these
 17 individuals, are you not?
 18 A. I'm --- I'm very polite and I like to stay on top of my
 19 paperwork, so I was delivering the things that they had
 20 --- that we had discussed at the last meeting as actions.
 21 I do tend to take actions and then deliver on actions,
 22 but it was during this period that we --- basically,
 23 I did it by phone to Alan and Richard, say, "Look, we
 24 think actually we're not going to take the investment".
 25 Q. Well, hang on, look at the words on this document.

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1 A. Yes, absolutely.
 2 Q. This is post the US trip —
 3 A. Absolutely.
 4 Q. — and you are still seeking investment from these
 5 gentlemen?
 6 A. Yes.
 7 Q. Can we go then though {M2/41/1}, which is
 8 the "Investment Agreement" referred to in point 2. In
 9 that document, at {M2/41/3}, we see
 10 the heading "Subscription for shares". 1.1:
 11 "Immediately following execution of this agreement,
 12 each of AW [Mr Wheatley] and, RK [Mr Kilsby] will
 13 subscribe £70,000 for 11,086 ordinary shares of £0.01
 14 each in the Company ..."
 15 So pausing there. It is not the £1 million referred
 16 to in your business plan, but you are still seeking
 17 a considerable amount of money, 140,000, from these two
 18 individuals at this stage, are you not?
 19 A. Yes, and they were — they were seeking to invest it,
 20 yes.
 21 Q. In the event, they did not become shareholders and they
 22 did not invest that £140,000, did they?
 23 A. That is correct.
 24 Q. {M2/64}, please.
 25 This is an email in — from you to Mr Wheatley and

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1 to Mr Jon Wheatley this time. This is October 2005.
 2 I think it is American — an American date, so it is
 3 8 October. So this is —
 4 A. I think it's — no, I think it's 10 August.
 5 Q. All right. Either which way, this is several months
 6 after the US trip, is it not?
 7 A. Yes.
 8 Q. You are sending these potential investors operating
 9 cost & revenue forecast —
 10 A. No, no, no, no.
 11 THE CHAIRMAN: Just listen to the question.
 12 A. I'm sorry.
 13 THE CHAIRMAN: Just listen to the question.
 14 MR MCGURK: So you are sending these gentlemen, who are
 15 potential investors, "Operating cost & revenue forecast"
 16 information, and you are still hoping that they will
 17 invest, are you not?
 18 A. No, no, no, no. Okay, so we had very politely turned
 19 down the investment some time previously. Alan Wheatley
 20 I still have a very soft spot for. He's —
 21 Q. We do not have time for this —
 22 A. — very avuncular —
 23 Q. — Ms Raff.
 24 A. — and we were — he is — he's not just avuncular, he's
 25 an indefatigable networker, and actually, I believe what

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1 we were looking at at this point — so this was not
 2 about investment. I believe — I mean, I'm dredging my
 3 memory here, but it was actually he — he was
 4 introducing us to Jon Wheatley, because Jon Wheatley had
 5 an interesting idea. So we absolutely were not seeking
 6 investments.
 7 Q. But this communication is not about investment.
 8 A. I do not believe it is, no.
 9 Q. Can we look at the attachment to this email. It is
 10 {M2/65/1}. So these are the operating costs and revenue
 11 forecasts. If we click on the spreadsheet link. I am
 12 grateful. If we go down to row 12, you see
 13 the heading "Cash", Ms Raff?
 14 A. Yeah.
 15 Q. If we hover over the red arrow:
 16 "Assuming investment of £90K in addition to balance
 17 of £20K."
 18 So as at this point in time, several months after
 19 the US trip, you are still seeking investment from these
 20 individuals, are you not?
 21 A. No, I don't believe I am seeking investment. I mean, it
 22 might well be that there's — there's a potential
 23 investment in there, but that's a spreadsheet — no, we
 24 had — we had turned down the investment at that point,
 25 I believe.

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1 Q. I do not accept your evidence that you were turning down
 2 investment. You came back from the States in
 3 March 2005, in April you approached Mr Wheatley and
 4 Mr Kilsby seeking £140,000, it did not come to pass, and
 5 then here, later on in October or August, you are
 6 seeking more investment from Mr Wheatley and
 7 Mr Jon Wheatley and that was not forthcoming either,
 8 was it, Ms Raff?
 9 A. So we didn't — we didn't approach Mr Kilsby and
 10 Mr Wheatley in April, we had been talking to Mr Kilsby
 11 and Mr Wheatley for some months before that, before
 12 the second trip, and if — the email that you took me to
 13 was very much the final stages of that conversation and
 14 we turned down that investment.
 15 Q. Just drawing a line under this, it is not right to
 16 suggest to this Tribunal that you were not, post the US
 17 trip, looking for further investment into your business,
 18 is it?
 19 A. Oh, god, that's got quite a lot of double negatives in
 20 it. Is it — could you put it without an "is not
 21 right"?
 22 Q. You were still seeking investment, and to the extent
 23 that you are telling the Tribunal through your witness
 24 statement that you were not, that is not accurate, is
 25 it?

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1 A. No, I disagree. I believe it is accurate. I believe it
 2 is accurate.
 3 Q. Can we pivot to your dependency on feeds and Google at
 4 this stage. When you say in your witness statement that
 5 you decided to pursue an organic growth model after
 6 deciding to launch alone, what you mean is that you were
 7 going to rely on general search services to direct users
 8 to you; that is correct, is it not?
 9 A. Yes, it's a slightly pejorative way of putting it, but
 10 I believe that all internet search — all internet
 11 services at that time had an uncomfortable but avoidable
 12 reliance on Google for traffic.
 13 Q. Your business model at this stage, post-pivot, would
 14 rely heavily on free search traffic and from Google in
 15 particular, would it not?
 16 A. Yes.
 17 Q. Yes. But you knew, did you not, that this would be
 18 a very risky business strategy, because you had
 19 recognised that rankings could change as Google and
 20 others evolved the way they assessed quality and
 21 undertook ranking from time to time? You recognised
 22 that risk, did you not?
 23 A. Yes, I think, if you have an uncomfortable but
 24 unavoidable reliance on a specific thing, you have to be
 25 very alert to the risks that that specific thing might

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1 be switched off.
 2 Q. If we go back to page 9 of your February 2005 business
 3 plan, it is {J2B/5/9}, we see the heading under
 4 2.3.2.1.3, "Search Engine Optimisation ...", and
 5 the second paragraph, you say:
 6 "The difficulties faced by any business reliant on
 7 search engines are compounded by the periodic
 8 modifications that search engine providers make to their
 9 ranking algorithms. These modifications are made, in
 10 part, to try and thwart the actions of SEO firms.
 11 The search engines would of course prefer that content
 12 providers pay them for a placement slot, rather than pay
 13 an SEO firm to fool their ranking algorithm."
 14 Just pausing there, that is referring to what we
 15 have called "black hat SEO", is it not, Ms Raff? That
 16 is illegitimate SEO that you are referring to?
 17 A. It's — I — we were being slightly pejorative about SEO
 18 firms there.
 19 Q. Because there are legitimate SEO firms and there are
 20 illegitimate SEO firms, and you are talking about
 21 the illegitimate firms here, are you not?
 22 A. Well, if you look at the paragraph above, I think we're
 23 talking about search engine optimisation, and there I've
 24 called it:
 25 "... the practice of deliberately manipulating

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1 a website's pages to obtain a place and prominent
 2 ranking within the results of one or more search engines
 3 — is now a flourishing industry."
 4 Q. Yes, this is the black hat SEO. These are the people
 5 who are trying to gain the algorithms. That is who you
 6 are talking about, are you not?
 7 A. Yes, I think there's — I think "black hat" and "white
 8 hat" makes it sound like there are — there's not
 9 a spectrum.
 10 Q. "Major modifications ..."
 11 Just coming back to the second paragraph:
 12 "Major modifications typically occur three to four
 13 times a year, and are seldom announced. Their effects
 14 can be both far-reaching and unpredictable. It is not
 15 unusual, after such a modification, for a site that
 16 previously enjoyed a top-ten ranking for a particular
 17 set of keywords to find itself suddenly ranked 80,000th
 18 for precisely the same set of keywords. Such
 19 substantial and unpredictable fluctuations in
 20 a search engine's notion of relevance can have
 21 significant commercial implications. Hundreds of
 22 thousands of businesses can suddenly and inexplicably
 23 find themselves ranked out of the running, either
 24 permanently or for several weeks at a time, while the
 25 experiment with adjustments to their websites."

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1 So therefore, just one month after you finalised
 2 this business plan from which this paragraph is taken
 3 identifying the risks of relying on free traffic, you
 4 choose to pivot to a business model that would be wholly
 5 reliant on free traffic from general search services, do
 6 you not?
 7 A. If you're saying that all CSSs have an uncomfortable but
 8 unavoidable reliance on organic search engine from —
 9 traffic from Google, then, yes, and yes, if you choose
 10 to be a CSS, you are therefore reliant on organic
 11 search engine traffic from Google, yes.
 12 Q. You are not. If your WebSentient was the best of breed
 13 technology and you had managed to roll it out as your
 14 business plan had hoped it would, you would have direct
 15 relationships with merchants, you would be getting data
 16 from merchants, and with the market exposure you get
 17 with that you could have, with a proper launch,
 18 generated traffic in a non — in a way that did not
 19 exclusively rely on the general search services; that is
 20 right, is it not?
 21 A. That is correct.
 22 Q. Does not this, the pivot —
 23 A. But I think —
 24 Q. — and the choice to take this —
 25 A. I think the bigger context of that is you're saying if

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1 we had chosen not to enter the CSS market we would not
 2 have been as vulnerable to the vagaries of Google's
 3 search service as we were. But if you expand that, are
 4 you saying that CSSs are — only have themselves to
 5 blame for being reliant on organic search engine traffic
 6 from Google and that really we should only be
 7 either technology providers or content providers because
 8 Google would like to do the CSSing, thank you very much?
 9 Q. You are making submissions —
 10 THE CHAIRMAN: Well, Ms Raff, it is not for you to ask
 11 counsel questions —
 12 A. I'm sorry.
 13 THE CHAIRMAN: — as you know, or to argue your case.
 14 A. Sorry.
 15 THE CHAIRMAN: You have got very competent counsel to do
 16 that.
 17 A. Yes.
 18 THE CHAIRMAN: So the question you were asked is: if you had
 19 been able to follow, or had followed, shall we say,
 20 the plan —
 21 A. Plan A.
 22 THE CHAIRMAN: — that as set out, plan A, or
 23 the February 2005 plan, then you would not have had this
 24 vulnerability and risk that is highlighted in this
 25 passage?

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1 A. That is correct.
 2 THE CHAIRMAN: Yes.
 3 A. As a non—vertical search service, as a technology
 4 provider. Technology providers are insulated from
 5 the uncomfortable but unavoidable reliance on Google
 6 Search traffic.
 7 MR MCGURK: Now, can we discuss what your decision to launch
 8 relying on affiliate feeds and affiliate networks meant
 9 for Foundem's offering to its users. The affiliate
 10 networks which Foundem signed up to included, did they
 11 not, TradeDoubler, Buy.at, Commission Junction and also
 12 Amazon, amongst others; that is correct, is it not?
 13 A. Yes, and also I think Affiliate Window is a big one.
 14 Q. We will cover them all in a moment, Ms Raff. But you
 15 did not have to become — you did not have to pay to
 16 become an affiliate member of those affiliate networks,
 17 did you?
 18 A. No.
 19 Q. You did not have to pay for the affiliate feeds that
 20 these networks sent you, did you?
 21 A. No, that's correct.
 22 Q. Through those intermediaries, you were provided with
 23 information about products from a whole range of
 24 merchants from John Lewis to Comet to BA, the full range
 25 of people, full range of familiar brands; that is right,

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1 is it not?
 2 A. That is correct.
 3 Q. You were getting the same feeds, with the same product
 4 information, as all other affiliate members of each of
 5 those affiliate networks, were you not?
 6 A. That is correct.
 7 Q. Now, by 2008/2009 or so, you did manage to obtain seven
 8 or eight direct merchant clients. I think all of them
 9 were involved in the sale of motorbike accessories and
 10 gear; that is correct, is it not?
 11 A. So it definitely is correct that for motorcycle parts
 12 and accessories we had direct merchant relationships.
 13 I'm afraid I'm not sure of the exact number.
 14 Q. But at the time of Foundem's launch in 2006, you had no
 15 direct merchant clients and so at that stage all
 16 the product information you served came exclusively from
 17 affiliate feeds, did it not?
 18 A. Almost exclusively, but, for example, Amazon —
 19 Q. Well, we are counting that as an affiliate, because you
 20 got their feeds through their affiliate program.
 21 A. I think you said affiliate network, didn't you?
 22 Q. Networks or programs, I am not particularly
 23 distinguishing.
 24 A. Oh, okay.
 25 Q. My point is you had no direct merchant clients in

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1 June 2006, did you?
 2 A. That is correct.
 3 Q. Could we go to {M2/1173}, please, and bring up
 4 the spreadsheet. These are the accounts, Ms Raff, for
 5 2005 and 2006 that you prepared for your business. Can
 6 we go, please, to the "Revenues" tab at the bottom. We
 7 can see the source of your revenues. If we go across to
 8 the left and have column A showing, you see "CJ.com"
 9 that is Commission Junction, is it not?
 10 A. Yes.
 11 Q. "DGMPPro", "TradeDoubler", "Amazon", "[Affiliate] Future",
 12 "[Affiliate] Window", "Buy.at", "WebGains",
 13 "PaidOnResults". Then you list "Google", "Octopus" and
 14 "Venere", but I think there is almost no revenue from
 15 them, but all the previous names I read out are
 16 affiliate networks, are they not?
 17 A. Well, Amazon isn't, and Octopus and Venere are not
 18 either.
 19 Q. Venere were a travel vertical, were they not?
 20 A. I'm not sure if vertical ... I think it's possible
 21 that Octopus and Venere ... They were certainly in
 22 travel.
 23 Q. They were not merchant clients, though, were they?
 24 A. I'm not sure.
 25 THE CHAIRMAN: Is there any revenue from Octopus?

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1 A. Oh, no, so we probably don't need to worry about it.
 2 Yes. No, I absolutely — the other thing that trade
 3 — that affiliate networks did was they — they managed
 4 the invoicing, the commercial relationships including
 5 the invoicing, so that — that is correct.
 6 MR MCGURK: {M2/1174}, please, take us to the 2006/2007
 7 accounts.
 8 A. By the way, these aren't quite accounts, these are kind
 9 of my internal spreadsheets. I think "accounts" might
 10 be overstating it a bit. This is my internal
 11 spreadsheets, but, yes, let's go.
 12 Q. Well, "bank receipts", "bank payments", "expenses",
 13 "revenues"; these are management accounts, are they not,
 14 Ms Raff? They are internal, but they are management
 15 accounts, are they not?
 16 A. Right, okay.
 17 Q. We see in the 2006 to 2007 period, again, on
 18 the "revenues" tab — click that — it is all the same
 19 affiliate networks and programs from which you are
 20 generating income as a business; that is correct, is it
 21 not?
 22 A. That is correct. I can't remember what "IPMC" are.
 23 Q. It may not matter, but you had a lot of problems with
 24 the data feeds you go through — you got through
 25 affiliate networks. Do you accept that as a broad

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1 proposition?
 2 A. I think it's fair to say that the data feeds were not
 3 perfect and so there were — sometimes there were issues
 4 with them and sometimes the data quality was not
 5 perfect. That's one of the reasons why we did things
 6 like live validation, where, for particular clients that
 7 we thought their data was out of date or we weren't sure
 8 it was completely accurate, we would follow up behind,
 9 and we would go and check the price and the stock levels
 10 on the actual webpages of the merchants. Is that what
 11 you're asking about?
 12 Q. Well, I am asking about a range of things, because
 13 the documents demonstrate a range of problems. For
 14 example, you would get feeds that contained product
 15 category errors. That is one thing we came across.
 16 A. That is correct. That's why having a technology that is
 17 very good at identifying the exact product that's being
 18 discussed is necessary in order to provide a fully
 19 comprehensive CSS.
 20 Q. Yes, well, we do not accept that your technology did
 21 optimise the data in that way, but we will come back to
 22 that after lunch.
 23 Feeds could use illegal characters, which meant they
 24 could not be parsed? That was another problem; that is
 25 right, is it not?

