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IN THE COMPETITION
APPEAL TRIBUNAL

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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

22nd June-31st July 2026

Before:

The Honourable Mr Justice Roth
Dinah Rose KC
Alasdair Smith

(Sitting as a Tribunal in England and Wales)

BETWEEN:

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

Claimants

- and -

GOOGLE LLC & OTHERS

Defendants

A P P E A R A N C E S

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

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

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

1 Tuesday, 30 June 2026
 2 (9.45 am)
 3 (Proceedings delayed)
 4 (9.52 am)
 5 Housekeeping
 6 MR WEST: Some points which have developed overnight.
 7 THE CHAIRMAN: Yes.
 8 MR WEST: As you know, Mrs Raff was in purdah overnight and
 9 under strict instructions not to discuss her evidence
 10 with anyone. I thought I would bring to the Tribunal's
 11 attention that she has sent two emails to the legal team
 12 overnight which are not concerned with her evidence,
 13 they are concerned with other matters relating to
 14 the case. But I thought I would bring that to
 15 the Tribunal's attention. One is about the timing of
 16 future witnesses and the other concerns the demeanour of
 17 the legal team. I thought, given the sensitivity of
 18 these matters, I ought at least to mention that.
 19 Immediately before standing up, it was brought to my
 20 attention that Mrs Raff may have been accidentally
 21 copied in to an email discussion about potential
 22 re-examination topics, but I am now told it appears she
 23 was not. I have not been able to speak to her about it,
 24 but it may be, I do not know how else to deal with it,
 25 simply — other than simply to raise it with

1

1 the Tribunal as a matter of professional conduct.
 2 THE CHAIRMAN: I think the second point is rather more
 3 significant than the first.
 4 MR WEST: Indeed.
 5 THE CHAIRMAN: Well, it is quite right you bring that to our
 6 attention, but have you been able to establish that that
 7 email was not copied to her or ...?
 8 MR WEST: The position, as I understand it, is that it was
 9 sent from an email address which is Mrs Raff's email
 10 address by Mr Raff, but it appears it may not have
 11 actually gone to Mrs Raff.
 12 THE CHAIRMAN: Yes.
 13 MR WEST: Because Mr Raff says he does need his email.
 14 THE CHAIRMAN: Yes.
 15 Well, I think, Mrs Raff, we should ask you, did you
 16 — you have heard what your counsel said. Did you get
 17 an email about —
 18 A. No, I haven't seen an email.
 19 THE CHAIRMAN: Right, thank you.
 20 Yes, Mr McGurk.
 21 A. My — this mic isn't on. It's flashing red.
 22 THE CHAIRMAN: Just one moment.
 23 Is it all right?
 24 A. Thank you.
 25

2

1 MS SHIVAUN EDWINA RAFF (continued)
 2 Cross-examination by MR MCGURK (continued)
 3 MR MCGURK: Sir, before I start I just wanted to say I have
 4 made some cuts overnight. I will be taking Mr Raff
 5 a little bit shorter in light of where we got to
 6 yesterday, but I did not want the Tribunal to have
 7 concerns if Mrs Raff is still in the box at 10.45, but
 8 we aim to finish by 1 o'clock.
 9 THE CHAIRMAN: Yes. Well, I think you have to, yes. As has
 10 been pointed out, including some re-examination.
 11 MR MCGURK: Yes.
 12 Mrs Raff, good morning.
 13 A. Morning.
 14 Q. We have a few topics to finish up. I am going to take
 15 it at a bit of a clip. If you could give your answers
 16 crisply and concisely, I think —
 17 A. I will be as concise as possible.
 18 THE CHAIRMAN: Just one moment, your microphone.
 19 MR MCGURK: I hope that is better.
 20 Can you hear me, Mrs Raff?
 21 A. Yes.
 22 Q. Thank you.
 23 Starting with whitelisting. As discussed yesterday,
 24 and drawing the strands together, after receiving
 25 the Receptional report, you accepted several of

3

1 the recommendations that they made and we saw that you
 2 implemented a number of those recommendations, did you
 3 not?
 4 A. That's correct.
 5 Q. You also made further improvements in the weeks before
 6 whitelisting in response to problems identified to you
 7 by Mr Cutts in an email of 30 November; do you recall
 8 that?
 9 A. Yes, that's correct.
 10 Q. So you made improvements to your website both in
 11 response to the Receptional report and in response to
 12 concerns and observations Mr Cutts made; that is
 13 correct, is it not?
 14 A. It is, but the bigger context with Mr Cutts, of course,
 15 is that we were in a dialogue about whitelisting, and
 16 I've set out in my witness statement —
 17 Q. Yes.
 18 A. — our view of those typographical errors which I think
 19 Google has already agreed would not have impacted
 20 the Algorithm A penalty.
 21 Q. Well, for the Tribunal's note, the exchange is at
 22 {J2B/2/2}. I was not going to go to it. Those matters
 23 that Mrs Raff describes as minor typographical issues
 24 were set out by Mr Cutts in three emails there.
 25 But the point is you accepted them and you