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1 A. I'm not sure they couldn't be parsed if they had illegal
 2 characters. I think it would be more challenging,
 3 but —
 4 Q. But if you cannot parse them, you cannot show
 5 the information that is contained within them, can you?
 6 A. Have you got a specific example in mind, because
 7 normally, if there are illegal characters —
 8 Q. I was hoping to do this quickly, but let us look at
 9 the documents {M2/58}. Just to let you know, this is
 10 from you to affiliates window — Affiliate Window:
 11 "Just to let you know that your XML datafeed has
 12 recently introduced some illegal characters that render
 13 it unparsable ..."
 14 This was a problem, was it not?
 15 A. Yes, so whether you have — if you have a — yes, so
 16 basically, an XML parser will have issues if you have an
 17 illegal character, so, yes, that's correct.
 18 Q. Yes, if you cannot parse it, you cannot show
 19 the information on your CSS at all?
 20 A. Yes, so all services have bugs, and TradeDoubler
 21 occasionally had a bug.
 22 Q. We see lots of examples of downloads of data feeds being
 23 so — being slow and so slow that they sometimes fail.
 24 That was a problem you encountered as well, is it not?
 25 A. Yes, in common with all CSSs, or everyone using the data

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1 feed.
 2 Q. Commission Junction's feeds. Commission Junction was
 3 a big network and you generated a lot of revenue from
 4 it, but you were observing in 2008 that their feeds were
 5 quite unreliable and always at least 24 hours out of
 6 date. Do you remember making that observation about
 7 Commission Junction?
 8 A. I don't, but that sounds like they had a systemic issue.
 9 Q. Now, if you were obtaining standardised data feeds from
 10 affiliate networks rather than optimised data feeds
 11 directly from an individual merchant, your CSS offering
 12 was only as good and reliable as the affiliate feeds you
 13 were getting from these networks; that is right, is it
 14 not?
 15 A. The optimised data feed from the merchant would almost
 16 certainly have similar issues to what was coming out
 17 the other end of the affiliate network. But, yes,
 18 obviously if you're picking up a feed from a merchant,
 19 whether it be direct or via an affiliate network, there
 20 are going to be issues with those data feeds. They
 21 might be out of date. I believe that Google, for
 22 example, Google's CSS, even now, people are uploading
 23 data feeds to Google and sometimes they're horribly out
 24 of date and Google has a maximum age of a feed —
 25 Q. We are not talking about Google, we are talking about

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1 your business at the time, Ms Raff.
 2 A. Yes. No, you're absolutely right, if there's an issue
 3 it — well, that's why we were actively managing these
 4 feeds because if something was out of date, then we
 5 needed to raise that with the affiliate network and do
 6 something about it.
 7 Q. Lots of other affiliate members, insofar as they were
 8 receiving the same standardised feeds from the same
 9 networks, would have the same problems with those feeds
 10 that you experienced, would they not?
 11 A. Yes, it might be that they would be a little bit less
 12 proactive about reaching out to the networks and raising
 13 the issues, but, yes.
 14 MR MCGURK: Sir, I am just going to pause there. I am
 15 behind. I do not like cutting across the witness but
 16 the witness is giving often quite long answers. I am
 17 behind, Sir.
 18 THE CHAIRMAN: Well, I do not think she is being on
 19 the whole in any way disruptive in the way she is
 20 answering your questions. You are asking questions
 21 which sometimes invite, I have to say, a longer answer
 22 to explain what she is saying.
 23 How far are you behind? On what we know, we just
 24 have, I think, a — from the timetable, a period for
 25 the Foundem witnesses; we do not know how it is divided

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1 between Mr and Ms Raff.
 2 MR MCGURK: Well, we have a day and a half allocated for
 3 both of them.
 4 THE CHAIRMAN: Yes. So how have you divided that day and
 5 a half?
 6 MR MCGURK: Well, I was hoping — I am going to be longer
 7 with Ms Raff. She has given two statements and she —
 8 her name is on many, many more of the documents.
 9 THE CHAIRMAN: Yes.
 10 MR MCGURK: So I am going to be longer with Ms Raff, but —
 11 THE CHAIRMAN: How long — just come back to my question.
 12 MR MCGURK: Yes.
 13 THE CHAIRMAN: What was your expectation?
 14 MR MCGURK: I think at this stage I am about 45 minutes
 15 behind where I wanted to be.
 16 A. Oh, my goodness.
 17 THE CHAIRMAN: Yes, we cannot — as I think we said, we
 18 cannot sit beyond 4.30 tonight. We can take a shorter
 19 — but can you still answer my question. What was your
 20 — how were you dividing the day and a half? What was
 21 your plan?
 22 MR MCGURK: About a day for Ms Raff and half a day for
 23 Mr Raff, but this could always have gone a little bit
 24 longer, which would have meant I would have taken
 25 a little less time with Mr Raff, depending on how it

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1 went.
 2 THE CHAIRMAN: Yes. So you would have expected that this
 3 might in any event spill into — because at the moment
 4 there is — tomorrow morning is allocated to Mr Raff on
 5 that basis, so, yes, well, we will come back at 1.50 to
 6 give an extra 15 minutes and we will see if we can start
 7 half an hour earlier tomorrow and that will give you
 8 the 45 minutes.
 9 MR MCGURK: I am conscious we started the cross 40 minutes
 10 late, Sir, because you had matters to deal with and
 11 the submissions — (overspeaking) —
 12 THE CHAIRMAN: Well, we allowed — your opening, yes. Well,
 13 we will see what we can do, but in any event, we will
 14 come back at 1.50.
 15 Ms Raff, I think you know you cannot discuss
 16 the case with anyone in your team, or your husband, over
 17 lunch until you have completed your evidence.
 18 A. Thank you, Sir.
 19 (1.08 pm)
 20 (The short adjournment)
 21 (1.53 pm)
 22 THE CHAIRMAN: We have asked that the temperature be
 23 increased a bit in this court, because I think everyone
 24 is suffering.
 25 MR MCGURK: We are all very grateful. Thank you, Sir.

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1 Ms Raff, good afternoon.
 2 A. Hi.
 3 Q. Can we go to {J2A/18}, please.
 4 Before looking — yes, this is a reconsideration
 5 request, or a log of reconsideration request that
 6 Foundem made to Google from time to time.
 7 On page {J2A/18/2} of this document, if we look at
 8 the July 23, 2007 request, you see ten lines down in
 9 that first box, this is your husband saying to Google:
 10 "We have pored over the Google Guidelines and racked
 11 our brains to try and identify what could have brought
 12 on this crippling penalty."
 13 Now, taking this in stages, when he says "We have
 14 pored over the Google Guidelines", he is referring to
 15 the Google Webmaster Guidelines, is he not?
 16 A. Yes, that's correct.
 17 Q. When he says "we", I assume he is referring to himself
 18 and you?
 19 A. Yes.
 20 Q. You know, do you not, that Google first published formal
 21 Webmaster Guidelines in 2003? That is right, is it not?
 22 A. I didn't know that, but I'm sure you're correct.
 23 Q. Well, if you pored over them, can — you indicate —
 24 A. This is 2007. That doesn't mean I'd know when they
 25 first published the Guidelines.

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1 Q. Yes, so let us —
 2 A. I am sure you're correct, though.
 3 Q. No, no, I am correct about when they were published,
 4 I am just curious as to when you read them?
 5 A. Oh, right.
 6 Q. Did you read the 2003 Guidelines when they were
 7 published?
 8 A. I doubt that back in 2003. At that point I was still
 9 managing large software development projects for various
 10 firms.
 11 Q. They republished those Guidelines in, for our purposes,
 12 essentially similar terms in 2005. Do you remember
 13 reading the 2005 Webmaster Guidelines?
 14 A. I don't remember reading them, but by 2007, if we're
 15 saying we pored over them, I probably have read them at
 16 that point.
 17 Q. All right. Well, let us go to the Guidelines that were
 18 extant at the point that you made your site fully
 19 crawlable. That is at {M2/1231/1}.
 20 Now, these Guidelines were published on
 21 11 June 2006, Ms Raff. You made your site fully
 22 crawlable and launched somewhere between 22 and
 23 26 June 2006, so by my maths that was between 10 and
 24 14 days after these Guidelines were published; is that
 25 right?

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1 A. That sounds right to me.
 2 Q. So this was the guidance in place at the time of your
 3 launch, was it not?
 4 A. Yes, that sounds correct.
 5 Q. Did you read these Guidelines carefully before you
 6 launched your website?
 7 A. Yes, we will have. We'll have been keeping on top of
 8 that kind of thing.
 9 Q. Can we look at what they say. Page 1, dropping down to
 10 the "Design and content Guidelines", bottom half of
 11 the page. Do you see the third bullet, Google are
 12 telling webmasters:
 13 "Create a useful, information-rich site, and write
 14 pages that clearly and accurately describe your
 15 content."
 16 A. Yes.
 17 Q. So you will have noted that when you read this, will
 18 you?
 19 A. Then and subsequently, yes.
 20 Q. Yes.
 21 Then turning over to {M2/1231/3} of this document
 22 and going to the bottom of the document, can you see,
 23 second half "Quality Guidelines ...", and then at
 24 the very bottom, "Quality Guidelines — specific
 25 Guidelines".

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1 Going over the page to {M2/1231/4}, I am looking at
 2 the penultimate and the very last bullet point.
 3 The penultimate says:
 4 "Avoid 'doorway' pages created just for
 5 search engines, or other 'cookie cutter' approaches such
 6 as affiliate programs with little or no original
 7 content."
 8 Having subsequently pored over the Guidelines, you
 9 will now know that that indication was repeating exactly
 10 what was said in the 2003 and the 2005 Guidelines; that
 11 is correct, is it not?
 12 A. I didn't know that this repeated what was in 2003 and
 13 2005, but I can see that it's extant here. Let's —
 14 let's go with that.
 15 Q. The seventh bullet says:
 16 "If your site participates in an affiliate program,
 17 make sure that your site adds value. Provide unique and
 18 relevant content that gives users a reason to visit your
 19 site first."
 20 A. Exactly. So, for me, that value would be the value of
 21 the comparison shopping service.
 22 Q. So you interpret this to say it is sufficient to rely
 23 upon the content of the feeds that you were providing on
 24 your CSS? Is that how you saw you to be complying with
 25 this requirement, Ms Raff?

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1 A. So I think it's important to put yourself back in 2006.
 2 So at that point, we certainly had no reason to suspect
 3 that Google was either moving to shutdown alternative
 4 monetisation mechanisms for a service than Google's own
 5 advertising. So there's two ways of monetising your
 6 service —
 7 THE CHAIRMAN: Ms Raff, the question was: looking at this
 8 criterion here —
 9 A. Yes.
 10 THE CHAIRMAN: — how you saw Foundem as satisfying that.
 11 A. Absolutely. So, yes, our service added value because,
 12 in common with all comparison shopping services and
 13 vertical search services generally, what we did was we
 14 would gather all of the relevant information from all
 15 over the web and present it to you in a single place in
 16 a way that speedily answered your question. So, for
 17 example, with travel, what is the best and cheapest
 18 flight from A to B on the date I want to go, or with
 19 a particular product, what is the cheapest supplier of
 20 this product that has this product in stock. I think
 21 that adds value.
 22 MR MCGURK: Yes, well, you are principally relying upon
 23 functionality rather than any original content that you
 24 are adding, but we will come back and look at that
 25 distinction in a moment.

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1 A. I believe that several of Google's documents also talk
2 about the value of service and doesn't just acknowledge
3 content.
4 Q. We are focusing on your business here, Ms Raff.
5 A. Yes.
6 Q. You do not need to answer —
7 A. No, no, no, but in terms of your internal and external
8 Guidelines, you did — Google did acknowledge the value
9 of service as well as just original content.
10 Q. At no stage prior to your launch in June 2006 did
11 Foundem hire a search engine optimisation expert or
12 consultant to advise you on designing or improving your
13 site for SEO purposes, did you?
14 A. That is correct. We already had sufficient in-house
15 expertise to ensure that our site was fully crawlable.
16 Q. Crawlable is different to SEO optimisation. Crawlable
17 is a prerequisite to being shown; SEO improves your
18 ranking. That is the distinction, is it not?
19 A. We also had in-house expertise in terms of what the key
20 criteria would be for improving your ranking.
21 Q. The first time Foundem sought SEO advice and input
22 externally was in April 2009 from a consultancy called
23 Receptional; that is correct, is it not?
24 A. That is correct.
25 Q. Can we then note that they were, as you have put it in

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1 your documents, an SEO and search marketing specialist
2 firm who had been operating since 1999; that is correct,
3 is it not?
4 A. Well, I can't remember now, but if that's what I have
5 said, then at the point where I wrote that, I will have
6 made sure that that was a correct statement.
7 Q. Receptional were both well known and reputable,
8 were they not?
9 A. Yes, I think I would agree with that, or we wouldn't
10 have hired them.
11 Q. Can we go to {H2A/3/22}.
12 This is your witness statement and I am looking at
13 paragraph 46(g), where you note:
14 "On 29 April 2009, a third-party SEO consultancy,
15 Receptional, submitted a reconsideration request on
16 Foundem's behalf."
17 Now, I am pausing on this because this is the only
18 place in your statement where you mention Receptional
19 and it is merely to say that this was the organisation
20 that submitted a reconsideration request on Foundem's
21 behalf. Neither you, nor your husband, anywhere in your
22 statements, indicate that you sought SEO advice from
23 this company, do you?
24 A. I think the term — yes, because we didn't seek SEO
25 advice in the way that you're suggesting.

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1 Q. I asked you a slightly different question.
2 Nowhere in your statements do you acknowledge that
3 you sought SEO advice from this company, do you?
4 A. That is correct.
5 Q. Now, can we then move on.
6 Taking it short, you instruct Receptional and they
7 are asked to do a full deep dive assessment of your site
8 to consider both the technology and the content; that is
9 right, is it not?
10 A. So we were in the process — so this was during
11 the early part of 2009. So just to put it in context,
12 at the end of 2008 we'd been named the best price
13 comparison service in the UK by —
14 Q. You are not answering my question.
15 A. No, no, I am. I'm putting it in context, Mr McGurk,
16 because I'm telling you — I need to give you a little
17 bit of background to explain why —
18 Q. We do not have time for that.
19 (Simultaneous speakers — inaudible)
20 THE CHAIRMAN: Ms Raff, I think giving a lot of background,
21 or even a bit of background, does create slight
22 problems, because Mr West will be able to re-examine and
23 if there are bits that are relevant that have not come
24 out, that is the purpose of any supplementary questions.
25 A. Okay.

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1 THE CHAIRMAN: So I think what you were asked was that in
2 early 2009, you engaged Receptional to give advice; is
3 that right?
4 A. Not SEO advice. It was because we were in the process
5 of taking our case public and we needed to have a clean
6 bill of health from an SEO — reputable SEO firm, if we
7 were going to take our case public that we were
8 suffering from Google's search penalty. So it was more
9 a sort of rubber stamp than SEO advice. Is that ...?
10 THE CHAIRMAN: Yes.
11 A. Thank you, Sir.
12 MR MCGURK: Right, well, that is not correct and we are
13 going to have to look at a document, {M2/361/1}.
14 THE CHAIRMAN: This is the document you want?
15 MR MCGURK: No, it is not.
16 Before I can show you this on screen — and I do
17 apologise — can I just read the instructions that you
18 were — you had given to Receptional?
19 THE CHAIRMAN: Have you got the reference for
20 the instruction?
21 MR MCGURK: I am trying to find it through my junior.
22 THE CHAIRMAN: Right, but you were about to read it out, you
23 said?
24 A. This is making me feel better, because we have similar
25 snaffos on our side.

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1 MR MCGURK: {M2/1164}. I do apologise, Ms Raff.
 2 So this is the brief setting out the instructions
 3 that you had given to Receptional:
 4 "Receptional has been requested to tender for
 5 the provision of SEO analysis and consultancy for
 6 the website in order to improve its effectiveness for
 7 natural search as a key route to market."
 8 So you are not merely just asking for a tick box
 9 clean bill of health, you are asking for SEO analysis,
 10 are you not?
 11 A. Well, this is what Receptional is saying to us, and this
 12 is their boilerplate, but in fact we hired them because
 13 it was recommended by the PR company that we had
 14 contracted in order to bring our case about the fact
 15 that we had a search penalty from Google to the public.
 16 Q. Well, let us look at what they understand to have been
 17 instructed to do:
 18 "Key Objectives:
 19 "Ensure the website is optimised for natural search.
 20 "Ensure that all site development/changes are
 21 actioned in the most effective way for search engine
 22 requirements.
 23 " ...
 24 "It is crucial that the website is thoroughly
 25 reviewed, and requisite amendments made, in order to

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1 ensure that the site's pages are successfully indexed
 2 and well ranked by the major search engines; if
 3 the website contravenes any of the 'rules' by which the
 4 search engine spiders assess sites, the pages will not
 5 be ranked favourably. Areas for analysis: Site
 6 architecture and technologies used; On—page content and
 7 coding; Inbound links."
 8 Then they tell us that " ... Receptional will"
 9 {M2/1164/2}:
 10 "Analyse all aspects of the website in order to
 11 establish which areas require revision for improving
 12 natural search performance.
 13 "Fully document the site SEO analysis, including
 14 the provision of detailed action points for the changes
 15 required."
 16 You do not, when you received this, write back to
 17 them and say, "You have got this all wrong ..." —
 18 A. No.
 19 Q. — " ... we are looking for something more narrow", do
 20 you?
 21 A. No, absolutely not. We wanted the full analysis to get
 22 a clean bill of health to take our case public, yes,
 23 you're exactly right. So the full analysis allows us to
 24 then take our case public, yes.
 25 Q. We will come back to that, certainly.