4

1 implemented those improvements, did you not?
 2 A. Absolutely.
 3 Q. Staying with whitelisting, you and your husband had
 4 a conference call with Mr Cutts who dialled in
 5 from California on 15 October 2009; that is correct, is
 6 it not?
 7 A. Yes, that is correct.
 8 Q. You had to schedule the call to accommodate the time
 9 difference, did you not?
 10 A. Yes. So my memory is that it was 11 pm UK time, so by
 11 the time it finished, it was Adam's birthday, which is
 12 16th October.
 13 Q. Memorable.
 14 In response to a request from Google's Mr Barron in
 15 advance of that call, you expressly told him that you
 16 were happy for that conversation to be "mutually off
 17 the record". Do you remember giving Mr Barron that
 18 assurance?
 19 A. Yes.
 20 Q. You give a detailed account of this call on 15 October
 21 in your witness statement, do you not?
 22 A. Yes.
 23 Q. Can we go and look at it, please. It is {H2A/3/38}.
 24 Yes, can I just invite you for the moment, Mrs Raff,
 25 to remind yourself of what you said and tell me when you

5

1 have finished reading that paragraph.
 2 A. Yes, I've finished down to the end of the page.
 3 Q. Thank you.
 4 If we could go over to page {H2A/3/39}.
 5 A. Yeah, finished.
 6 Q. Thank you.
 7 Can we then go to {H2A/3/38} — sorry, wrong
 8 reference, {M4/227}.
 9 This is a phone log that includes a contemporaneous
 10 record of that call.
 11 Can I ask you if you or your husband produced this
 12 contemporaneous call log, Mrs Raff?
 13 A. No.
 14 THE CHAIRMAN: Have you seen this before?
 15 A. No. I think this is a Google internal call log.
 16 THE CHAIRMAN: Well, do not speculate.
 17 You have not seen this document before; is that
 18 right?
 19 A. So this —
 20 THE CHAIRMAN: Mrs Raff, it is a very simple question: have
 21 you seen this document before now?
 22 A. No, I don't think I have.
 23 MR MCGURK: Mrs Raff, this is not a Google document, this
 24 was disclosed by Foundem —
 25 A. Really?

6

1 Q. — and when we go through the communications that are
 2 recorded here, you will see that only Foundem could have
 3 prepared and disclosed this document.
 4 Can we take it in stages, starting with the second
 5 box, which you see is an entry for 15/10/09 at 23:00; do
 6 you see that?
 7 A. Oh, he asked us to send him some examples.
 8 Q. Can we just take the language in the box in stages?
 9 A. Yes.
 10 Q. It is headed "Call [with] [Mr] Cutts"; do you see that?
 11 A. Yes.
 12 Q. "Matt C: 'I would have to disagree with the algorithm,
 13 and I can't make that case right now'. During call,
 14 Matt sent a few 'snippets' to Foundem and to Peter B."
 15 That is Peter Barron:
 16 "At the end of the call, he asked us to send him
 17 some examples of our credentials — which he claimed not
 18 to have seen (e.g. Gadget Show clip)."
 19 This was written either by yourself or by your
 20 husband; that is right, is it not?
 21 A. Yes, and I must therefore have seen it. So I apologise,
 22 Sir, I clearly have seen it.
 23 Q. Now, the account you give of the call and what was
 24 discussed in the call on 15 October is much more
 25 extensive than what we see in this log; that is correct,

7

1 is it not?
 2 A. Yes.
 3 Q. In fact, Mrs Raff, there was another contemporaneous
 4 account of this call insofar as you made and retained an
 5 audio recording of the call, did you not?
 6 A. That is correct.
 7 Q. The audio recording was only disclosed to Google
 8 three weeks ago?
 9 A. That's because we only remembered it existed about
 10 four weeks ago.
 11 Q. I think the answer to my question is yes, is it?
 12 A. Yes.
 13 Q. You did not tell Mr Cutts that you were going to record
 14 the call, did you?
 15 A. No, that's true. It was for our internal records.
 16 Q. You did not therefore get his consent to record
 17 the call, did you?
 18 A. That is correct.
 19 Q. In fact, at the end of the call, you assured Mr Cutts
 20 that your discussion was, as you had previously put it
 21 to Mr Barron before the call, "off the record mutually",
 22 did you not?
 23 A. I don't remember that, but possibly. So I do — just
 24 making a private recording, we were not intending that
 25 to be on the record. It was the most important call our