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1 {M2/1156/1}. So the document I just showed you,
 2 Ms Raff, is dated 13 March 2009. The same day, Mr Jones
 3 of Receptional emails you, thanking you and your husband
 4 for the meeting that day.
 5 Then at page [sic] 3, if we could look down, he says
 6 to you:
 7 "We are following the theory that ... Because you
 8 are aggregating third party data — the site has almost
 9 no unique content. I think this is likely to be
 10 the challenge that needs looking at, Can't say for sure
 11 yet — or how to suggest a fix/test, but give us a bit of
 12 time ..."
 13 So even before Receptional have started their full
 14 review, they have immediately honed in on a key problem,
 15 namely that Foundem had very, very little original
 16 content, and he was right in that provisional
 17 assessment, was he not?
 18 A. He was wrong in that provisional assessment because they
 19 were having trouble getting their heads round the fact
 20 that we had a search penalty.
 21 Q. I really struggle with that answer, but let us track
 22 through what they understood and found, Ms Raff.
 23 You had a further exchange with Mr Jones —
 24 THE CHAIRMAN: Just before we move on, what he says is:
 25 "Because you are aggregating third party data —

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1 the site has almost no unique content."
 2 That was his initial reaction; is that fair?
 3 A. Yes, I think that is fair.
 4 THE CHAIRMAN: Yes. So he was telling you that may well be
 5 the problem that you are facing?
 6 A. Yes.
 7 MR MCGURK: Sir, I am grateful.
 8 Then you had a further exchange with Mr Jones before
 9 they produced their report. He attached some PowerPoint
 10 slides, which contained screenshots of your website and
 11 they are at {M2/1345/1}.
 12 If we can make that a little bit bigger and then
 13 turn to {M2/1345/2}.
 14 THE CHAIRMAN: I am sorry, these pages are attached, you
 15 say, to ...?
 16 MR MCGURK: There was — I do not have time to go to
 17 the exchanges, but this was an email exchange between
 18 Ms Raff and Mr Jones from Receptional, and this was an
 19 attachment — slideshow attachment to one of those
 20 exchanges.
 21 Now, Ms Raff, slide 2 is a screenshot of your main
 22 page with links to your specific search categories; that
 23 is right, is it not?
 24 A. That's correct.
 25 Q. Unlike what we saw — unlike what we will see on other

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1 publisher sites, there is no original content on this
 2 page, is there?
 3 A. That is correct.
 4 Q. Slide 3, please {M2/1345/3}. If we can make that
 5 a little bit bigger.
 6 This is "Bike Accessories and Clothing Search" and
 7 you can see from the breadcrumb, "Home", then click
 8 through though "Bike[s] Accessories and Clothing", so
 9 this was a sub-category search, was it not, "Bike
 10 Accessories and Clothing"?
 11 A. That's correct, and actually this screenshot, I can take
 12 you back to an earlier question when you were saying we
 13 had —
 14 Q. Can I just focus on this screenshot and ask you
 15 a question about this?
 16 THE CHAIRMAN: Just listen. We have not had a question yet.
 17 A. Oh, sorry.
 18 THE CHAIRMAN: So this is a sub-search, you agree, for "Bike
 19 Accessories and Clothing", yes?
 20 A. That's correct, yes.
 21 MR MCGURK: Two things on this page, Ms Raff. This is 2009
 22 at this stage.
 23 A. Mm—hm.
 24 Q. Why is the page still marked "Beta"?
 25 A. Many internet services stay in beta for quite a long

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1 time.
 2 Q. So three years after full launch parts of your site were
 3 still in beta, is that what you are telling
 4 the Tribunal?
 5 A. That is correct, yes. So this might have been —
 6 I can't remember exactly when we launched bike
 7 accessories and clothing, but if this was in the first
 8 early period of that particular domain, then we will
 9 have marked it beta.
 10 THE CHAIRMAN: Sorry, where is the beta marking?
 11 A. It's just — oh, yes, thank you.
 12 THE CHAIRMAN: Oh, I see, yes.
 13 MR MCGURK: But you were dealing with the bike stores from
 14 2008. You were adding them as direct merchant clients.
 15 We covered that this morning. This is April 2009, so
 16 you are well into your biker domain, if I can put it
 17 that way, and you are still marking this page beta.
 18 A. Less than a year into our — into that domain, yes.
 19 Q. Would you agree that this is another page of links with
 20 no original content, Ms Raff?
 21 A. Well, the — the titles are — I mean, there's not very
 22 much text on here at all, because it's a navigational
 23 page. It's — it's a hierarchical click-down into
 24 categories, but I suppose that the titles themselves
 25 obviously we wrote — this is our product hierarchy, so

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1 I think that is original content, actually.
 2 Q. So the way you have named the search category, that is
 3 the originality on this page, is that it?
 4 A. This is our hierarchy. "Bodywork and Bolt Ons", I don't
 5 know how common that is as a title. But, yes, this
 6 product hierarchy is our product hierarchy.
 7 Q. Can we go to {M2/1345/4}, please, and we will see your
 8 "Books Search" page, which returns results from, among
 9 others, Amazon and Waterstones.
 10 Again, there is no content on this page, it is just
 11 another search form, is it not, Ms Raff?
 12 A. That is correct, the book domain was a live search
 13 domain and it was — it was form-based, it did not have
 14 static pages that the search engines were designed to
 15 acquire and index.
 16 Q. Two points on this.
 17 If you started your book purchasing journey on
 18 Google or Bing and you were redirected to this page as
 19 a search result, that would be a pretty poor user
 20 experience, would it not?
 21 A. I wouldn't expect to be redirected to this page if you
 22 started your book search on Amazon or — who did you
 23 say?
 24 Q. No, no, Google or Bing.
 25 A. Google or Bing. I wouldn't expect you to be redirected

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1 to here.
 2 Q. But if you were redirected to here, you would be pretty
 3 disappointed with this outcome, would you not?
 4 A. Well, it slightly depends what query you put in. So if
 5 you put in a specific book, you would not be directed to
 6 here because the book text is not on this page, whereas
 7 if you were saying give me a vertical search for books,
 8 then this would be the sort of page you would want.
 9 Q. If you are just redirecting people looking to buy a book
 10 to WHSmith, Waterstones, Amazon, there is no way Foundem
 11 should rank higher than WHSmith, Waterstones or Amazon
 12 in book searches, is there?
 13 THE CHAIRMAN: Well, I do not quite understand that
 14 question. There is a big difference, is there not, from
 15 saying, I am looking to buy "Harry Potter and the Goblet
 16 of Fire" or whatever, or saying, I want to buy guide
 17 books to Rome? They are both book searches, but one is,
 18 as it were, a more general book search question than
 19 the other. So what — when you say "if you are
 20 searching for a book", what do you mean? You mean
 21 a specific title, or do you mean books in a category,
 22 or ...?
 23 MR MCGURK: Either. If you were searching for books and you
 24 put in "buy books" into Bing or Google, you would want
 25 to be taken to a book store before being taken to

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1 another search form that might then get you to a book
 2 store; that is right, is it not, Ms Raff?
 3 A. So I would reiterate that our book search was form-based
 4 and that the keyword that you're suggesting, so
 5 "Harry Potter and the Goblet of Fire" or even "guide
 6 books to Rome", those keywords are not on this page and
 7 you would therefore not expect to be taken to this page
 8 in response to a search like that.
 9 Q. Go to slide 15 in this document —
 10 THE CHAIRMAN: What would this page deal with?
 11 A. So "Book Search" is a pretty challenging domain and
 12 because it's form-based — we're actually doing book
 13 search live. Because it's form-based, we would not
 14 expect that page to be indexed and come back in response
 15 to specific book search queries. Books is quite a niche
 16 thing, it was actually —
 17 THE CHAIRMAN: So what sort of query is this designed for?
 18 A. So this is for people who already know our service and
 19 would come direct to us and put in a particular book.
 20 We would not expect people to discover this page through
 21 the search engines.
 22 THE CHAIRMAN: Right.
 23 A. It's quite different to the previous slide that
 24 Mr McGurk was showing, which has a hierarchical —
 25 a hierarchical product topology where you can click

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1 through, and those are designed for the search engine to
 2 discover the category pages and then the product price
 3 comparison pages under it, whereas the book search,
 4 absolutely not.
 5 MR MCGURK: Let us look at one of those hierarchical pages,
 6 it is at slide 15 of this deck {M2/1345/15}.
 7 This is "Compare Oven Prices", and if we can start
 8 by noticing the breadcrumb, the cascade that takes you
 9 to this page. So you have clicked through "Home", you
 10 have clicked "Appliances" on that search category page,
 11 you have then clicked on "Large Kitchen Appliances",
 12 then clicked on "Cookers, ovens and hobs", and then
 13 clicked on "Ovens". So there are six clicks to get to
 14 this page; correct?
 15 A. No, I think if you go back to the homepage you'll see
 16 that under "Appliances" there are subcategories that cut
 17 through some of those clicks.
 18 Q. But the breadcrumb trail tells you how this user has got
 19 to this page?
 20 A. No, no, it doesn't. The breadcrumb trail doesn't tell
 21 you how the user has got there. What it's telling you
 22 is these are layers in the hierarchy, but you can
 23 shortcut those layers.
 24 Q. But if you are just following the hierarchy, that trail
 25 would take you to this page, would it not?

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1 A. But not — you wouldn't need to do six clicks from
 2 the homepage. If you go back to the homepage —
 3 Q. When you are on this page —
 4 A. If you go back to the homepage, you'll see that several
 5 of those categories are on the homepage, so you just
 6 click that.
 7 Q. Well, let us look at —
 8 A. So it would not take six clicks to get to here. Sorry,
 9 but I really can't let you just sort of —
 10 Q. No, no, no, let us look at slide 2 {M2/1345/2}.
 11 A. Thank you.
 12 Q. So the category is "Appliances", we saw that on
 13 the breadcrumb trail, so you would click that. Then,
 14 going back to {M2/1345/15}, the next sub-category page
 15 from "Appliances" would be "Large Kitchen Appliances";
 16 that is right, is it not?
 17 A. But there are lots of categories under "Large Kitchen
 18 Appliances".
 19 Q. Yes, one is "Cookers", so you click that —
 20 A. No, but you could go straight to ovens, but okay.
 21 I mean, you could go straight to ovens. It would not
 22 take six clicks to get here.
 23 Q. Well, I am suggesting it would —
 24 A. It would take the search engine crawler six clicks.
 25 Q. When you follow the hierarchy in the cascading way that

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1 it is designed to take you through to this page, you
 2 still have to then click on — do you see the brown bars
 3 under each of the cookers? It says "click to compare
 4 prices". So you have to click yet again to compare
 5 prices of particular ovens and then you have to click
 6 again to get to a merchant page; that is right, is it
 7 not?
 8 A. So, you're correct, this is an oven category page and
 9 listed on that are all of the specific ovens that we
 10 then provide price comparisons for. This is
 11 the de facto industry standard of a category landing
 12 page. So Kelkoo has one of these, Google Shopping has
 13 one of these. You are correct, this is a category page.
 14 Q. Well, if somebody has followed through your cascade, it
 15 is going to take them eight clicks having done so to get
 16 to a product page, is it not?
 17 THE CHAIRMAN: I think, Ms Raff, you are saying — but I do
 18 not know if we can see it — that if one goes to
 19 the "Large Kitchen Appliance" page, is it right that
 20 there is then a menu there from which you can choose
 21 "Cookers, ovens and hobs" or — and you can choose
 22 ovens? We just do not know at the moment.
 23 A. That is correct.
 24 THE CHAIRMAN: We have gone to the homepage, but we have not
 25 got the intermediate page.

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1 A. Yes, I hear what you're saying, Sir. I'd also point out
 2 that there's — along the top there's a menu. So do you
 3 see — I guess it would come under home and garden, you
 4 would drop down on that and you would have electronics,
 5 appliances, and that also has sub—menus. So actually
 6 you'd do a dropdown menu, you'd get sub—menus and
 7 sub—menus, in exactly the same way that if you went to
 8 a clothing supplier like Hobbs, you would do a dropdown
 9 menu on women's clothes and you'd be offered, you know,
 10 dresses or — so you can have sub—menu items.
 11 THE CHAIRMAN: Yes.
 12 A. So these dynamic menus, you would drop down and you
 13 would jump to ovens in a single click would be another
 14 way to navigate this.
 15 MR MCGURK: Well, let us look at how users found this
 16 technology, this cascade function. It is {M2/175}.
 17 This is — if we could blow that up, this is
 18 feedback to Foundem, and this person says:
 19 "I'm trying to use your search facility for a
 20 delonghi dfs905 cooker to no avail. It seems to think I
 21 need to narrow my search to ..."
 22 Then this person indicates the breadcrumb trails
 23 that they had followed to try to get to their De'Longhi.
 24 They list seven breadcrumb trails, starting at the top:
 25 "Household Appliances >> Small Kitchen Appliances >>

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1 Cooking >> Fryers."
 2 That did not get them there.
 3 Started again with "Household Appliances", went
 4 through "Other Appliances", "Heating and Cooling",
 5 "Heaters and Fires", that did not get them there.
 6 Went back and started with "Household Appliances",
 7 "Small Kitchen Appliances", "Tea and Coffee" and then
 8 "Kettles". That didn't get them there.
 9 Repeated that process seven times and each of those
 10 cascades has required four clicks. So this user has
 11 been through 28 pages on Foundem using this cascade
 12 functionality and he says:
 13 "If I use the active filters there are no options
 14 for the delonghi make."
 15 So they have got to the end of the process and do
 16 not find the product they were looking for in the first
 17 place. That is an entirely unsatisfactory user
 18 experience, is it not?
 19 A. If he had done what you've just suggested, then that
 20 would be, but I don't think it's correct. So although
 21 he has listed a bunch of the hierarchy there, I don't
 22 know where they got that from. I'm wondering if they
 23 copied and pasted from the menu, but I'm not sure how
 24 easy that would be. But I think the key thing here is
 25 that there are no options for the De'Longhi make. That

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1 would have been — when I received this, and I received
 2 all of the feedback, that would be my primary concern
 3 would be if we are missing a specific manufacturer.
 4 Q. Yes, well, if you had a more sensible search
 5 functionality tool, the very first answer this person
 6 would get with putting in De'Longhi DFS would be
 7 an indication that they are looking at the wrong site
 8 because you do not have it, and then they can go
 9 elsewhere. That would be the more sensible approach to
 10 search on your site, would it not?
 11 A. Well, I think there is that there. So, for example —
 12 so there's — obviously there's the clickable hierarchy
 13 from the homepage, there's the dropdown menu from
 14 the homepage, but I believe, by this time, we also had
 15 a site search box in the middle. If we want to go back
 16 to the homepage picture that you had.
 17 Q. Well, let us look at this through the eyes of
 18 Receptional. They provide their report on your site on
 19 21 April 2009.
 20 Can we go to {M2/1160/1}.
 21 This is the covering email under which the report
 22 was sent. I am just focusing on the third paragraph —
 23 this is an email from Andy Langton to you —
 24 the headline is:
 25 "Our overall opinion is that there are certainly

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1 enough issues that any reconsideration request would be
 2 unlikely to succeed. In a more positive light, we'd be
 3 confident that a manual review would be successful if
 4 the major factors within the document are addressed, and
 5 we can confirm in our communication with Google that we
 6 have taken direct steps to ensure the site conforms with
 7 their inclusion criteria, be that because of algorithmic
 8 or manually—triggered problems."
 9 So the headline from Andy Langton is that there are
 10 major issues with the site, that they would be confident
 11 that a manual review would succeed if, but only if,
 12 Foundem made the recommendations set out in the report.
 13 That is the long and the short of it, is it not?
 14 A. So we should probably look at the recommendations.
 15 Q. We are going to.
 16 A. I believe that his position in that email is incorrect,
 17 and of course he didn't know, and neither did we at that
 18 point, that because it was an algorithmic penalty, no
 19 reconsideration request would ever succeed because
 20 algorithmic — if you had an algorithmic penalty, they'd
 21 just be binned. But apart from the fact that he didn't
 22 know that, and to be fair, we didn't know that at that
 23 point either, I would also say that some of his
 24 assessments about issues were incorrect.
 25 Q. But the bulk of your answer is imputing a knowledge and

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1 an understanding to Mr Langton which you never put to
 2 him in an email at any stage after receiving this report
 3 to say, "Look, I have got to push back on all of this
 4 because I think you are assessing our site on
 5 a fundamental misapprehension". We do not see any of
 6 that in the documents, do we?
 7 A. No. There was, I seem to remember, quite an intense
 8 meeting, but you're right, we didn't do it in email.
 9 Q. Can we go to {M2/1338}. Now, this is the report.
 10 Turning to {M2/1338/3}, you have an "Executive summary".
 11 The third paragraph notes:
 12 "This report identifies areas likely to cause
 13 problems, the likely impact of these areas, and
 14 recommended solutions to eliminate the problems
 15 identified. While resolving the issues outlined in this
 16 report maximises the chances of a successful
 17 reconsideration request, there are wider issues with
 18 the site (especially the lack of external links and
 19 references) that mean overall performance is likely to
 20 be significantly below actual potential."
 21 Now, those two points about external links and
 22 references are picked up on page 8 of this document
 23 which I wanted to show you {M2/1338/8}.
 24 This lists — if we can blow it up — some familiar
 25 names in the CSS space who are ranked in relation to

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1 pages indexed and external linking domains. So you see
 2 where Foundem is ranking.
 3 Just for the Tribunal's note, the pages indexed is
 4 56,000 and the external linking documents were just over
 5 1,000.
 6 Ms Raff —
 7 THE CHAIRMAN: Sorry, just one second.
 8 Sorry, can you just explain when you say "the pages
 9 indexed", what do you mean? What does it mean?
 10 MR MCGURK: Pages indexed — so Google will send out its
 11 crawlers.
 12 THE CHAIRMAN: Yes.
 13 MR MCGURK: If a page is amenable to being crawled, it then
 14 gets indexed on a main or supplemental index, and you
 15 are given the numbers of how many pages are indexed
 16 across the CSS market considered here.
 17 If we look at the bottom of that page, there is some
 18 text that I wanted to show you.
 19 Receptional tell you:
 20 "It is no surprise that the sites with the biggest
 21 market share tend to be those with the greatest numbers
 22 of domains linking to them. However, it is notable that
 23 Foundem.co.uk has significantly fewer external links and
 24 pages indexed than major competitors. Even without
 25 Google penalties, the site is unlikely to be able to

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1 challenge existing sites for a wide variety of
 2 placements."
 3 That is obviously correct, is it not, Ms Raff?
 4 A. It is important to have a lot of page ranks. So
 5 externally linking domains is what gives you the page
 6 ranks, so, yes, that is correct. I would highlight that
 7 because we were crushed at birth, we hadn't got the —
 8 we hadn't been afforded the opportunity to gain
 9 the external links that the established incumbents had
 10 gained.
 11 Q. Plenty of 3 entrants, CSSs, established more than
 12 sufficient traffic and external links to do well, did
 13 they not?
 14 A. And absent a penalty, we were doing well as well. So
 15 the rankings that we sent just before we were penalised,
 16 if you remember, the pages that we sent to Matt Cutts,
 17 just after we were penalised showing the before and
 18 after, we were ranking on the first page for a bunch of
 19 competitive product—related keywords. So we were
 20 ranking absent a penalty. With a 90% penalty, it
 21 doesn't really matter how many inbound links you have.
 22 Q. Well, I am going to come back to the basis on which you
 23 were getting those rankings hopefully, if we have time.
 24 But just to stay within this document, {M2/1338/12},
 25 please, deals with a number of Foundem's "Content—based

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1 issues" as identified by Receptional, and the first
 2 problem they highlight was that there was duplication of
 3 and excessive similarity in content on Foundem's pages,
 4 and we see what they say about this at the bottom of
 5 page 12.
 6 They say:
 7 "Currently, key aspects of many pages are extremely
 8 similar (often only a few words difference between
 9 pages, with large amounts of 'template' text). Caution
 10 should be exercised when using dynamically generated
 11 titles, descriptions and headings, since they can easily
 12 create the impression of duplicated or even spam pages
 13 which will then have little prospect of performing in
 14 search results."
 15 Receptional were right in raising this concern about
 16 Foundem's site, were they not?
 17 A. I think in general it is a concern, and I would
 18 highlight, though, that the key difference on each of
 19 those pages is the category, so Rangefinder, voice over
 20 IP, trousers, nightdresses, etc.
 21 Q. Sorry, I do not understand that answer at all.
 22 A. So — so the keyword that is different is the category
 23 page.
 24 Q. Are you talking about what you see in the box above?
 25 A. Yes.