8

1 company had ever had and we wanted to be sure that if we
 2 didn't remember something that was important, we would
 3 be able to go back and review it and make sure that we
 4 got it right.
 5 Q. The most important call your company ever made?
 6 A. Has ever had, yes, because it was the dialogue to
 7 whitelisting.
 8 Q. Yes.
 9 You had a number of calls with Google employees over
 10 the years, have you not?
 11 A. Yes.
 12 Q. Is your evidence to the Tribunal this is the only
 13 telephone call that you recorded, Mrs Raff?
 14 A. So this was slightly different. This was a conference
 15 call, it wasn't a normal telephone call, and, yes, it is
 16 the only one that we've ever recorded.
 17 MS ROSE: Can I just ask, why did you not ask for his
 18 consent if you wanted a private recording?
 19 A. It didn't feel right, and I think we weren't intending
 20 to use it, we were just needing it in case we needed to
 21 review. So we should have asked for his consent. In
 22 retrospect, we should have.
 23 MR MCGURK: Now, I want a simple "yes" or "no" to this
 24 question, Mrs Raff. Did you consider or investigate in
 25 advance of that call whether recording a call with

9

1 somebody dialling in from California without their
 2 consent might be unlawful?
 3 A. No.
 4 Q. So I take it you were not aware that the recording of
 5 the call without Mr Cutts' consent violated
 6 the California Invasion of Privacy Act and
 7 paragraph 632(a) of the Californian Penal Code?
 8 A. No, I was not aware of that.
 9 Q. You recorded this call because you have told us already
 10 this was the most important call that your business had
 11 yet made and has since made; correct?
 12 A. Yes, I think that's true.
 13 Q. So can we go back to your witness statement,
 14 paragraph 81 {H2A/3/38}.
 15 Given the detail in this statement, given that none
 16 of this is founded in the call log I have shown you,
 17 I want to suggest to you that you could only have
 18 produced this account of that call by reference to
 19 the audio recording, Mrs Raff.
 20 A. No, that is definitely not true. Because this is
 21 the most important call, we have talked and discussed
 22 between Adam and myself many times over the years about
 23 the contents of that call.
 24 Q. So when you sat down to draft your paragraph 81 — 80
 25 and 81, notwithstanding, as you have proffered — I did

10

1 not ask you, you proffered that this was the most
 2 important call you have made, sitting down to write
 3 this, you did not remember that you had recorded this
 4 conversation and had an audio tape of it?
 5 A. No. If I had remembered, then I would have — as you
 6 know, I consulted lots of documents in the writing of my
 7 witness statement. If I had remembered, then we would
 8 have gone and found it and gone through the whole
 9 disclosing and ... etc. then, but I genuinely did not
 10 remember.
 11 Q. You then had a further call with Mr Barron on
 12 30 October, did you not, and your evidence at
 13 paragraph 83 of your witness statement {H2A/3/40} is
 14 that during this call, Mr Barron informed you that
 15 Google had made a final decision to lift Foundem's
 16 penalty; that is right, is it not?
 17 A. Yes, but he said he had — they hadn't decided yet
 18 whether it was going to be through whitelisting or
 19 a general engineering change.
 20 Q. But your evidence in this paragraph 83, first sentence,
 21 you say:
 22 "On 30 October ... Mr Barron called me and informed
 23 me that Google had decided to lift Foundem's penalty."
 24 That is your evidence to the Tribunal?
 25 A. Yes, that's what I remember from that call.

11

1 Q. Yes, and the decision having been taken, the only
 2 question, as you have just told us, was whether this
 3 would be done algorithmically or by whitelisting?
 4 A. Yes.
 5 Q. Can we look at the call log. It is {M4/227}.
 6 The first entry for 30 October is three boxes down.
 7 Just taking you through the text:
 8 "Peter B: I've been talking to Matt over the week.
 9 He's had a preliminary look at your case. There is
 10 definitely a case to answer, he's persuaded of
 11 the arguments to the extent that it requires more work.
 12 It's certainly worthy of further consideration. He
 13 wants to look in depth not just at Foundem but at
 14 the broader implications. This will take time to work
 15 out, up to a month or four weeks. After that, we will
 16 either do nothing or change the algorithm."
 17 Pausing there. Mr Barron told you on that call that
 18 no final decision had yet been made, did he not?
 19 A. So clearly I made this call log at some point in
 20 the past, and I must admit, I had completely forgotten
 21 that it existed, and my memory has — I mean, this was
 22 17 years ago that this was happening, and my memory has
 23 shifted over time, that is how this works. But if
 24 that's what this call log says, it was almost certainly
 25 made much more contemporaneously, so clearly my witness

12

1 statement is incorrect .
 2 Q. Yes.
 3 A. And it's interesting that the next bits are the bits
 4 that I remember, where he said, "Our preference is
 5 a general engineering change, but we would consider
 6 whitelisting Foundem". So this call log is a more
 7 nuanced version, much more contemporaneous.
 8 Do you have a date for this call log?
 9 Q. The date is on it. It is 30 October. Oh, for the ---
 10 A. Yeah, for the document.
 11 Q. As I understand it, you made this on a rolling basis, so
 12 this was a contemporaneous note of the call as and when
 13 it was made. It is your document, Mrs Raff.
 14 A. Yes. So is there a --- I mean, how many pages is this,
 15 when does it end, what's the date on it --- what's the
 16 date of the file?
 17 Q. Can we just focus on the entry. To your point about
 18 remembering more of the content further down, you
 19 alluded to Peter Barron's preference, but you offered to
 20 help in the process that he set out by providing some
 21 further information; do you see that?
 22 A. Yes.
 23 Q. All of which made clear, if you read this log, that,
 24 again, no decision had been made and you knew no
 25 decision had been made yet because you were offering to

13

1 provide further information to help them in this process
 2 that Mr Barron had articulated?
 3 A. Yes. I hadn't remembered that either.
 4 Q. So your evidence that a final decision had been made to
 5 whitelist on 30 October is wrong, is it not?
 6 A. It appears that my memory was incorrect.
 7 Q. When Mr Cutts followed up on 20 November to raise his
 8 further concerns about the site, the email I referred
 9 you to a few minutes ago, that was entirely in line with
 10 the process that Mr Barron has sketched out as recorded
 11 in this log, is it not?
 12 A. It's not how I remember it, but I do see your point that
 13 this sounds --- this more contemporaneous account looks
 14 much less certain because it says, we'll either do
 15 nothing or change the algorithm.
 16 Q. Yes.
 17 A. Yes.
 18 Q. Having seen this, this --- your contemporaneous record of
 19 these calls, rather than being evidence of a cover-up,
 20 as you suggest in paragraphs 85 {H2A/3/41} and 95 to 97
 21 {H2A/3/44} of your witness statement, in fact all that
 22 is going on here {M4/227} in this month is the process
 23 playing out in the way Mr Barron told you it would play
 24 out, is it not?
 25 A. Well, it's important to bear in mind that this is

14

1 apparently, although I had forgotten that I'd written
 2 this, this is from my end of things, whereas
 3 the internal dialogue behind the scenes ---
 4 Q. You are talking about Google disclosure now, are you
 5 not?
 6 A. I am, but that's bound to have impacted ---
 7 Q. To your point a minute ago, Mrs Raff ---
 8 A. --- my memory.
 9 Q. --- you have read a lot of Google disclosure over time
 10 and you have allowed that to warp your memory of what
 11 you actually wrote and did at the time. That is
 12 the problem with you always reading Relativity
 13 documents, is it not?
 14 A. Yes.
 15 Q. Thank you.
 16 A. I mean, 13 years of disclosure, it's bound to have an
 17 impact on my memory, but the internal dialogue,
 18 definitely that is where they were. So that is --- I ---
 19 I see your point. I guess my memory has been affected
 20 by reading that.
 21 Q. Well, if Mr West wants, in light of the evidence that
 22 you have given, to go back to Google documents and make
 23 a point contrary to the contemporaneous evidence, then
 24 that is for him and good luck to him.
 25 Could I turn then to other penalties.

15

1 Your initial position was that Foundem's rankings
 2 were restored to normal after whitelisting, was it not?
 3 A. I don't believe we --- so it's important to bear in mind
 4 the context, which is that, at this point, we were in
 5 a position where we were trying to prove the existence
 6 of a penalty and whitelisting is an important way of
 7 demonstrating that a penalty exists because you can't be
 8 whitelisted unless you have a penalty. So we were
 9 definitely saying our rankings restored to normal or
 10 near normal at that precise moment.
 11 Q. Let us look at the traffic at that precise moment. It
 12 is {M4/229}.
 13 So:
 14 "Foundem organic traffic from Google's SERP,
 15 2008 -- 2010."
 16 So if we start with the spike in December 2008, that
 17 was the month of your Gadget Show recommendation, was it
 18 not?
 19 A. That's correct.
 20 Q. Then looking at December 2009 when you are whitelisted,
 21 the traffic there continues to increase until
 22 April 2010, notwithstanding the fact, as you confirmed
 23 yesterday, that you had stopped devoting very much time
 24 or energy to developing the site at that point; that is
 25 right, is it not?