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1 Q. Right, well, the problem that Receptional highlight with
 2 that is that it is entirely formulaic. If you look at
 3 each of those links, "Compare Screen Prices at Foundem",
 4 "Compare Nightdress Prices at Foundem", "Compare Putter
 5 Prices at Foundem", and you have got the same subtext as
 6 well, and what Receptional say to you on page
 7 {M2/1338/13} about this is that there was a simple SEO
 8 tweak to make, and they give you an example of this in
 9 the middle of the page in relation to the Beko oven.
 10 They say instead of doing it as we see you have done it
 11 in the boxes, you can generate a degree of originality
 12 even in the description by writing not as you have, but
 13 in this case:
 14 "Beko S502 Electric/Single Oven — Compare Cooker
 15 Prices at Foundem."
 16 What they are telling you is that even if you pay
 17 that much SEO attention to your descriptions, you will
 18 rank better, and they were right to tell you that,
 19 were they not?
 20 A. That is correct.
 21 Q. Bottom of page 13, you see the actions they recommend
 22 you take in relation to sorting this problem out. They
 23 say:
 24 "Make titles, descriptions and headings as unique as
 25 possible, emphasising individual information about

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1 the page content (primarily data about products)."
 2 You accepted that recommendation, did you not,
 3 Ms Raff?
 4 A. I can't remember. Did we?
 5 Q. You did. {M2/1339}. This is a document that provides
 6 your comments and responses to each of the recommended
 7 actions that Receptional set out in the report, and we
 8 will focus, first of all, on this first action:
 9 "Make titles, descriptions and headings as unique as
 10 possible ..."
 11 Your response to that is {M2/1339/1}:
 12 "Partially done. We have reverted to an earlier
 13 format:"
 14 You have set out how it was reading and how it now
 15 reads:
 16 "May look at adding attributes/features longer
 17 term."
 18 So you accepted Receptional's advice and you
 19 implemented the changes in the way you described there;
 20 that is correct, is it not?
 21 A. So, as you can see, we say we've reverted to an earlier
 22 format, so that is — what it now reads is what it used
 23 to read, so just so you know.
 24 The second thing I'd point out is that we were very
 25 aware that we were suffering under a penalty, so we knew

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1 that this would make no difference, and indeed it did
 2 make no difference, because we were still penalised, so
 3 we still didn't rank.
 4 Q. Can we just focus on the SEO issues in this report
 5 rather than —
 6 A. So you see it says, "We have reverted to an earlier
 7 format". You should bear in mind that part of what we
 8 were doing during the first two years of suffering under
 9 our penalty was de—optimising our website in order to
 10 make it look less SEO optimised, because there was
 11 definitely a feeling in the industry at the time that
 12 perceived over—optimisation of pages could trigger
 13 a penalty. So you have to bear in mind, this whole
 14 Receptional report is in the context of a deliberately
 15 de—optimised website where we are trying to shake off
 16 a 90% search penalty.
 17 Q. You have never said in any of your witness evidence that
 18 you deliberately de—optimised your website from an SEO
 19 perspective, have you?
 20 A. I —
 21 Q. Well, look, let us come back to that, Ms Raff.
 22 Can we turn back to {M2/1338/14}.
 23 The next problem that Receptional identify is
 24 a systemic problem of "Conjoined words". Over the page.
 25 So what we see there at the top, Receptional tell us

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1 that:
 2 "Pages contained links that are not properly
 3 separated, and thus make the appearance of
 4 machine-generated, artificial text ..."
 5 They give in the box an example of this problem:
 6 "Foundem — Search and Compare prices on Motorcycle
 7 Parts ..."
 8 Then you see the way the words below in
 9 the description are conjoined several times.
 10 Then they say to you:
 11 "A substantial volume of indexable text is affected
 12 by this problem (on almost every site page), which may
 13 be sufficient to trigger algorithmic filters, especially
 14 if combined with other negative 'quality signals'.
 15 Ms Raff, can we agree that it is bordering on
 16 astonishing that in 2009, three years from launch,
 17 Receptional are noting that nearly every Foundem site
 18 page is suffering from the problem of mangled and
 19 conjoined text?
 20 A. I wouldn't agree it's bordering on astonishing, but
 21 I would agree that that issue does appear to still be
 22 there in 2009.
 23 Q. This problem arose because you had no, or certainly no
 24 sufficient human or automated text quality control on
 25 your site, did you?

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1 A. No, I would disagree with that. We had lots of human
2 quality control.
3 Q. Well, if that was true, you would not get these
4 conjoined words, would you?
5 A. Well, no, I disagree. I mean, that is obviously we have
6 conjoined the hierarchy. We haven't put spaces in
7 between. But that doesn't mean that there's no human
8 review of our functionality or our pages.
9 Q. I am not talking ---
10 THE CHAIRMAN: Why are we still having, if there is that
11 review, why were these not separated and corrected?
12 A. Because we missed it.
13 THE CHAIRMAN: On almost every page?
14 A. Well, this --- the menu --- the menu is on almost every
15 page. To be fair, this is looking at a particular view
16 and we had not seen --- we had not spotted that view. So
17 we were looking at our menus and the menus were down ---
18 were dropping down beautifully, etc, so we had missed
19 this issue.
20 THE CHAIRMAN: It does say "on almost every site page",
21 does it not?
22 A. Yes. It wasn't visible on the actual page, though, just
23 to be clear. If you look at the page itself from
24 a user's perspective, this was not visible. This was
25 just how the search engine was picking up and indexing

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1 our menu.
2 THE CHAIRMAN: Yes, I understand that.
3 MR MCGURK: But if you had a word separator at the time, it
4 would appear on search services in a non-mangled,
5 non-conjoined way and users looking at those links would
6 be less suspicious that this was spammy or
7 auto-generated sites, would they not?
8 A. That is correct.
9 Q. Now, the recommended action was:
10 "Use an interoperable word separator between on-page
11 links ..."
12 You accepted that recommendation and you indicated
13 to Receptional you would make the improvement, did you
14 not?
15 A. Absolutely, because we had missed it; they spotted it
16 and we fixed it.
17 Q. Do you recall that the next part of this report advised
18 you that for many pages on your site there were
19 discrepancies between the titles and description
20 headings on the one hand and the text on the related
21 pages on the other?
22 A. No, I don't recall that, because I don't really --- but
23 I'm happy to believe that you're telling the truth.
24 Q. Well, look further down. It makes this point under
25 the heading.

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1 "Title/description/heading/text disparities."
2 "Search engines understandably expect a common theme
3 across the key elements of any HTML page. For many
4 current pages, these key elements do not always reflect
5 the content of the target page, or actively contradict
6 each other."
7 Then if you go over to {M2/1338/15}, you will see an
8 example of this problem.
9 Receptional tell us in the middle of the page 15:
10 "The breadcrumb trail feature ..."
11 Which, as we have seen, was a key part of your
12 search functionality:
13 "... [was] broken."
14 But in relation to this mismatch problem it
15 indicates that in relation to the page set out:
16 "... this is a page containing men's clothing,
17 the final breadcrumb trail entry points to with women's
18 clothing."
19 Now, just pausing there. If a breadcrumb trail does
20 not work and leads users to products that they were not
21 looking for, they are likely to immediately leave that
22 page and consider this a very poor experience, are they
23 not?
24 A. If they had come looking for men's clothing and they
25 landed with women's clothing, then that would not be

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1 good, yes, I agree.
2 Q. Their suggested remedial action you see at the bottom of
3 the page is to:
4 "Ensure consistency across key areas of each page."
5 Now, you did not make that change because you said
6 to Receptional you did not think it was really
7 applicable; do you recall that?
8 A. I don't.
9 Q. Well, that was your response, and just to take this
10 short because we may not be able to go to all
11 the correspondence, but there was a back and forward
12 between you and Receptional, where Receptional said to
13 you, "Actually, this does matter, please do it"; do you
14 recall that?
15 A. I'd like to be shown it.
16 Q. I may not have time, Ms Raff, and I am going to go to
17 {M2/1338/16} of this report.
18 A. It's just that it's possible if I was saying it's not
19 applicable, it's possible I was being polite and it
20 might have been that they had got the wrong end of
21 the stick.
22 THE CHAIRMAN: Well, I think it is right, you should ---
23 I mean, you asked her if she recalls it and Ms Raff said
24 she would like to be reminded. I think it is fair that
25 the witness should be shown it. You say that they

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1 recommended the — well, we have seen
 2 the recommendation. You say that — I am not quite
 3 clear what you were saying, Foundem did not agree or
 4 decided not to do it?
 5 MR MCGURK: The short point I am just trying to get at can
 6 possibly be made at {M2/1339}.
 7 Yes, so we are talking about the third action down:
 8 "Not Really Applicable. This only applies to
 9 javascript enabled browsers, not crawlers. The central
 10 portion of the page is delivered by Ajax."
 11 My point to you is that Receptional, when they saw
 12 that, did not agree with that answer to their
 13 recommended remedial action, did they?
 14 A. I don't remember what their response was, but I think —
 15 so this is — I must admit, I can't remember, but
 16 looking at this — so we used AJAX, which is JavaScript
 17 technology, to refresh just portions of the page rather
 18 than the whole page. I'm wondering if this "not really
 19 applicable" is, crawlers don't have JavaScript switched
 20 on and so the crawlers were seeing something different
 21 to what a human being with a JavaScript enabled browser
 22 would see and so what I think I'm saying here is, if you
 23 switched JavaScript off and you go to men's clothing,
 24 you're going to see men's clothes, I think.
 25 Q. The prior point that they are making in the — which is

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1 one presumably we can agree on, namely, it is important
 2 to ensure titles and descriptions on the one hand match
 3 the content on the page that users go to on the other.
 4 That is a very obvious point, is it not?
 5 A. That is correct, but I think when I'm saying "not really
 6 applicable", I think what I'm saying to them is: when
 7 you are either a user, you're seeing the JavaScript
 8 enabled thing where it is absolutely matching what
 9 you're expecting, and I think I'm also saying
 10 the search engine crawler is seeing something that
 11 matches the description, but I'm not sure, I'd need to
 12 see — do you have their pushback?
 13 Q. I do, but —
 14 A. Brilliant.
 15 Q. — I am struggling with the reference so I will come
 16 back to it.
 17 A. Okay.
 18 Q. If we move on in the report to {M2/1338/16}, we get to
 19 another key issue. This is what Receptional describe
 20 as "The unique content" problem". Ms Raff, Receptional
 21 advised you in no uncertain terms that Foundem had
 22 a content problem and we see them stating that:
 23 "Google actively penalise sites that offer ..."
 24 Little or no original content:
 25 "Google will take action against domains that try to

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1 rank more highly by just showing scraped or
 2 auto-generated pages that don't add ... value ...
 3 "As with many of Google's Guidelines, this is
 4 a subjective process, and hence presentation plays
 5 a large part. If pages appear to offer 'little or no
 6 original content' [then] a manual reviewer may flag
 7 the site as spam, with the prospect of significant
 8 negative impact on search performance."
 9 Pausing there. That is exactly the advice that
 10 Google was giving webmasters in the Webmaster Guidelines
 11 about content, was it not?
 12 A. Yes, and we believed then and still believe, only this
 13 time we're backed by a Decision, that for a vertical
 14 search service, this is not a reasonable requirement, to
 15 ask for original content. That is for a blog site or
 16 a media site. The original content that we're providing
 17 is more of a service. So you're right. So it is
 18 important to bear in mind that SEO firms are designed to
 19 communicate, quite slavishly, Google's view of
 20 the world, and we disagreed with Google's view of
 21 the world, and we disagreed with, therefore, the SEO
 22 acolytes' view of the world, which is that original
 23 content is not a reasonable requirement for a CSS.
 24 Q. So you should have been exempted from the Google
 25 Webmaster Guidelines as a CSS because really what

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1 mattered was functionality, not original content? That
 2 is the long and short —
 3 A. Not exempted from the Guidelines. The Guidelines,
 4 certainly in certain instances, acknowledged the value
 5 of service, not just unique content.
 6 Q. Now, the report continues on the content issue:
 7 "The issue for Foundem ..."
 8 This is the fourth paragraph:
 9 "... is to ensure that pages are clearly
 10 identifiable as offering something of unique value to
 11 visitors, and that a manual reviewer who has little time
 12 to conduct thorough research into a site has the clear
 13 impression that a site should be included in Google
 14 search results.
 15 "While Foundem's unique selling points are clear,
 16 they are not present on pages creating a significant
 17 risk that reviewers will view the site's features as 'me
 18 too' content that offers nothing unique to searchers."
 19 That is a pretty damning indictment of Foundem's
 20 site from an SEO expert, is it not?
 21 A. So — sorry, where is the paragraph? Oh, yes:
 22 "... [the] manual reviewer who has little time to
 23 conduct thorough research ..."
 24 I would highlight that there were multiple manual
 25 reviewers in Google who did get the — have the clear

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1 impression that the site should be included in Google's
 2 search results. So just as two examples Dave W from
 3 AdWords did a multi-page —
 4 Q. You are not answering my —
 5 A. — thing where they were saying —
 6 Q. — question, Ms Raff —
 7 A. — this site adds value —
 8 Q. My question, Ms Raff —
 9 A. — and I believe his name was —
 10 THE CHAIRMAN: Just do not speak across each other, please.
 11 Just one moment.
 12 A. Can I just finish my point, though?
 13 THE CHAIRMAN: The advice you are getting here from
 14 Receptional is that doing things that there is not going
 15 to be an issue for the way you are ranked on Google
 16 because of the way that Google conducts its reviews and
 17 that this is the problem, that is what they are telling
 18 you, is it not?
 19 A. They're saying we need to ensure that pages clearly
 20 offer something of value to users so that a reviewer who
 21 hasn't got a lot of time to look sees that value, and
 22 I would say, yes, that is correct, we agree, and I can
 23 name two — at least two reviewers within Google, Dave W
 24 and Evan Tang, who both looked at our site, felt that it
 25 had a lot of value, and in the case of Dave W, he did an

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1 appeal of our AdWords penalty, and in the case of
 2 Evan Tang, he raised a bug report to Cody Kwok to say
 3 this site shouldn't be penalised, they add a lot of
 4 value.
 5 So I agree with that statement and I would say that
 6 the Google reviewers looked at it and saw the value in
 7 our service, and I'm sure on re-examination I'll be
 8 taken to those.
 9 MR MCGURK: Right, well, without directing your counsel, can
 10 we just focus on the paragraph afterwards which I was
 11 looking at, it is appearing as presenting too much:
 12 "... 'me too' content that offers nothing unique to
 13 searchers."
 14 So your own SEO analyst is saying this is how it
 15 looks from an SEO perspective and they give as an
 16 example of this problem something we have looked at
 17 already, namely your "Books Search", and they say:
 18 "Other than the (greyed-out) images of suppliers on
 19 the left hand side, there is no indication as to what is
 20 being offered of unique value here."
 21 Again, that is a fair comment by Receptional, is it
 22 not?
 23 A. Well, those greyed out images are in fact showing
 24 the merchants that we're searching —
 25 Q. Yes.

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1 A. — if you do a book search. That's the unique value.
 2 That is the unique value that that book search —
 3 Q. So you are telling this Tribunal that you are counting
 4 that as somehow original content on your page; is that
 5 right?
 6 A. No, I'm saying it's the thing that shows that there is
 7 — that there is value to searchers, are those seven
 8 merchants that we serve — that we search for books
 9 live.
 10 Q. Can we go to the top of {M2/1338/17}.
 11 The Receptional report then gives you examples of
 12 what Foundem could do, saying, second paragraph:
 13 "A value statement can be as simple as saying how
 14 many suppliers/products are being searched ... Kelkoo,
 15 for instance include messages such as '1,053,894 offers
 16 from 132 stores'. Many of the other comparison sites
 17 also include editorial content such as buyer's guides
 18 which helps to give the impression of a site offering
 19 something unique and of value to searchers."
 20 So pausing there. What you are being told by your
 21 SEO advisers, Ms Raff, is that other CSSs did provide
 22 original content. That is what they are telling you,
 23 are they not?
 24 A. The original content in terms of listing the number of
 25 offers and the number of stores?

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1 Q. And providing buyers' guides. They are telling you that
 2 this is what other CSSs do and why it counts as original
 3 content, are they not?
 4 A. That is correct.
 5 Q. They are absolutely not telling you that it is no part
 6 of a CSS's purpose to provide original content so you
 7 need not bother, are they?
 8 A. No, but we — we're saying that it is — buyer's guides
 9 are not the core business model of a comparison shopping
 10 service —
 11 Q. But when you — I am so sorry.
 12 A. No, go for it.
 13 Q. When you saw this, you did not push Receptional back and
 14 say, "No, no, you are wrong about this, because it is no
 15 part of a CSS's purpose to provide original content",
 16 you accepted the analysis in this respect, did you not?
 17 A. It was not relevant or useful to push back to an SEO
 18 service. What we did when we, for example, stuck —
 19 every time we appealed to Google, if you look at
 20 the reconsideration requests, we are setting out time
 21 and time again that we don't provide original content
 22 and instead the value of our service is our service.
 23 So, no, we didn't argue with Receptional, although I do
 24 remember we had one testy meeting where we did argue
 25 with them a bit, but mainly we were arguing with Google,

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1 you are our priority .