16

1 A. So I believe that that sort of March 2010 peak is when
 2 Google went public with the fact that Foundem had filed
 3 a competition complaint.
 4 Q. Yes, so there was media interest in the complaint,
 5 was there not?
 6 A. Yes.
 7 Q. Yes. But nevertheless, we see the rise in traffic over
 8 this period, do we not?
 9 A. We do.
 10 Q. Can we go to {J2A/14/1}, please.
 11 So you will see this is Foundem's response to
 12 Google's reply to the Commission and it is dated
 13 August 29, 2010; do you see that?
 14 A. I do, yes.
 15 Q. Can we go to {J2A/14/10} in this document to see what
 16 you were telling the Commission at the time.
 17 There are three entries in that table for
 18 1 December 2009, which is the date of whitelisting.
 19 You say, first of all:
 20 "Foundem emailed Peter Barron to ask him to
 21 expedite.
 22 "Peter Barron phoned to say don't worry, things are
 23 afoot, it's all going to happen much faster than next
 24 week."
 25 Then, in the last entry, you say:

17

1 "Within [an] hour of Barron's phone call,
 2 whitelisting started to kick in. Within an hour or so,
 3 all of Foundem's rankings across tens of thousands of
 4 pages and hundreds of thousands of keywords were
 5 restored to 'normal'.
 6 Do you see that?
 7 A. In quotes, yes.
 8 Q. I take it that your evidence to this Tribunal today is
 9 that what you were telling the Commission in 2010 in
 10 this document was true?
 11 A. Of course, yes.
 12 Q. Your Particulars of Claim stated that your rankings
 13 across tens of thousands of web pages and hundreds of
 14 thousands of keywords were restored to levels close to
 15 those before the search penalty took effect in
 16 June 2006, is it not? I can show you the pleading if
 17 you want.
 18 A. Not necessary. Yes.
 19 Q. Thank you.
 20 You said your traffic from Google had increased by
 21 around 10,000% in that pleading, did you not? Do you
 22 remember that?
 23 A. I do, although 10,000%, when your base is 2, is only
 24 200.
 25 Q. But your position was entirely consistent with what you

18

1 are telling the Commission?
 2 A. Yes. I will say that "normal" is in quotes.
 3 Q. You were not trying to mislead the Commission?
 4 A. No.
 5 Q. No.
 6 So at this time you made no allegation, whether to
 7 the Commission or in your pleadings, that you were being
 8 impacted by another penalty post—whitelisting, were you?
 9 A. At that point, no.
 10 Q. You only applied to amend your case in 2015 following
 11 the Commission issuing its Statement of Objections;
 12 correct?
 13 A. That is correct.
 14 Q. That is because you spotted a problem for your case,
 15 which was that post—whitelisting in December 2009,
 16 Algorithm A no longer applied, and prior to
 17 the imposition of Panda in April 2011, you had no case
 18 about any demotion algorithm applying in that period at
 19 all, did you?
 20 A. No. No, that's not correct. We absolutely — we
 21 reached out within a week of whitelisting to
 22 Peter Barron to raise the fact that we felt that our
 23 rankings had not been restored to a level playing field
 24 with our competitors, and we absolutely had tried to
 25 explain to our legal team, as we were writing

19

1 the Particulars of Claim, that there's — that we did
 2 not feel that we were actually back on a level playing
 3 field, but it was decided that it was too complicated to
 4 explain.
 5 THE CHAIRMAN: I do not think you need to tell us what
 6 discussions you had with your legal team.
 7 A. Oh, god, sorry. Yes, Sir.
 8 THE CHAIRMAN: But you say you reached out to Peter Barron,
 9 you say, within a week of whitelisting?
 10 A. Yes, and there's an email that — where Peter Barron
 11 then talks to Matt Cutts and says, "She thinks it's been
 12 restored to more like 7 out of 10 than 10 out of 10".
 13 MR MCGURK: But notwithstanding that discussion with
 14 Peter Barron, you did not reach out to the Commission
 15 and qualify what you had told them in your 2010
 16 response, did you?
 17 A. No.
 18 Q. You did not plead that point, did you?
 19 A. No.
 20 Q. When you received the Statement of Objections from
 21 the Commission in June 2015, you saw the Commission
 22 articulate what we are calling in these
 23 proceedings "the combination abuse", did you not?
 24 A. Yes.
 25 Q. So you knew, Mrs Raff, at that point, that not only

20

1 could you not point to any demotion algorithm applying
 2 in the interim period, you knew, at that point, that you
 3 had no combination abuse and therefore no follow-on
 4 claim for that period either, did you not?
 5 A. No, absolutely not.
 6 Q. It was because you knew you had no claim for that period
 7 that you scabbled around and came up with the idea of
 8 another penalty applying in that period. That is what
 9 has happened, is it not?
 10 A. No, that's not true, and you can tell that because we
 11 were gathering evidence throughout that period of
 12 the fact that we did not believe that we were — had
 13 been restored onto a level playing field, and you can
 14 see that evidence set out in the Further Particulars,
 15 and that's contemporaneous, that wasn't reconstructed in
 16 2015.
 17 Q. You only amended your paragraph 68 on this point in
 18 August 2025; that is correct, is it not? I can show you
 19 if you want?
 20 A. Amend in August 20 — so we certainly didn't do
 21 paragraph 68A in 2025 —
 22 Q. 68?
 23 THE CHAIRMAN: I think if you are going to make a point like
 24 that, it is right to show the paragraph.
 25 MR MCGURK: Yes. That is fair, Sir, I do apologise.