2 Q. The next problem that the report identifies was under

3 the heading, "Presentation of pages as search results"

4 on page 17. Can we go over to page 17, please.

5 It says:

6 "Most search engines avoid showing search interfaces

7 or search results pages for general purpose search

8 results. While technically it is a search conducted

9 when the site displays results, in most cases the user

10 is not search at all — but browsing categories."

11 Now, it gives an example of this problem,

12 the "Computing Search" page which you see below, and it

13 says, below the image, when it sets out that

14 sub—category page:

15 "'Computing search' pages — no search is being

16 conducted by the user in a traditional sense.

17 "The majority of pages identified by the site

18 as 'search' pages have no visible search interface

19 unless the user chooses to 'show advanced search'."

20 So the suggestion that "no search is being conducted

21 by the user in a traditional sense" on a page like this

22 is fair comment, is it not?

23 A. So what they've shown here is not one of the two types

24 of pages that we were primarily looking to get into

25 Google. This is an interstitial hierarchy page. It

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1 does actually illustrate the exact point that we were

2 debating earlier, where you were suggesting it took six

3 clicks to get down to ovens. You'll see here,

4 under "Computer Peripherals", there are subcategories,

5 which is what I was talking about earlier. So if you

6 look at a similar interstitial page for appliances, you

7 would have been able to shortcut down to ovens, but

8 that's the previous thing.

9 So what you're looking at here is an interstitial

10 hierarchy page. The pages that add value that we wanted

11 to get into Google and other search engines, but of

12 course they're not really relevant here, are

13 the category pages, so the page that you showed earlier,

14 for example showing all of the ovens which you could

15 filter to single ovens or double ovens, etc, and then

16 the specific product price comparison pages, so

17 a specific oven, the price comparison, the price

18 history, etc. This is an interstitial hierarchy page,

19 so we were not interested in that being — and I can't

20 imagine that this kind of thing would have been returned

21 to users, because when a user is looking for double

22 ovens, Google, absent penalties, should have taken them

23 — should have delivered the user to the double ovens

24 category page, or if they were looking for a specific

25 Neff KX50 oven, then Google should have delivered them

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1 to the product price comparison page for that oven.

2 Q. We can see that your users had the same problem as

3 alluded to by Receptional. If we go to {M2/377}.

4 So this person says:

5 "Got to you from a link at the gadget show for

6 TomTom. One with a price. Your page just opened to

7 the 'search electronics' page, totally not what I was

8 expecting."

9 So what has happened here is that somebody has

10 clicked on a Foundem widget on the Gadget Show page,

11 that was showing a TomTom with a price, they clicked

12 thinking they were going to search — to click through

13 onto a page where they could buy the TomTom at that

14 price and they have been taken to one of your

15 interstitial pages, namely the search electronics page,

16 which looked something similar to the page I have just

17 shown you in the Receptional report, and they are

18 telling us that is completely "not what I was

19 expecting".

20 This is on all fours with the complaint Receptional

21 are pointing out, is it not, Ms Raff?

22 A. No, this is completely different. So — so clearly,

23 with the Gadget Show, he's talking about an

24 intelli—widget, so if there is a review for a TomTom ONE

25 which was the very early TomTom GPS, the review for

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1 the TomTom ONE will have triggered an intelli—widget

2 which will have shown the four or the six cheapest

3 prices for the TomTom ONE, and then would have had

4 a link at the bottom that will have said compare prices

5 from 13 merchants or however merchants — many merchants

6 we had offering the TomTom ONE, and that should have —

7 that link should have landed on the TomTom ONE page.

8 The individual prices, which were the four cheapest

9 prices for the TomTom ONE, would have landed direct on

10 the merchants. The top of the intelli—widget would have

11 had a "Compare Prices at Foundem", that would have

12 landed higher up. So I believe that probably they

13 didn't click on the "Compare prices from 13 merchants",

14 or it's possible — it's possible that they did and

15 something went wrong.

16 Q. Can we go back to {M2/1338/17}.

17 What this user was expecting was to land on a

18 TomTom. What the user — (overspeaking) —

19 A. On a TomTom ONE page, that's —

20 Q. — did land on was a page that looked almost identical

21 to this, save that it was your "Electronics Search"

22 page, not your "Computing Search" page, and that is what

23 has surprised this user?

24 A. But it would surprise me too, because if it was a link

25 on the Gadget Show, that will have been an

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1 intelli —widget which will only show when you can
 2 identify the product, in this case the TomTom ONE, and
 3 that will have shown you however many of the cheapest
 4 merchants that intelli —widget was designed to show you
 5 and a link at the bottom that says "Compare from prices
 6 from X merchants for the TomTom ONE", and that should
 7 have landed you on the product price comparison page.
 8 So it's a surprise to me too. That will have been
 9 a very, very, very small percentage of users that will
 10 have had the experience that has been documented in that
 11 bug report.
 12 Q. Can we go to {M2/1338/18} of the report, over the page.
 13 Recommended "Actions" in relation to this problem:
 14 "Ensure that it is clear and explicit to all
 15 visitors (include manual reviewers from search engines)
 16 that the site is offering something of unique value,
 17 by ..."
 18 Doing three things. First of all:
 19 "Include value, benefit and other content to improve
 20 the 'uniqueness' of pages.
 21 "Avoid mis—representation of pages as search results
 22 if the user is browsing.
 23 "Display a product selection on all category pages."
 24 Now, can we look at your response to those
 25 recommendations from Receptional. They are at

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1 {M2/1339}.
 2 Notwithstanding the centrality of the recommendation
 3 to "Include value, benefit and other content to improve
 4 the 'uniqueness' of pages", the response on
 5 the Receptional document, actions document, simply says:
 6 "Looking at doing."
 7 So what this tells us is that you accepted
 8 the recommendation and accepted that it needed to be
 9 addressed, but you did not see this as an immediate
 10 priority, did you?
 11 A. My memory is that if you go back, that final suggestion
 12 to put hot products on every page of the hierarchy,
 13 I think we might have implemented that or it might have
 14 been that we had already implemented that.
 15 Q. Can we stay on the recommendation I am just focusing on?
 16 It is the first of the three.
 17 A. Oh, right.
 18 Q. "Include value and other content to improve
 19 the 'uniqueness' of pages.
 20 "Looking at doing."
 21 This is a really crucial SEO recommendation. You
 22 agree with it in principle, but you are saying not right
 23 now?
 24 A. Well, I think we — "looking at doing" means, well,
 25 we're looking at that, but we — if you look three

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1 further down, we say:
 2 "Will look ... longer term."
 3 So "looking at doing" means — I think is an
 4 active: okay, we're thinking about that and we'll think
 5 about what we can implement. So I think that's not
 6 saying not right now, I think that's saying yes.
 7 Q. Well, in any event, you never did it, you never sought
 8 to improve the uniqueness of your pages, you never
 9 sought to introduce additional original content to
 10 the pages after this recommendation, did you?
 11 A. Well, no, if you go back to the detail of this
 12 particular one, if you go back —
 13 Q. Well, I was just at the recommendations page and
 14 the recommendation is set out in this, Ms Raff.
 15 A. No, but one of the examples they gave was implement
 16 products on your hierarchy, and I think we might have
 17 implemented that.
 18 Q. Well, the three are on this page. So the second was:
 19 "Avoid mis—representation of pages as search results
 20 if the user is browsing."
 21 To which you say "Done". So, again, you accepted
 22 the recommendation and you purported to implement it.
 23 Then in relation to the third recommendation which
 24 said:
 25 "Display a product selection on all category pages."

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1 A. Oh, yes.
 2 Q. You say:
 3 "Targeting completion of this by early next week."
 4 A. Oh, good, that makes me feel so brilliant, because that
 5 is exactly what I thought I remembered. So, yes, we did
 6 put a product selection on all category pages within
 7 the week. But the top one, "Include value, benefit and
 8 other content to improve the 'uniqueness' of pages", we
 9 add value and we have got unique pages because
 10 the presentation of those comparison shopping results is
 11 unique and the processing to give you the most
 12 comprehensive search results for a particular product,
 13 that is unique, that is our —
 14 Q. I think we are just going to have to recognise that we
 15 are not going to agree as to what originality and
 16 uniqueness is. You are looking at it in a functional —
 17 A. Yes.
 18 Q. — sense; I am looking at it in a content sense. So
 19 we —
 20 MS ROSE: Could I just ask a question?
 21 A. Yes.
 22 MS ROSE: Is it your position that Google — it was
 23 incumbent on Google to accept your definition of what
 24 was unique about your page or were Google entitled on
 25 their search engine to decide to rank pages based on

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1 their own conclusions about what was of value to users?
 2 A. So, of course Google is entitled to rank pages based on
 3 their — their assessment of what was of value to users,
 4 but what I will say is that we had a clear vision of
 5 what comparison shopping was for and that is what we
 6 were cleaving to, and to be fair, Google was giving
 7 slightly mixed messages at this point in time. So there
 8 were definitely acknowledgments intermittently that, for
 9 example, adding comparison shopping functionality has
 10 value to users, and that's in various things in the
 11 bundle, throughout this period. It becomes less and
 12 less and less clear that they acknowledge the value to
 13 users of comparison shopping functionality as time goes
 14 on. But this — at this period, we certainly did not
 15 think that they had brought down the guillotine and
 16 said, "We're not letting any comparison shopping
 17 services into our search results because we don't think
 18 they add value to users".
 19 So there's an element here of the SEO firm is maybe
 20 not — is going with the sort of black and white of
 21 the Webmaster Guidelines and also not appreciating
 22 the value of service.
 23 MS ROSE: If you had had more original content, you would
 24 not have been so heavily penalised by the algorithm; is
 25 that right?

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1 A. No, I don't think that's quite true. The threshold —
 2 MS ROSE: Algorithm A.
 3 A. The threshold for original content, I believe — oh,
 4 I am not allowed. Shall we switch off the feed?
 5 (Off microphone discussion)
 6 MS ROSE: Leaving aside the details —
 7 A. Yes.
 8 MS ROSE: — I am not quite clear, because initially you
 9 said you did accept that it was up to Google to decide
 10 what were the features that it thought were important
 11 and what would get a high ranking, but now you seem to
 12 be saying actually it is not entitled to do that, so
 13 I am trying to work out which is your case.
 14 A. So, at this point, Google was giving mixed messages.
 15 MS ROSE: No, I'm not asking about what Google was doing.
 16 I'm asking you about what you think Google was entitled
 17 to do. Was it okay for Google to say, well, actually we
 18 are going to prioritise sites that have original content
 19 over sites that are just comparison shopping sites?
 20 Was it entitled to do that?
 21 A. So what I believed has changed over time. So now, with
 22 the Decision, sitting here today, I say, no, it's not
 23 entitled to do — it's not entitled to exclude all these
 24 other comparison shopping services for a lack of
 25 original content and just put its own equally lacking in

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1 original content at the top.
 2 MS ROSE: That is a different point.
 3 A. Yes.
 4 MS ROSE: Leave aside the fact that it preferenced its own
 5 website. Let us leave that out of the — if we are just
 6 looking at the way it ranks other sites, are you saying
 7 that Google was entitled to say, "We are going to rank
 8 sites higher if they have got original content", or are
 9 you saying, no, they were not entitled to do that
 10 because we had a functionality that meant we should have
 11 been near the top of the search results regardless of
 12 what Google thought?
 13 A. So I think it's not really for me to say whether they're
 14 entitled to or not. What I was concentrating on, as
 15 a service provider, was I knew that when you're making
 16 — when you're searching for "cheapest Nikon DX50",
 17 I knew, and I believed that Google was attempting to
 18 satisfy its users' requirements for that, and so I was
 19 confident that if you're saying "cheapest Nikon DX50",
 20 you're actually looking for a price comparison, and so
 21 I was confident that Google was being a good
 22 search engine and not succumbing to its commercial
 23 conflict of interest and therefore I was confident that
 24 as long as we could make it clear to the search engine
 25 crawlers that we were adding value as a CSS, that should

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1 be sufficient for us to be ranked in Google's search
 2 results.
 3 MS ROSE: Okay, so you did not think —
 4 A. It's not really entitled or not.
 5 MS ROSE: Right, so you did not think —
 6 A. It's sort of — what I think they're trying to do —
 7 MS ROSE: — you needed to create original content because
 8 that was not what you were trying to do as a business?
 9 A. It isn't what we were trying to do as a business, and
 10 also, just to be clear, there were other successful
 11 businesses that were also doing comparison shopping.
 12 MR MCGURK: Could we go back, please, to {M2/1338/19}.
 13 Now, the report lists other quality issues with
 14 Foundem under this heading, "Dubious on—page text", and
 15 tells us:
 16 "Certain pages contain 'related content' which
 17 appear to be plain—text mentions of keywords, sometimes
 18 with only slight relevance to the current page.
 19 The clear impression is that these words have been added
 20 as a measure to attempt to increase search engine
 21 traffic. It's hard to see a use of this content for
 22 visitors."
 23 Then he gives you an example, it is the second
 24 example in the box "Related content", where you see:
 25 "... audiobooks, large print books, free delivery,

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1 Amazon books, childrens books, audio books,
 2 Harry Potter, fiction and textbooks."
 3 Now, "Harry Potter" was an incredibly popular search
 4 term and brand at this point in time in 2009, was it
 5 not?
 6 A. Yes, love Harry Potter.
 7 Q. Now, adding the words "Harry" and "Potter" was
 8 a deliberate attempt to drive traffic to Foundem when
 9 Foundem had no more to do with Harry Potter than it did
 10 with Don Quixote or any other book, did it?
 11 A. No, that's absolutely incorrect. What we're doing here
 12 is primarily trying to tell the search engine the kind
 13 of stuff that users will be able to access if they land
 14 on this page. So obviously they'll be able to go and
 15 find large print books, they'll be able to filter to
 16 free delivery, they'll be able to find audio books. So
 17 what this is doing, this is in fact exactly what you are
 18 suggesting we do, so tell the search engine what it is
 19 that our users will be able to find if they land on that
 20 page. We're certainly not looking to bring people to
 21 our page seeking Harry Potter, because that would have
 22 done nobody any good, including us.
 23 Q. Well, the report does not put it so bluntly, Ms Raff,
 24 but the point being identified here is the problem of
 25 keyword stuffing, is it not?

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1 A. No, this is the opposite of keyword stuffing. That's
 2 why the report doesn't put it like that. Keyword
 3 stuffing is when you have a page that has lots and lots
 4 and lots of instances of the same or very similar
 5 keywords. This is the opposite of keyword stuffing,
 6 there is no repeated keyword here at all and that's why
 7 it doesn't "put it so bluntly", as you say, because
 8 they're not talking about keyword stuffing at all.
 9 Q. Can I just be very clear about this then. Are you
 10 telling the Tribunal that you, Foundem, as a business,
 11 have never engaged in keyword stuffing?
 12 A. Yes.
 13 Q. So if Google had an algorithm that sought to detect
 14 that, you never did it? It would not pick up on Foundem
 15 as a site that engaged in keyword stuffing, would it?
 16 A. No, that is incorrect. Google has a penalty that is
 17 aimed at keyword stuffing that many CSSs — that is very
 18 prone to demote CSSs, because CSSs on, for example,
 19 a product price comparison page, will repeat the make
 20 and model multiple times and so it will trigger Google's
 21 keyword stuffing penalty, and Google acknowledged that
 22 and that's why they had a whitelist where they had to
 23 list all of those CSSs in order to — so clearly this
 24 keyword stuffing algorithm has a false positive where it
 25 picks up CSSs, and we should have been whitelisted out

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1 of that but we weren't, but that's why Google had to
 2 deal with all the collateral damage. So we did not
 3 engage in keyword stuffing and CSSs in general did not
 4 engage in keyword stuffing and that's why Google had to
 5 whitelist those CSSs.
 6 Q. Ms Raff, I cannot argue the toss with you. This is
 7 a matter for submission. I profoundly disagree —
 8 A. Sorry, I'm answering your question. We did not engage
 9 in keyword stuffing —
 10 THE CHAIRMAN: Well, you have asked the question and you
 11 have got the answer and what Ms Raff said, keyword
 12 stuffing is particularly repeating keywords in order to
 13 trigger recognition by a search engine, and she — as
 14 I understand it, you are saying what a CSS does is
 15 repeat the product name because — not as a means of
 16 stuffing because that is the same — you are showing
 17 different sources for the same product.
 18 A. That's exactly right, and that's why Google had to
 19 whitelist so many CSSs.
 20 THE CHAIRMAN: Yes, we have got that point.
 21 A. Sorry.
 22 MR MCGURK: The action on this was:
 23 "Remove any occurrences of 'related content' such as
 24 the above, or replace the lists of keywords with
 25 meaningful, user—orientated [content]."

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1 Did you accept that recommendation?
 2 A. So this "related content" was actually aimed at letting
 3 the search engine know the kind of functionality that
 4 would be available to users if they landed on that page.
 5 Q. Did you accept the recommendation, Ms Raff?
 6 A. I can't remember. Probably not.
 7 Q. {M2/1339/1}:
 8 "Remove any occurrences of 'related content' such as
 9 the above, or replace the lists of keywords with
 10 meaningful, user—orientated text.
 11 "Done."
 12 A. Ah, I was clearly less feisty back then than I am now.
 13 Q. So you accepted that there was a problem, you accepted
 14 the recommendation and you sought to implement it; that
 15 is right, is it not?
 16 A. I think it looks like we implemented it. It was a work
 17 but of moments.
 18 Q. Can we then look at a further problem which is back at
 19 page 20 {M2/1338/20}.
 20 This is picking up on a point — do you see, at
 21 the bottom, sorry, I should take you to "Other external
 22 links"? We are starting at the bottom of this page,
 23 Ms Raff.
 24 A. That's a shame, I was looking forward to talking about
 25 our intelli—widgets.