21

1 THE CHAIRMAN: People do not remember paragraph numbers.
 2 MR MCGURK: {C3/3/54}, paragraph 68.
 3 So the blue is what was introduced in August 2025.
 4 THE CHAIRMAN: You see that at the top the page, Mrs Raff?
 5 A. Yes, thank you.
 6 MR MCGURK: I am grateful, Sir.
 7 THE CHAIRMAN: There are a lot of amendments here and they
 8 have rather helpfully got different colours. So
 9 the blue one is 1 August 2025.
 10 A. Thank you.
 11 MR MCGURK: The score—throughs, just to be clear as well,
 12 Mrs Raff, which you see in the second half of this
 13 paragraph, are also deletions in August 2025.
 14 So your case further amend is that, yes, your
 15 rankings improved significantly and your traffic :
 16 "... increased significantly, but not to the level
 17 that would be expected if Foundem's relevance scores
 18 were no longer being systematically reduced by any
 19 penalty."
 20 That is correct, is it not?
 21 A. Yes, every time we amend we try and make our Particulars
 22 clearer.
 23 Q. But this is wholly inconsistent with what you had told
 24 the Commission about your traffic in August 2010, is it
 25 not?

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1 A. No, and in fact I think you can see that the Particulars
 2 used to say "were restored to levels close to those
 3 before the search penalty took effect in June 2006".
 4 Q. Yes, which is roughly what you told the Commission, but
 5 you scored that through?
 6 A. Yes, that's correct.
 7 Q. You do not point to any facts that cause —
 8 A. Can I just —
 9 Q. — you to change this view?
 10 A. Can I just finish the point?
 11 So if you think about it, before the penalty took
 12 effect in June 2006, we were absolutely a new website
 13 and so we hadn't had any opportunities to build PageRank
 14 or for the search engine to crawl us and for us to gain
 15 authority, inbound links, etc. So coming back to levels
 16 close to before the search penalty took effect in
 17 June 2006, that's not where we would expect to be after
 18 three and a half years of building partnerships with
 19 hundreds or thousands of inbound links, which is as you
 20 were discussing yesterday, with the Receptional report.
 21 Q. Yes.
 22 A. So that is correct, but it is scored out because it's
 23 misleading, and the reason that we — I mean, I assume
 24 everybody does this. Every time we change our
 25 Particulars, we try to make it clearer.

23

1 THE CHAIRMAN: I think the point being put to you, Mrs
 2 Raff —
 3 A. Yes.
 4 THE CHAIRMAN: — is that what you told the Commission was
 5 that your level of, as it were, your scoring or your
 6 level of traffic following the whitelisting had come to
 7 normal, that is not the same as what you were saying
 8 here.
 9 A. Yes, and to an — to an extent, that's a fair point.
 10 I would also point out, though, that if you cast your
 11 mind —
 12 THE CHAIRMAN: Well, why did you not — well, just pausing
 13 there.
 14 A. Okay.
 15 THE CHAIRMAN: Why did you not say to the Commission what
 16 you are saying here?
 17 A. We were in a very different place back in 2010. So, at
 18 that point, there was no proof that there were such
 19 things as penalties, no proof that there was an
 20 Algorithm A penalty, no proof that there was
 21 whitelisting. We were trying to explain to
 22 the Commission what the effect of whitelisting was, and
 23 so we were trying to explain a — it's such
 24 a complicated story that we were perhaps
 25 over-simplifying in order to explain it to

24

1 the Commission. But there was certainly no intention to
 2 be misleading.
 3 MR MCGURK: What concrete fact or matter changed such as to
 4 render what you told the Commission in 2010 incorrect
 5 and where is it in your pleading?
 6 A. No concrete fact or matter changed. It's a question of
 7 emphasis and what you are trying to explain to
 8 the Commission at that point. You can't explain
 9 everything at once.
 10 Q. Fair enough.
 11 A. It's too complicated.
 12 Q. Moving on, just staying in the period 2010 to 2011 for
 13 a moment, Mrs Raff. We know you were not focusing on
 14 developing your site in this period, we know you were
 15 focusing on your complaint to the Commission, as we have
 16 just seen, but you were also working with an
 17 organisation called ICOMP from April and May 2009, were
 18 you not?
 19 A. So, it's not true that we weren't focused on developing
 20 our site in 2010, we were. We were members of ICOMP in
 21 2010.
 22 Q. Well, hang on, that is not what you told us about
 23 the development of the site yesterday. I showed you
 24 a Hausfeld letter and you agreed with what Hausfeld had
 25 said. You are not changing that evidence you gave to