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1 THE CHAIRMAN: Let us just go where we are, shall we,
 2 Ms Raff, "Other external links".
 3 A. Yes.
 4 MR MCGURK: Receptional say:
 5 "If we discount links that will appear to
 6 search engines to be advertising/revenue based, the site
 7 has few external links, and only a relatively small
 8 number from unique domains (our system located 804
 9 unique domains linking to Foundem ...).
 10 "Applying a simplistic categorisation system to
 11 these links results in the below."
 12 Then if we go over the page {M2/1338/21}, you see
 13 a pie chart indicating where links to Foundem are coming
 14 from. So of a total of 804 unique external links, 620
 15 of them are coming from spam sites, Ms Raff. That is
 16 77% of external links to Foundem from spam sites.
 17 That was unacceptably high, was it not?
 18 A. So it's not — you'll see here that it's — that it's
 19 saying:
 20 "The majority of sites (especially older ones)
 21 attract a lot of links from spam sites, primarily
 22 'scrapers' ..."
 23 So it's not possible for any site to control who
 24 links to them.
 25 I'd also point out that this is discounting all of

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1 the multiple publishers who were linking to us because
 2 we were powering their comparison shopping and
 3 intelli — widgets.
 4 Q. If you were a quality site, you would have an awful lot
 5 more external sites linking into Foundem, as we saw on
 6 page 8 that other CSSs had the benefit of, would you
 7 not?
 8 A. That is an odd way to frame the question. So you said,
 9 "If you were a quality site". So just to be clear, we
 10 were an innovative vertical search service who launched
 11 and almost immediately were disappeared from
 12 the internet by an exclusionary Google Search penalty.
 13 Q. You are arguing the case again, Ms Raff. My question
 14 was much simpler and much narrower.
 15 If you were a quality site, many more people would
 16 link to you and would be telling their own users, "Go to
 17 Foundem, it is great". That is the short point and it
 18 did not happen?
 19 A. Okay, I disagree with the premise of the question. We
 20 were a quality site and we were disappeared from
 21 the internet and so the links to us were primarily from
 22 the publishers that we were powering, and over time we
 23 did get the odd link, so The Times named us their
 24 website of the week, we were named one of the — so we
 25 did have inbound links because we were a quality site.

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1 Q. Could we look at that —
 2 A. But we had fewer quality links than a service that had
 3 not been excluded from the internet by Google.
 4 Q. Let us test that by reference to {M2/1338/22}, because
 5 Receptional themselves did a little experiment in that
 6 they placed a value passing link on a third—party page
 7 of related content, which sought to link back to an
 8 unindexed Foundem page, and at that point, as a result
 9 of placing that single link on a third—party page
 10 pointing back to this Foundem page, you came up eighth
 11 for an exact phrase taken from the document title on
 12 the SERP; that is right, is it not?
 13 Perhaps we can make this more visible by going to
 14 page 26 where the product of this experiment is set out
 15 {M2/1338/26}. So if we blow up the top example:
 16 "The above shows a page containing substantial
 17 unique text remaining in brand search results."
 18 So just placing that one link on a third—party page
 19 pointing back to Foundem puts you at position eight on
 20 page one of the SERP, Ms Raff. So my point to you is
 21 that if you had paid even minimal attention to
 22 the importance of quality external links, you could have
 23 ranked well, could you not?
 24 A. Well, it's interesting, because the exact page that you
 25 have got there, which is query.jsp, was only

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1 intermittently penalised, but that — that is a dynamic
 2 page, because do you see the:
 3 "... domain=films&q=murder ... mystery ..."
 4 So that is a dynamic page.
 5 So just to be clear, that is not one of our slash
 6 G pages or our slash M pages, so this is — this is not
 7 a category page and this is not a product price
 8 comparison page, and they were the pages that were very,
 9 very, very consistently, whether we had a domain level
 10 penalty or a sub—domain penalty, throughout that period,
 11 we're penalised with a 90% penalty. So if they had done
 12 that experiment with one of those pages, I don't believe
 13 we'd have come up as eighth. Although —
 14 Q. Well, I cannot —
 15 A. — with a very specific long tail query, you could
 16 potentially have come up — we're getting quite
 17 technical.
 18 Q. You did not push them back and say, "Well, this is
 19 a really bad example of a value—passing link so it does
 20 not really help us", did you? You did not say to
 21 Receptional, "This is a bad example", for the reasons
 22 you have just given to the Tribunal, did you?
 23 A. No, we didn't push back on Receptional very much at all.
 24 What we were focused on was getting the overall penalty
 25 overturned by Google, so we were mainly focused on

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1 Google.
 2 Q. Yes, well, the point of principle that Receptional are
 3 making is that even a small amount of attention to SEO,
 4 SEO tweaks, including ensuring that you are being
 5 pointed to by other quality websites, would have
 6 resulted in Foundem ranking a lot better, and they were
 7 right in that point of principle, were they not?
 8 A. No, they were definitely wrong, because we had hundreds
 9 and hundreds of value—passing links coming to the most
 10 important pages of our website, because every time we
 11 put an intelli—widget on Good Housekeeping or
 12 T3 magazine, those were value—passing links that were
 13 linking to the products and categories on our website
 14 and they were having no impact whatsoever because they
 15 were — all of that value was being squigged to
 16 essentially ineffective by the site—wide penalty.
 17 THE CHAIRMAN: Can we just — I think I am struggling
 18 just — and I think this is nothing to do with either
 19 you or Ms Raff, just to understand this experiment as
 20 explained on page {M2/1338/22}:
 21 "A value passing link was placed from a page of
 22 related content, to an un—indexed URL on foundem ..."
 23 A. So —
 24 THE CHAIRMAN: Can you just, Ms Raff, just explain what is
 25 being done there?

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1 A. Yes, Sir. So there's two things to bear in mind. So
 2 "value passing link", that is referring to PageRank,
 3 where a site that has a lot of PageRank, if they link to
 4 another site, that parses PageRank, and this is Google's
 5 special source, so if PageRank is parsed to a site, then
 6 that means that their PageRank increases and so when, if
 7 you get five comparison shopping pages for a particular
 8 product, all things — all other things being equal,
 9 the one with the highest PageRank will rank top.
 10 But then they're doing something else here which is
 11 sort of SEO magic source, which is their — their
 12 hyperlink to that page has a specific phrase on it, and
 13 then they go and they search for that specific phrase
 14 and that has also been registered by Google and so for
 15 that specific phrase, that is saying, "Oh, this page is
 16 probably relevant for that phrase", and so they're
 17 actually doing a double magic, they're doing
 18 the PageRank parsing, but they're doing a specific
 19 phrase parsing well.
 20 We had a lot of very relevant —
 21 THE CHAIRMAN: Yes, just a minute. I am just trying to
 22 understand. So there is the — yes, and the specific
 23 phrase was, "Find the best flight deals in the UK", is
 24 that it?
 25 A. Well, it was longer than that, "Cheap Flights — Find

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1 the best deals in the UK", yes.
 2 THE CHAIRMAN: That is where, on the result you get, which
 3 is on {M2/1338/26} —
 4 A. Yes.
 5 THE CHAIRMAN: — and there you come up —
 6 A. Yes, and if you look at the URL at the bottom of that
 7 result, it goes to " ... foundem.co.uk/query.jsp ...".
 8 THE CHAIRMAN: Yes.
 9 A. So that is — I mean, it's slightly brain stem now
 10 because it's such a long time ago, but that I believe is
 11 when you put something into our site search, this is
 12 much more Adam's field than mine, and you put in
 13 a particular query, that's the page that you end up
 14 with. So it's — they've actually gone with quite
 15 a dynamic niche, let's say unique page that wouldn't
 16 exist absent that query. Whereas, if you go back to
 17 where they were actually raising this, they had a little
 18 picture of our intelli—widgets and for an intelli—widget
 19 for a particular product, like a Bosch double oven, at
 20 the bottom of that intelli—widget it would say "Compare
 21 prices for the Bosch double oven from 17 merchants" and
 22 that is the hypertext on that link. So we had a lot of
 23 inbound links which had the double magic of
 24 the Good Housekeeping PageRank and also a piece of text
 25 that is saying this site is relevant for comparing

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1 prices for these ovens, and they had no impact
 2 whatsoever because we were under a penalty.
 3 THE CHAIRMAN: I think I understand. Thank you.
 4 A. Thank you, Sir.
 5 MR MCGURK: Can we go back to {M2/1338/23}.
 6 Receptional then hone in on problems with your
 7 search feature and it says:
 8 "Many visitors ..."
 9 This is the top of the page:
 10 "... starting point on a price comparison site is to
 11 enter relevant keywords into a search box — in the case
 12 of Foundem ... users are likely to use the 'site search'
 13 input in the ... header."
 14 You see the "Site Search" function set out on this
 15 page just below that text:
 16 "Similarly, quality testers are likely to make use
 17 of this feature if manually evaluating the site.
 18 "On most price comparison sites, keyword searches
 19 will immediately lead to a listing of matching products
 20 or services. However, this search box does not provide
 21 that functionality. An example search for 'finepix
 22 camera' leads to the following results."
 23 Then you are taken to another page which you see in
 24 the box below headed:
 25 "Search Results for 'finepix camera'."

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1 But it is nothing of the sort, because you have got
2 instead a series of preordained "Matching Categories"
3 that you present to the user.

4 Now, what is being said here by Receptional,
5 Ms Raff, is that the user's specific search in
6 the Foundem search box gets lost because the search just
7 dumps you onto a page like this where you have got to
8 choose one of these further categories. That is not
9 best in breed search technology, is it?

10 A. Ah, Mr McGurk, I'm so pleased you brought this one up.

11 So what you see there is a site search box that has
12 very dynamic responsiveness to people starting to input
13 a search query, and if you start to type in "F—I—N—E—P",
14 you would have been presented with a dropdown of
15 specific FinePix camera models. In this case,
16 Receptional forged past that and kept going and typed
17 also the word "camera". So when we saw that you had
18 raised this in your written openings, we went — and
19 fortunately our search site is still working even though
20 we closed down our service nigh on nine years ago.

21 Q. Can you just answer the question?

22 A. Yes, so what I'm saying is as you type in "FinePix", we
23 did indeed, and still do, return a list of the models
24 that would be relevant to FinePix, and in fact I believe
25 we've put into the bundle screenshots of doing that

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1 exact exercise, which I'm sure someone in the glamorous
2 Hausfeld team will be able to find.

3 THE CHAIRMAN: Why is it different if you type the full two
4 words "FinePix camera"?

5 A. Because as you type in "F—I—N—E" — as you type in
6 "F—I", we actually are responding with search results
7 immediately, a little bit like if you're on a travel
8 search site and you start to type in "Heathrow" and it
9 will immediately try and tell you, "Oh, here's
10 Heathrow". So we type in — if you were searching for
11 "FinePix camera", you would have started to type in
12 the first few characters and you would have immediately
13 got a dropdown of FinePix models and you would have been
14 able to select the one you were looking for.

15 THE CHAIRMAN: Why do you not get the same dropdown when you
16 go on and type the full word?

17 A. Right, because when you forge past that, ignore
18 the lovely dropdown of models and you also type in
19 the word "camera", at that point our system says, "Okay,
20 we don't have a model FinePix camera", now we're having
21 to fall —back, you have gone past the model, so now
22 you're having to fall back and say, "Okay, so they're
23 interested in cameras", so now we're having to go with,
24 well, do you want digital compacts, digital SLRs,
25 because the keyword "camera" has thrown it off. But,

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1 crucially, Receptional will have had to have gone
2 past —

3 THE CHAIRMAN: No, I understand, yes.

4 MR MCGURK: Well, two points on that, Ms Raff. First of
5 all, I do not accept Receptional has missed this at all.
6 But secondly, if somebody does type in "FinePix camera"
7 in full because that is what they are after,
8 Receptional's point maintains this is the page that they
9 are served with and it is just a series of further
10 search categories. So if you are putting your full
11 search query in as a user, this is what you get. My
12 point is, if a user has done that, that is a really
13 unsatisfactory search service, is it not?

14 A. Well, it depends, because if you're looking for
15 a specific FinePix model, so FinePix DX50, then as you
16 are typing in FinePix, you see that and you would have
17 selected it and stopped. If you forge past it and you
18 want to go to "FinePix camera", then we're having to
19 guess at what your intention is and we're giving you
20 digital compacts, which I think is the first category
21 because FinePixes were digital compact cameras, and then
22 we're giving you our second, third, fourth, fifth and
23 sixth guess, because "FinePix camera" is not a real
24 model and the word "camera" is definitely broadening
25 the intent, but I believe digital compacts is where you

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1 will find all the specific Fuji FinePix models.

2 I mean, again, I have to say to you, they must have
3 forged past the model dropdown that you would have got
4 as you typed in "FinePix".

5 Q. {M2/1339/1}, please.

6 So the recommendation they made in relation to this
7 is the penultimate:

8 "Ensure user choices are not lost during the search
9 process.

10 "And Do not serve 'search results' that merely lead
11 to another search page."

12 Your response to this:

13 "Partially done."

14 So you accepted the recommendation and your
15 qualifier was simply that:

16 "Site search on a site like ours is very complex.

17 In comparison to other price comparison sites we do
18 better in some cases and worse in others. Your example,
19 'finepix camera', is a little off the beaten path, but
20 we've now improved our performance for it and some other
21 similar queries."

22 A. Yes, so I think I was being very —

23 Q. Can I ask my question, please?

24 A. Sorry. I'm so sorry.

25 Q. You are not at all pushing back to Receptional and

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1 saying, "You have completely missed a fundamental aspect
 2 of our search service", and that if you had just paused
 3 on "FIN", there would have been a dropdown menu and
 4 the user would have been taken straight there?
 5 A. So, yes, it was really not useful to remonstrate with
 6 them. So I think you'll see I'm being quite polite
 7 here. I'm pretty sure I wrote this because it's — it's
 8 smelling like me because it's so polite. When I'm
 9 saying:
 10 "Your example, 'finepix camera', is a little off
 11 the beaten path ..."
 12 What I mean by that is, when you typed in FinePix
 13 and you got a bunch of dropdown models, but I can see
 14 that if you then forge past it and also type in the word
 15 "camera" it might be better if we could do slightly
 16 better. So I mean, I think we're being polite:
 17 THE CHAIRMAN: But you say, "Partially done". What does
 18 that mean?
 19 A. So I suspect — I can't remember, but I suspect that we
 20 thought if you forge past it and you start to put in
 21 category things like "camera", maybe we could do a bit
 22 better with the categories that we return. I'm afraid
 23 I can't remember exactly what it was we thought we could
 24 optimise. But when I say it's "a little off the beaten
 25 path", that smells like me being polite.

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1 MS ROSE: You say here that you have improved specifically
 2 the FinePix camera search?
 3 A. Yes.
 4 MS ROSE: So your search in relation to this hearing would
 5 be of the improved search, not the one that —
 6 A. That would be, yeah, for the categories that were —
 7 when it says you're "a little off the beaten path", for
 8 the categories that are returned after you forge past —
 9 when you're putting something in that is clearly not
 10 a model but is smelling of a category, "cameras" —
 11 MS ROSE: So you are saying you did that search when you saw
 12 it in their written submissions?
 13 A. Yes.
 14 MS ROSE: But you would have been searching the version that
 15 was improved after you had this report from Receptional,
 16 right?
 17 A. Yes, that's correct. But what I can say is that
 18 the version that was on then was already doing the smart
 19 lookup because there's — it's very, very hard to do
 20 a smart lookup for the enormous number of words that are
 21 part of makes and models. So you can't just do
 22 a regular expression because that would be thousands and
 23 thousands of regular expressions and it's not scalable.
 24 You would have to use a tree that says "F" and then you
 25 go to "I", and then you go to "N", and as soon as you do

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1 that you're going down to the leaf nodes to find
 2 the models.
 3 MS ROSE: But you are also saying that even the improved one
 4 if you do "FinePix camera" you just go to the camera
 5 page and not to the FinePix page, right?
 6 A. Yes.
 7 MS ROSE: Even after you improved —
 8 A. Yes, once you go past FinePix — so it's a bit like, if
 9 you put in "KX50", if that is a particular model, but
 10 then you went beyond that and you say "KX50 Goat", at
 11 that point, the system can't — can't cleave to FinePix,
 12 it has to broaden out, because you've typed — you've
 13 bothered to type in the word "camera", so at that point
 14 you have to take a step back and say: okay, is this user
 15 talking about digital cameras?
 16 MR MCGURK: Before you made this improvement in response to
 17 Receptional, your users were struggling with this
 18 feature as well. Can I show you an example at
 19 {M2/327/1}.
 20 So this is from an individual from an
 21 Edinburgh University address, and says:
 22 "Hi, searching seems to result in a bunch of
 23 blank 'hits', with pretty much only a 'visit shop' link
 24 visible. Clicking on 'Visit shop' reliably gives me
 25 another search form, prefaced with 'Sorry — your results

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1 have expired. Please use the search form below'. This
 2 is on firefox3.0.4/linux. Not impressed, I'm
 3 afraid ..."
 4 So what has happened here, I suggest, Ms Raff, and
 5 this person clearly has some technical nouse, is their
 6 specific search has been lost to the 3 search page, upon
 7 which they were forced to start again on the generic
 8 search form and that is a deeply unsatisfactory search
 9 experience, is it not?
 10 A. What is happening here is definitely a bug, and I think
 11 it's interesting that he's put in that he's got a Linux
 12 Firefox, that is a very off the beaten path browser and
 13 I think this chap knows it. This is a bug. This is not
 14 how our site search works and I will have taken this
 15 seriously, and if you look down below, there's a bunch
 16 of debugs, so do you see the "user-agent", "Linux" etc?
 17 We will have taken that and we will have looked at what
 18 went wrong. This is a bug. This is a bug.
 19 Q. Can we go back to {M2/1338/24}.
 20 Receptional agreed that this search functionality
 21 gave rise to a very poor experience. It states, bottom
 22 paragraph:
 23 "The clear impression from this visit is that
 24 the search function does not work acceptably. Following
 25 a similar procedure on other price comparison sites will

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1 immediately deliver product results [from] the initial
 2 search."
 3 This was another damning indictment of your search
 4 functionality because it was not even delivering basic
 5 product search results in the way your competitors were,
 6 was it?
 7 A. Ah, this is interesting. You see in the preceding
 8 paragraph:
 9 "... did not show results for 'finepix camera' ..."
 10 I suspect that the improvement that we said we were
 11 going to make was to take that query and if it had some
 12 specific keywords try and filter to those at the point
 13 you land on the category page.
 14 Q. You have not answered my question.
 15 THE CHAIRMAN: I think what you were being asked is this ---
 16 A. Oh, sorry.
 17 THE CHAIRMAN: --- the problem that Receptional have
 18 identified is that if you type "FinePix camera", you do
 19 not start reacting at "Fine", but you type those two
 20 words, you then get all these categories. Then they say
 21 that the in fact --- if you go to digital SLRs, you get
 22 these, and they say that doing the same or similar on
 23 other CSSs will get the user to a page of FinePix
 24 cameras. That is what they are saying. They are
 25 comparing what happens when you type "FinePix camera" on

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1 Foundem and when you type "FinePix camera" on other
 2 CSSs.
 3 A. Yes. Would it possible to go back to the FinePix search
 4 results page?
 5 THE CHAIRMAN: The previous page?
 6 A. Yeah.
 7 THE CHAIRMAN: Yes, page {M2/1338/23}.
 8 A. So if you look there, the "Matching Categories", the top
 9 matching category is "Digital Compacts".
 10 THE CHAIRMAN: Yes.
 11 A. My memory is --- I'm not a camera geek, but my memory is
 12 that FinePix cameras were all digital compacts ---
 13 THE CHAIRMAN: Yes.
 14 A. --- and Receptional has not clicked on that top link,
 15 they've clicked on digital --- so not only have they
 16 forged past FinePix and insisted on inputting "camera",
 17 they have then clicked on the second link, which is
 18 "Digital SLRs". So if we now go back to that search
 19 results page, because FinePixes are digital compacts,
 20 I think, I might be wrong here, if you click on digital
 21 SLRs, you're not going to find any FinePixes.
 22 THE CHAIRMAN: But the point they are making here, Ms Raff
 23 is that with the other CSSs, you go straight to FinePix
 24 cameras, you do not have to go through a dropdown menu
 25 and then choose digital compacts, you just type

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1 in "finepix camera" and click and you are on a page of
 2 FinePix cameras, and that is not how Foundem worked, for
 3 the reasons you have explained, and they suggest that is
 4 a potential problem.
 5 A. Yes, I see that, but we actually had more sophisticated
 6 search. Because we --- we were using the dynamic search
 7 functionality that we had developed for flights, we had
 8 more dynamic search responses to the --- to the site
 9 search than other CSSs. So other CSSs didn't used to
 10 bring --- bring up, after you've typed in the first few
 11 characters, a list of models; we did, so we were faster.
 12 So ---
 13 THE CHAIRMAN: So you had that advantage ---
 14 A. Yeah.
 15 THE CHAIRMAN: --- that you could type "F-I-N-E" and you
 16 would get there.
 17 A. Yes.
 18 THE CHAIRMAN: But they are saying there was a disadvantage,
 19 as you see at the bottom of {M2/1338/24} in the
 20 "Actions" box:
 21 "Do not serve 'search results' that merely lead to
 22 another search page."
 23 Could you see that as where you were doing less
 24 well?
 25 A. I'd love to just say "yes", but that isn't a search

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1 page, that is a category page. So if someone is looking
 2 for digital SLRs without specifying a model, then you
 3 land on a page that allows you to filter to a different,
 4 you know, high or low resolution megapixels, price
 5 ranges, it's a category page where, if you're early in
 6 the shopping journey, this is in itself a useful page.
 7 THE CHAIRMAN: I am not sure I understand that.
 8 A. I'm really sorry.
 9 THE CHAIRMAN: But if you go back to {M2/1338/23}, your user
 10 has typed in "finepix camera" ---
 11 A. Yes.
 12 THE CHAIRMAN: --- and what comes up is this "Search Results
 13 for 'finepix camera', "Matching Categories".
 14 A. Yes.
 15 THE CHAIRMAN: So that is another --- however you want to
 16 call it, it is another page you have got to then click
 17 on to get to your FinePix, so there are two stages to
 18 get to the page instead of one. That is the simple
 19 point being made here.
 20 A. So FinePix --- FinePix is a series, so there are multiple
 21 different FinePix cameras, there's the DX50 --- I'm
 22 making the numbers up.
 23 THE CHAIRMAN: No, well, we understand that.
 24 A. If you had typed --- if you had clicked on "Digital
 25 Compacts" and filtered to Fuji, who I think are the

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1 people who make the FinePix, then you would have just
 2 got, these are all of the FinePix cameras.
 3 So I still have to stand by — I'm so sorry, I have
 4 to stand by the fact that that is useful if you're in
 5 a place looking for the FinePix. Now, they didn't click
 6 on the top result, they clicked on "Digital SLRs", which
 7 doesn't have any FinePix models.

8 THE CHAIRMAN: Yes.

9 MR MCGURK: Sir, would it be testing patience if I finished
 10 one more topic on this document then had a break?
 11 I think the transcribers are overdue a break, so I am in
 12 your hands.

13 If we go to {M2/1338/25} of this report.

14 This is the "'Blank' reviews" issue that Receptional
 15 identified.

16 They say:

17 "The biggest subdirectory of content on the site is
 18 user reviews held within the /user—reviews/ directory
 19 (46% of available HTML URLs). Unfortunately, the
 20 majority of these pages appear to contain no reviews,
 21 and these send visitors to a 'Write the First Review'
 22 page. Google actively frown on such pages, which they
 23 consider to deliver a poor user experience when found in
 24 search results. In some cases, they may be seen as a
 25 deliberate spam technique. Google engineer Matt Cutts

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1 has commented on these types of pages ..."

2 So the short point here is that the majority of your
 3 user review pages had no reviews at all and therefore no
 4 original content at all, did they?

5 A. So every page of our site has — every product page had
 6 a — had a button that would switch depending on
 7 the number of reviews sitting in the database. So
 8 either, if it had reviews, it would — one or more
 9 reviews, it would say one or two or however many reviews
 10 for this particular camera, or it would say "write
 11 a review", and on the "write a review", it had a "no
 12 follow". So it was saying to all search engines,
 13 including Google: do not follow this link, do not index
 14 this empty page, only index the pages that do have user
 15 reviews.

16 If you go up to — I believe it might be page 3 of
 17 this report {M2/1338/3}, you will see that that "no
 18 follow" worked, because early on in this report it shows
 19 you the number of user reviews pages that are indexed,
 20 indexed by Google. So although, here, Receptional are
 21 saying, "Oh, it's 45% of your URLs", actually, if you
 22 look at the page 3, they hadn't put these two things
 23 together. The only pages that are indexed in Google are
 24 the ones that do have user reviews.

25 Can we go to page 3 of this document, please

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1 {M2/1338/3}. Okay, a page down {M2/1338/4}. I don't
 2 know the exact page, so we're going to have to page
 3 until we find it, but it's quite near the beginning.
 4 Another one, please, and another one. I promise it will
 5 be soon, unless someone wants to stand up and tell us
 6 the page? Keep going. Keep going. Keep going. Here
 7 we are, brilliant {M2/1338/7}. So — oh, no, one more,
 8 sorry, and again {M2/1338/9}. Yes, this is the page.
 9 Thank goodness. That was painful, I'm so sorry.

10 If you look at "user reviews", so they're saying,
 11 oh, there's 40,000 URLs that are user reviews, that's
 12 saying we've got 40,000 products that potentially lead
 13 you to a user review page, but Google indexed only 106,
 14 and that's because we only invited the search engines to
 15 index the pages that did indeed have one or more user
 16 reviews. So it's not massive rocket science, but
 17 Receptional hadn't quite sort of got their head round
 18 that, I'm afraid.

19 Q. The point is slightly different. The point, again, is
 20 an original content point in that there were not product
 21 reviews for products that otherwise featured on your
 22 site for all but a handful of products. So if users
 23 were —

24 A. That isn't the point you were just making. You were
 25 saying —

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1 Q. I am making a different point —

2 A. Okay, so you've switched your point, Mr McGurk.

3 THE CHAIRMAN: Just listen, Ms Raff. Just listen. There
 4 may be some misunderstanding, but just listen.

5 A. Okay.

6 THE CHAIRMAN: Yes, Mr McGurk.

7 MR MCGURK: The point is, in relation to the concern over
 8 content, which is a broader concern of this report,
 9 users going to your site are going to find no more than
 10 a handful of product reviews on your pages; that is
 11 right, is it not?

12 A. That is correct, of original, user-generated, on Foundem
 13 only user reviews, we only had a small number, and
 14 that's partly, of course, because we were excluded from
 15 Google and so we didn't have enough traffic to build up
 16 lots. I would highlight that at this period Google's
 17 own CSS was copying all of its reviews from other sites,
 18 so its user —

19 Q. Can you not —

20 A. — reviews were —

21 Q. — make submissions —

22 A. — over Amazon, etc —

23 Q. — Ms Raff. I am not asking you about —

24 A. I'm just giving you the context —

25 Q. — Google.

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1 A. --- of this.
 2 Q. This is not context.
 3 THE CHAIRMAN: Well, I think ---
 4 A. It's relevant.
 5 THE CHAIRMAN: --- the answer to the question is that you did
 6 only have a small number of user reviews ---
 7 A. And the context is ---
 8 THE CHAIRMAN: --- and ---
 9 A. --- that we were excluded from Google's ---
 10 THE CHAIRMAN: --- you say because that ---
 11 A. We didn't have much traffic. The other context is ---
 12 THE CHAIRMAN: --- because of lack of traffic.
 13 A. --- that Google's own search engine at this point ---
 14 THE CHAIRMAN: Well, no, we are talking about your site ---
 15 A. Yeah ---
 16 THE CHAIRMAN: --- and why you had ---
 17 A. --- had no original --- (overspeaking -- inaudible).
 18 THE CHAIRMAN: --- and what, Receptional were talking about
 19 your site. So the context is, you said, that you only
 20 had little traffic.
 21 MR MCGURK: Ms Raff, if lots of aggregators, including CSSs
 22 are operating on the basis of affiliate feeds and some
 23 of them are providing rich original wrap-around content
 24 and others are not, then Google is entirely justified in
 25 ranking the former aggregators with rich content and

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1 original content higher than the latter, are they not?
 2 A. We were providing original content, for example, in
 3 the form of price history graphs which Google's
 4 search engine, as they acknowledged whilst they were
 5 whitelisting us, could not detect.
 6 Q. So you are putting all your reliance on original content
 7 on your price history graphs?
 8 A. No. Thank you for picking that up. No, our original
 9 content was our very comprehensive and accurate product
 10 price comparison.
 11 Q. All right. Receptional were pointing out issues that
 12 existed on your site since launch, and the truth,
 13 Ms Raff, is that the reason Foundem ranked so low on the
 14 SERP was because, as is pointed out in this report,
 15 Foundem had ignored some of the most important Webmaster
 16 Guidelines from launch right through to this point in
 17 2009, had it not?
 18 A. No, absolutely not, Mr McGurk. As Google has admitted,
 19 the reason that we were ranking so low in Google's
 20 search results is because we were suffering from between
 21 a 90% penalty and a 99% penalty throughout this period.
 22 That is why we were ranking so low on Google's search
 23 results.
 24 MR MCGURK: That might be a moment, Sir, to have a pause.
 25 THE CHAIRMAN: Yes. So we will take another ten minutes and

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1 we will come back at 4 o'clock.
 2 A. Thank you, Sir.
 3 (3.48 pm)
 4 (A short break)
 5 (4.06 pm)
 6 THE CHAIRMAN: Yes, Mr McGurk.
 7 MR MCGURK: Thank you, Sir.
 8 Ms Raff, we saw earlier that you had asked
 9 Receptional to prepare a reconsideration request that
 10 was going to be submitted to Google; that's right, isn't
 11 it?
 12 A. That's correct.
 13 Q. Mr Jones of Receptional did an initial draft which he
 14 sent to you for review, did he not?
 15 A. Yes.
 16 Q. You replied to that draft under cover of an email which
 17 is at {M2/1158/1}, if we could turn that up, please.
 18 You say:
 19 "Hi Dixon,
 20 "Thanks for preparing this reconsideration request."
 21 Then you say:
 22 "We've made a couple of tweaks to your draft. Some
 23 of the changes were to remove inaccuracies, and some
 24 were to remove things we're not comfortable highlighting
 25 to Google."

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1 So there were things that you removed from
 2 the reconsideration request drafted by your SEO experts
 3 because you did not want Google to know that they were
 4 problems that had been diagnosed with your site; that is
 5 correct, is it not?
 6 A. I think let's have a look at what we've removed, but
 7 I don't think --- I don't know what we were not
 8 comfortable highlighting to Google, but it's worth
 9 bearing in mind that we were in the process of --- this
 10 is April 2009, so we were in the process of taking our
 11 case public and we were also starting to consider a
 12 competition complaint. So let's see what we weren't
 13 comfortable highlighting to Google.
 14 Q. I am very happy to do that. Can we have on a split
 15 screen, please, first of all, Mr Dixon's draft, which is
 16 at {M2/1157/1}, and we are going to start right at
 17 the bottom, and on the right-hand screen could we have
 18 up, please, {M2/1337/1}. On the left-hand screen, given
 19 that what is really relevant is on page 2, can we move
 20 that up to reveal page 2 on the left-hand side
 21 {M2/1157/2}.
 22 So let us explore the changes which were made.
 23 First, in the Receptional draft, Mr Jones proposed
 24 saying, and this is the first starred point we see:
 25 "They have aimed to replace lists of keywords with

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1 meaningful, user—orientated text."
 2 This was the keyword stuffing issue that Receptional
 3 identified .
 4 THE CHAIRMAN: Sorry, where are you?
 5 MR MCGURK: It is about eight lines down, the first star.
 6 It is the first asterisk .
 7 THE CHAIRMAN: On page 2?
 8 MR MCGURK: On page 2, on the left hand side, Sir.
 9 THE CHAIRMAN: Oh:
 10 "Receptional have urged Foundem to make a number of
 11 changes ..."
 12 Is that it?
 13 MR MCGURK: It is about nine lines down, the first asterisk
 14 on the left—hand side.
 15 THE CHAIRMAN: Yes, I am sorry, I have got it.
 16 MR MCGURK: Yes. Thank you.
 17 So:
 18 "They have aimed to replace lists of keywords with
 19 meaningful, user—orientated text."
 20 This was the concern that Receptional had made that
 21 including irrelevant words, but which were nevertheless
 22 popular words, which were aiming to drive traffic to
 23 your site was a problem and you have deleted that
 24 comment in your redraft, have you not?
 25 A. Yes.

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1 Q. Then turning down to the third starred point on the left
 2 Mr Jones' draft said:
 3 "Titles, Descriptions and Headings: These were
 4 inadvertently the same? on many pages and they often did
 5 not reflect the product or products being shown to the
 6 user. Indeed, pages for (say) a camera had
 7 a description pertaining to (say) a flight. These tags
 8 should now at least reflect the content on the page."
 9 But you delete that entirely in your redraft, do you
 10 not?
 11 A. Yes.
 12 Q. You delete that notwithstanding that you told
 13 Receptional that you would make that amendment in
 14 the actions document that we looked at earlier; that is
 15 right, is it not?
 16 A. I can't remember.
 17 Q. Well, we looked at it. You accepted it by saying this
 18 is "Done", but you have deleted it in the Google—facing
 19 document because you do not want Google to see that you
 20 accept this improvement was needed; that is right, is it
 21 not?
 22 A. I think that's a slightly more — stepping over
 23 the line. I definitely deleted that point.
 24 THE CHAIRMAN: Why?
 25 A. I can't remember.

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1 MR MCGURK: Mr Jones' fifth starred point on the left. He
 2 included in his draft:
 3 "Removed blank review pages: blank review pages are
 4 removed via robots.txt and in addition (all reviews are
 5 no followed)."
 6 You have deleted that because you did not want to
 7 acknowledge that so high a proportion of Foundem's pages
 8 were full of blank reviews, did you?
 9 A. No, I deleted that because Receptional's analysis was
 10 incorrect, as we've just seen.
 11 Q. Dixon Jones' sixth starred point had also proposed
 12 including that Foundem:
 13 "... have changed the way in which search results
 14 might be misinterpreted as pages if the user is browsing
 15 the site."
 16 Again, this was deleted in your draft because you
 17 did not want to acknowledge that pages you had been
 18 presenting as search results pages were in fact 3 search
 19 pages, did you?
 20 A. I'm so sorry, I don't even understand that question.
 21 Say that again?
 22 Q. We saw earlier, before the break, that Receptional were
 23 criticising you for presenting search pages as search
 24 results and they advised you not to do that because it
 25 would go down badly in ranking. So Mr Jones, in

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1 relation to that point that Receptional have made, was
 2 proposing to say that Foundem had changed the way in
 3 which search results might be misinterpreted as pages,
 4 that is to say search pages, if a user is browsing in
 5 the site, and I am suggesting to you, Ms Raff, that you
 6 deleted that because you did not want Google to
 7 appreciate that pages you had been presenting as search
 8 results pages were in fact more accurately categorised
 9 as search forms, or search pages themselves, and that is
 10 correct, is it not?
 11 A. I don't think it is. I think I deleted that because
 12 I thought that the point was a bit gibberishy, actually.
 13 Q. "Gibberishy", all right.
 14 A. Yeah, so your — what you just said is search forms
 15 being presented as search results? Is that what you
 16 just asked me?
 17 Q. Yes.
 18 A. Well, no, search forms are not presented as search
 19 results.
 20 Q. Well, this is what — this is the point Receptional were
 21 making in their report and we looked at it together
 22 before the short adjournment; I am not going to go back
 23 over it. But in any event, that is what Receptional's
 24 concern was, but you have removed that from your
 25 reconsideration request draft, have you not?