25

1 the Tribunal yesterday, are you?
 2 A. I believe I pointed out that we still had a developer,
 3 we were still developing.
 4 Q. Do you rely on your evidence that you gave yesterday to
 5 the Tribunal about that letter and what it meant for
 6 the extent to which you were developing your site?
 7 A. And we were still adding new categories, so that counts
 8 as developing your site.
 9 Q. Well, you were adding pages, but can we just take this
 10 short ---
 11 A. Well, the pages were part of the category --- okay.
 12 Q. --- are you relying on the evidence you gave to
 13 the Tribunal yesterday? Because, if so, we can have
 14 a discussion about that in submissions, and I will just
 15 focus on this period in 2010/2011.
 16 A. I must admit, yesterday was quite stressful and very
 17 long, so I would need to be reminded what I said
 18 yesterday.
 19 Q. Well, let us focus on ICOMP, shall we?
 20 You had a number of meetings with this organisation
 21 in --- from April and May 2009, you had, I think, six
 22 meetings with that organisation in total then from 7 May
 23 through to October and November. Do you recall those
 24 meetings?
 25 A. In very general terms.

26

1 Q. Six meetings does not sound wrong to you? I do not want
 2 to necessarily go through it with a document, but I can,
 3 if you want?
 4 A. No, I guess not.
 5 Q. ICOMP was a trade organisation with strong links to
 6 Microsoft, was it not?
 7 A. Yes.
 8 Q. In fact, it was almost entirely funded by Microsoft,
 9 was it not?
 10 A. Yes.
 11 Q. Indeed, it held itself out as the lobbying vehicle for
 12 Microsoft, as the Financial Times pointed out, did it
 13 not?
 14 A. No, I don't think it will have.
 15 Q. {M4/91/1}. I will show you where you took that point
 16 from. It is an FT article by Richard Waters --- sorry,
 17 forgive me, Opinion Tech blog by Richard Waters.
 18 We are told:
 19 "There was something sweetly ironic in
 20 the not-so-veiled threat that a Microsoft-led lobbying
 21 group flashed at Google today. The message: Microsoft
 22 is learning how to turn the European anti-trust
 23 apparatus that has caused it so much grief to its own
 24 advantage.
 25 "The group in question, called ICOMP, claims to be

27

1 an industry association formed to address "concerns
 2 related to online marketplaces".
 3 So in this piece it is being described as a lobbying
 4 vehicle for Microsoft; do you agree with that?
 5 A. You said --- you said it held itself out as a lobbying
 6 vehicle for Microsoft, and I said I doubt they would
 7 have done that.
 8 Q. Well, can we --- I accept that. Can we agree with just
 9 how it is described in this article then?
 10 A. I --- that's how it's described. I think it's actually
 11 not --- I don't think ICOMP would agree with this
 12 description of it.
 13 Q. Well, I am asking you your view, but anyway ...
 14 In your statement, Mrs Raff, you tell us that
 15 {H2A/3/36}:
 16 "In early 2009, we hired a PR firm and began
 17 speaking with journalists about Foundem's case ..."
 18 Do you recall that bit of your evidence?
 19 A. Yes.
 20 Q. It is Waggener Edstrom, if I am pronouncing that
 21 correctly, that you are referring to, is it not?
 22 A. "Wag Ed", yes.
 23 Q. "Wag Ed". Let us say "Wag Ed".
 24 You had eight meetings with Wag Ed between January
 25 and May 2009, did you not?

28

1 A. That is correct. Well, I think it was — I mean,
 2 I don't know exactly how many meetings.
 3 Q. I can show you.
 4 A. If you think it's eight, we'll go with that.
 5 Q. Thank you. I am grateful.
 6 Mrs Raff, you knew, of course, that Wag Ed had as
 7 its key client at that point Microsoft?
 8 A. No, I did not.
 9 Q. From May 2011, you started —
 10 A. Microsoft seem to have a lot of PR firms.
 11 Q. Well, let us not discuss that.
 12 But from May 2011, you started receiving substantial
 13 payments from ICOMP as their adviser, did you not?
 14 A. So hang on a sec, you've really jumped. So Wag Ed and
 15 Burson—Marsteller are two completely different PR
 16 agencies —
 17 Q. I have not mentioned Burson—Marsteller.
 18 A. But Burson—Marsteller is referred to in the article that
 19 you have got here.
 20 Q. I did not take you to that, Mrs Raff —
 21 A. Yes, you did, you took me to that article.
 22 Q. I did not mention Burson—Marsteller. I am focusing on
 23 ICOMP for the moment —
 24 A. Right, so just so —
 25 Q. — to be clear.