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1 A. Yes, I have, and I still don't understand the sentence,
 2 so if I was doing it again today, I'd delete it again
 3 today.
 4 Q. Mr Jones' seventh starred point proposed to say:
 5 "Foundem have moved some way towards reducing
 6 the incidences where searchers do a search and return
 7 other searches. Site search on a site like this is very
 8 complex. In comparison to other price comparison sites
 9 they do better in some cases and worse in others. This
 10 area is a usability issue ..."
 11 That is to say a functionality or technical issue:
 12 "... that warrants further work, but they have
 13 improved onsite search significantly."
 14 Now, you have deleted that completely because you
 15 have not addressed that problem at all and, had you made
 16 that representation to Google, it would have been false,
 17 would it not?
 18 A. No, I've deleted it because it wasn't relevant to
 19 Google, because site search is something that users use
 20 and Google's browsers do not fill in site search forms.
 21 So I deleted it because it was irrelevant.
 22 Q. That is completely inconsistent with your case that site
 23 search functionality should be at the heart of why CSSs
 24 rank highly.
 25 A. No, no, no.

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1 Q. You just contradicted your entire case, Ms Raff.
 2 A. No, I disagree. Site search is the box at the top --- at
 3 the middle of the top of the page which has a box that
 4 users can type in, for example, "finepix". That is site
 5 search. Technically, that is the component of our site
 6 that I call site search and which I believe other
 7 services would also call site search. That's an
 8 industry standard nomenclature. Site search is used by
 9 users. Crawlers do not fill in site search boxes. What
 10 they do is they follow hyperlinks. So I deleted that
 11 point because site search is irrelevant to Google's
 12 crawlers and to how Google would process the page.
 13 Q. Your concern, which you appreciate, having received
 14 Receptional's report, that if Google are aware that
 15 matching categories and interstitial pages of the sort
 16 that we have looked at were search pages rather than
 17 search results, as you were presenting them, Google
 18 would be fortified in thinking that there was a real
 19 problem with your site. That is the point, is it not?
 20 A. That is not the point here. This is talking about site
 21 search, which is completely different.
 22 Q. Now, in light of the Receptional report, Ms Raff, it was
 23 materially misleading for you not to have addressed
 24 the report's existence, findings or recommendations in
 25 your witness statements to this Tribunal, was it not?

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1 A. No.
 2 Q. You did not tell the European Commission about
 3 Receptional's report, its findings or its
 4 recommendations at any time in the course of
 5 the complaint that you made to the Commission, did you?
 6 A. No, that's correct.
 7 Q. You continued to conceal from Google a number of
 8 the problems that Receptional had diagnosed and which
 9 they considered were affecting your site's ranking on
 10 the search page, in particular the extent to which you
 11 had not addressed those concerns at this point; that is
 12 right, is it not?
 13 A. No, that's completely incorrect. The reason we're
 14 looking at this today is because we disclosed absolutely
 15 everything that we've just looked at, probably in our
 16 first wave of disclosure. So I think
 17 the word "concealed" is pretty pejorative, Mr McGurk,
 18 and I strongly disagree, because you're suggesting
 19 I didn't do a good job of disclosure and I did. Every
 20 single thing that you're looking at today, we disclosed.
 21 Q. I am not making a disclosure point ---
 22 A. You used the word "concealed".
 23 Q. Now, we turn to December 2009, and on 1 December, you
 24 get ---
 25 A. By the way, you missed out the final ---

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1 Q. --- (overspeaking --- inaudible).
 2 A. --- bullet, which is where we make the point that:
 3 "This is where ..." ---
 4 "... the 'uniqueness' of [our] pages: This is where
 5 Googlebot is most likely becoming confused, because of
 6 the unique technology Foundem is using to source and
 7 filter data and images. The uniqueness being in
 8 the filtered results for the users rather than whether
 9 a particular product is available elsewhere on the web.
 10 Already, the system has historical price data for many
 11 product searches so that users can see how price has
 12 altered over time."
 13 I would point out that deleting some of
 14 the irrelevant stuff before it is because I was hoping
 15 that whoever reviewed this, not knowing at the time that
 16 no human would, would get to that sooner rather than
 17 later, because that is our case.
 18 Q. Can we change topic to whitelisting, Ms Raff?
 19 A. Yes.
 20 Q. On 1 December 2009 you were whitelisted in relation to
 21 Algorithm A; that is right, is it not?
 22 A. Yes.
 23 Q. I am right in understanding that you essentially stopped
 24 developing or growing your site after whitelisting; that
 25 is correct, is it not?

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1 A. No, that's absolutely incorrect.

2 Q. Can we go to {D3/8/13}. This is a letter from your

3 solicitors, Hausfeld, and I am interested in 12.3 where

4 they say to my client's solicitors:

5 "From early December 2009 ..."

6 I.e. shortly after whitelisting:

7 "... it was clear to Foundem that it had not been

8 restored onto a level playing field with its

9 competitors. By early 2010, it was also clear to

10 Foundem that Google had responded very negatively to

11 Foundem's December 2009 New York Times Op-Ed and its

12 February 2010 European Competition Complaint. Foundem

13 did not, therefore, devote much of the 16 months between

14 its 'whitelisting' in December 2009 and the introduction

15 of Panda in April 2011 developing or growing its site.

16 Site developments that did take place tended to be

17 primarily motivated by the need to experiment and/or

18 gather evidence."

19 I.e. for this case:

20 "After a few months of experimentation, it became

21 clear that adding, for example, a significant number of

22 additional product price comparison pages, made no

23 material difference to the traffic from Google to

24 Foundem's site, so, save for routine model maintenance,

25 Foundem desisted from these experiments."

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1 Now, what this tells us is that you simply did not

2 invest in the site between whitelisting and

3 the imposition of Panda, did you?

4 A. No. So we still had a developer who was developing

5 functionality, acquiring 3 data sources, and this thing

6 about adding pages, so we absolutely continued to add

7 product categories and pages, and that's set out in

8 the Further Particulars, and we were continuing to

9 maintain our site as a high quality site and our

10 partnerships, I think, although I think by this time we

11 were moving — Adam and I were moving more and more of

12 our focus — it's quite demanding being the lead

13 complainant in a competition investigation against

14 possibly the world's most powerful company, so that did

15 definitely take some of our attention. But, no, I would

16 not agree that we — that does not say we completely

17 stopped.

18 Q. It says what it says and we can read it.

19 A. Exactly.

20 Q. But can I make two points on it. First of all —

21 A. Fire away.

22 Q. — adding a significant number of additional product

23 price comparison pages, that, pausing there, is SEO

24 illiterate, because if you could just improve ranking by

25 adding pages, everybody could gain the algorithms in

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1 that way; that is correct, is it not?

2 A. So you get a certain amount of traffic for every product

3 page that you have in the index, and so if you become

4 a broader comparison search service, then you will end

5 up with proportionately greater traffic to your site.

6 That is not SEO illiterate, that's just basic maths.

7 Q. Can we — just to close this off, can you tell

8 the Tribunal whether you agree with what Hausfeld told

9 us, or disagree with what Hausfeld told us, and if so

10 why?

11 A. So it is absolutely true that during this period, as

12 the lead complainant in a competition investigation

13 against Google, we were aware that, if we were suffering

14 under an additional penalty, it was unlikely that Google

15 was going to lift it, and indeed, as Panda started to be

16 trailed by Google, we were very concerned that Panda was

17 also going to impact Foundem even more negatively than

18 we were already suffering under. So that is correct, we

19 were doing routine maintenance, and it's really

20 important to bear in mind that when you know you're

21 under a penalty and that Google is not going to lift it,

22 the incentive to proactively develop fresh

23 functionality, when you know no users are going to find

24 your site to use it, is reduced.

25 Q. So I think you are agreeing with Hausfeld's points in

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1 paragraph 12.3 here; is that right?

2 A. I think they are factually accurate.

3 Q. Now, you said when still labouring under a penalty.

4 This of course refers to your other penalties claim

5 which you make in respect of the period between

6 December 2009 and April 2011, but Ms Raff, at

7 paragraphs 85 and 95 to 97 of your witness statement you

8 have offered a theory as to how and why some other

9 penalty has been applied, and I want to just summarise

10 that and take this quickly so that I ensure that I have

11 understood it and that the Tribunal understands what it

12 is that is being alleged in these paragraphs of your

13 statement.

14 Can I try and summarise it this way, and then I am

15 going to ask you a couple of questions.

16 A. Could we put it up, what you're summarising?

17 Q. Well, it is across a number of pages, which is why I am

18 trying to summarise it.

19 THE CHAIRMAN: Well, let us just listen to the summary —

20 A. Fair enough.

21 THE CHAIRMAN: — and you will know whether that is fair or

22 not.

23 A. Which paragraphs are you summarising?

24 MR MCGURK: 85 and 95 to 97, and I want to just try and

25 crisply summarise the essence of this in two sentences,

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1 Ms Raff.
 2 In essence what you say is that whitelisting would
 3 have resulted in Foundem shooting up in the rankings
 4 causing an increase in ranking that Google could not
 5 plausibly explain to the world as being merely due to
 6 Foundem's site improvements. So to hide — you say, to
 7 hide the fact that Foundem was whitelisted, Google
 8 instead, you say, applied another penalty which limited
 9 the impact of whitelisting and allowed Google to
 10 maintain that Foundem's better rankings were due to site
 11 improvements, and you have effectively described this as
 12 a cover story that Google is engaging in. Is that
 13 a fair summary of this part of your evidence?
 14 A. It is not accurate to only talk about "may have
 15 applied", because the other option, the other
 16 possibility is that Google just left in place a penalty
 17 that was less extreme than Algorithm A —
 18 Q. Fair enough. Subject to that —
 19 A. — and therefore had —
 20 Q. — is it right?
 21 A. — previously been masked.
 22 Yes, I think that whitelisting — I think that
 23 the internal disclosure confirms that whitelisting
 24 Foundem, when we were already so high profile as
 25 publicly saying we had been suffering from a penalty,

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1 would have been potentially problematic for Google,
 2 because the act of whitelisting proved that there are
 3 penalties, algorithmic penalties, and neither of those
 4 things were in the public domain at the time.
 5 Q. Now, this cover story, as you set it out in paragraphs
 6 85 and 95 to 97, depends on Google having applied
 7 another penalty, whether by maintaining existing — an
 8 existing penalty or introducing a 3 one; that is right,
 9 is it not?
 10 A. Absolutely. We're saying there is — there was another
 11 penalty that Foundem was adversely affected by over that
 12 period, whether it be a 3 penalty or one that was just
 13 left in place.
 14 Q. So if the Tribunal finds that there is no evidence of
 15 another penalty in that period, Ms Raff, your cover
 16 story theory could not in logic be maintained, could it?
 17 A. I think it's very unlikely they're going to find there's
 18 no evidence, because there's substantial evidence.
 19 Q. Well, we fundamentally disagree with that, but just go
 20 back to the question I asked. If the Tribunal were to
 21 find that there was no other penalty, your cover story
 22 theory would, as a matter of logic, fall apart, would it
 23 not?
 24 A. Would — I think you're putting the cart before
 25 the horse a little bit. So the — the fact that Google

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1 had a potential PR issue if they just whitelisted us and
 2 we suddenly rose a lot in the rankings, that's more
 3 explaining what might have been the incentive,
 4 the motive for Google to have left another penalty in
 5 place, whereas that sort of a sideshow, the key is,
 6 was there a penalty in place or not, and if the Tribunal
 7 finds that, in its view, there was no other penalty
 8 either applied or left in place, then that is the end of
 9 it, that's for the Tribunal to decide.

10 But what I'm setting out here is a potential motive
 11 which goes to, I hope I'm not being completely
 12 irrelevant, I hope goes to the Tribunal's assessment of
 13 the probability of whether that might have happened. So
 14 I guess when you're talking about a crime — I mean,
 15 this isn't my area, but you talk about motive and
 16 opportunity, and so when we're trying to prove our case,
 17 in addition to the evidence that a penalty is applied,
 18 we're setting out that Google had the motive to apply it
 19 and we're also setting out that you had the opportunity,
 20 because you had an awful lot of penalty tools at your
 21 disposal. So I guess the outcome is going to be whether
 22 the Tribunal agrees with me or not.

23 Does that answer your question?
 24 Q. Yes and no, but I am going to move on.
 25 A. Sorry.

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1 Q. The implication of your alleged cover story, Ms Raff, is
 2 that every single internal and external document we have
 3 showing Google's discussion of whitelisting Foundem
 4 deliberately and falsely omitted any reference to
 5 the imposition of this other penalty; that is correct,
 6 is it not?
 7 A. No. No. So all of the internal documents discussing
 8 the internal decision to whitelist Foundem have a couple
 9 of themes running through them. So the first is that
 10 they are massively redacted because there's a lot of
 11 legal advice going on, apparently, about the potential
 12 legal implications of whitelisting Foundem, and then
 13 the other thing is that they talk about various comms
 14 plans, etc, which they take offline, and we've never had
 15 those — any of those plans disclosed. So I think —
 16 Q. Well, you have read all of those documents, have you
 17 not?
 18 A. The unredacted bits.
 19 Q. There is no suggestion of another penalty in any of
 20 those documents you have read, is there?
 21 A. I think they're all written pretty cognisant of the fact
 22 that this internal dialogue might potentially be
 23 disclosed, and I think there's — there's also no
 24 mention of the term "penalty" or "whitelisting". So for
 25 example, Matt Cutts says, "I'm minded to change my

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1 view". They don't use the word "penalty" and they don't
 2 use the word "algorithm", whereas we all know that they
 3 were discussing — they don't use the word "penalty" and
 4 they don't use the word "whitelisting", sorry,
 5 I misspoke, whereas we all know that these were
 6 discussions about whitelisting Foundem out of a penalty.
 7 So I definitely would agree that they are very
 8 circumspect in the written dialogue internally leading
 9 up to whitelisting. Is that what you're asking me?
 10 Q. My point is that there was no need for the elaborate
 11 cover story that you are sketching out in your witness
 12 statement, Ms Raff, because the truth is Foundem's
 13 significantly increased rankings post 1 December 2009
 14 are of course due to whitelisting, but you did not rank
 15 as well as you wanted to because Foundem was essentially
 16 a very poor quality site even with the limited
 17 improvements you made to the site following
 18 Receptional's report. That is why you were where you
 19 were in the rankings, is it not, Ms Raff?
 20 A. No, Mr McGurk, that's your case. What I would say is
 21 that all of Google's other ranking algorithms and
 22 signals, absent a penalty, before the penalty, had found
 23 our pages to be highly relevant all the way back in
 24 2006, and that the thing about a penalty is it takes
 25 that assessment of the pages [redacted — confidential]

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1 information].
 2 Q. Can you just be careful about ...
 3 A. Oh, god, sorry.
 4 THE CHAIRMAN: Yes. Well, what Mr McGurk has to do is put
 5 Google's case to you —
 6 A. Yes, and I'm having —
 7 THE CHAIRMAN: — and you say —
 8 A. — to say I disagree with that —
 9 THE CHAIRMAN: — you disagree with it.
 10 A. — and if I didn't disagree with it, I wouldn't have
 11 spent —
 12 THE CHAIRMAN: You would not be here.
 13 A. — 14 years —
 14 THE CHAIRMAN: No, we understand that.
 15 A. — pursuing this claim.
 16 THE CHAIRMAN: Yes, but he has to put their case —
 17 A. Yes.
 18 THE CHAIRMAN: — that is the reason, and you have given
 19 your answer.
 20 I think that is an appropriate point, Mr McGurk,
 21 where we have to stop. We said we have to stop at 4.30.
 22 We can sit at 9.45 tomorrow and start then, but you
 23 must finish at lunchtime, as agreed on the timetable, so
 24 that the Foundem evidence concludes tomorrow.
 25 MR MCGURK: That is fine. We will do that.

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1 THE CHAIRMAN: You must please adjust your cross—examination
 2 accordingly.
 3 A. Can I put in a desperate plea that, if there's going to
 4 be any re—examination, there's time for that, because
 5 what we really —
 6 THE CHAIRMAN: Well, Ms Raff, we understand that and that is
 7 the way we run our proceedings.
 8 A. Okay.
 9 THE CHAIRMAN: Ms Raff —
 10 A. Sorry, I'm also the client. I'm so sorry.
 11 THE CHAIRMAN: No, do not worry. As I told you, you have
 12 got very experienced and very good counsel representing
 13 you and I am sure he will insist upon a proper
 14 opportunity.
 15 You can discuss with Mr McGurk the timing.
 16 We also cannot sit late tomorrow, so we will have to
 17 stop at 4.30 tomorrow, but we will start at 9.45.
 18 MR MCGURK: Thank you very much, Sir.
 19 THE CHAIRMAN: We can, if necessary, shave 15 minutes off
 20 lunch, but that is what we can offer you tomorrow.
 21 Now, Ms Raff, it is always awkward when you are in
 22 the middle of the evidence, and no doubt you are seeing
 23 your husband tonight —
 24 A. No —
 25 THE CHAIRMAN: — or you are not —

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1 A. — I've booked myself into a hotel to be in purdah.
 2 THE CHAIRMAN: Right, okay, well, that just shows you
 3 appreciate what I am about to say, which is you cannot
 4 discuss the case with him, or, of course, with your
 5 legal team, and we will resume at 9.45 tomorrow.
 6 A. Thank you, Sir.
 7 (4.34 pm)
 8 (The Court adjourned until 9.45 am on Tuesday, 30 June 2026)
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