29

1 A. So just to be clear, we found Wag Ed because they had —
 2 the reason we hired Wag Ed and we were paying Wag Ed is
 3 because they had been involved in an — there are a few
 4 tech PR firms and the reason we picked Wag Ed is because
 5 they had been involved in the Intel versus AMD, and so
 6 we felt that they potentially would be qualified to help
 7 take our case to the media. So that's why we picked
 8 Wag Ed, and I had no idea they had any links to
 9 Microsoft.
 10 Q. Okay, can we just test that and go to {M2/1162/3}.
 11 Your evidence is you had no idea Wag Ed had links
 12 with Microsoft?
 13 A. It certainly wasn't something I was focused on at the
 14 time.
 15 Q. This is an email exchange you had with Adam Lasnik, and
 16 the third paragraph from the bottom — sorry —
 17 A. No, this is —
 18 Q. — this is Dixon Jones to you. I am so sorry.
 19 Shall we maybe go to the first page so that we can
 20 see the email heading {M2/1162/1}.
 21 There is an email from Dixon Jones to you, and you
 22 have replied to a number of things Dixon Jones has said
 23 and which are set out on page {M2/1162/2}.
 24 So this is your exchange with him on 24 March, and
 25 going down to the bottom of this page, in that 11.39

30

1 email, three paragraphs from the bottom on page 2 —
 2 sorry, on {M2/1162/3}, forgive me, Mr Jones says to you
 3 — this is about, as you will recall, his visit,
 4 Mr Jones of Receptional's visit to Iceland for
 5 a conference where he spoke to Adam Lasnik of Google; do
 6 you recall that?
 7 A. Yes, I do.
 8 Q. He is reporting back to you about the outturn of
 9 the conversation he had with Adam Lasnik in Iceland;
 10 that is right, is it not?
 11 A. Yes.
 12 Q. You say then in that third last — he says in that third
 13 last paragraph to you:
 14 "I talked about the strength of feeling that you
 15 felt ..."
 16 So he identified that Foundem —
 17 A. "... the issue of strangling innovation", yes.
 18 Q. Yes, he has identified Foundem as his client at this
 19 point:
 20 "... the strength of feeling that you felt on
 21 the issue of strangling innovation and said that
 22 I expected that you would not let that issue lie and had
 23 engaged a PR company with Microsoft connections ..."
 24 He was referring to, as you knew, Wag Ed, was he
 25 not?

31

1 A. So Receptional was recommended to us by Wag Ed because
 2 they had previously worked with Dixon Jones and
 3 Receptional. Apparently, he knew more about Wag Ed than
 4 we did, so he's the one who in this place is raising
 5 Microsoft connections. I don't know what his history
 6 with Wag Ed was. It's possible that he worked with them
 7 on a project that involved Microsoft, but I didn't know
 8 about the Microsoft connections when we hired them. It
 9 was because of the Intel versus AMD connection that we
 10 hired them.
 11 Q. I took you back to this email because your evidence to
 12 the Tribunal a few moments ago was that you did not know
 13 that Wag Ed had as a client or had a connection with
 14 Microsoft and I just wanted to show you —
 15 A. Yeah, when we hired them —
 16 Q. — where you had a discussion on this very point with
 17 Mr Jones.
 18 A. Well, that's something that he's raised and which I may
 19 have registered at the time but certainly had forgotten
 20 about subsequently.
 21 Q. Can we go back to May 2011 and the point about
 22 the source of your remuneration.
 23 It is right that in that year you received payments
 24 from ICOMP in the order of £400,000. Does that sound
 25 about right?

32

1 A. I don't remember the exact amount, but I'm sure you're
 2 correct. I would point out that this was after Panda
 3 had hit and we had been wiped out by Panda, and so we
 4 had been contributing an enormous amount to ICOMP. It
 5 was essentially our messaging and our strategy that had
 6 started to steer ICOMP's agenda and we needed to find
 7 a way of surviving a totally exclusionary Google Search
 8 penalty that was potentially going to last for years and
 9 so I became — what was the job title? I basically took
 10 on a consultancy role as an expert in search and related
 11 competition issues for ICOMP.
 12 Q. Let us look at the revenues you made in that year. It
 13 is {M2/1179}.
 14 So this is the "bank control" tab. We see "bank
 15 receipts" of £592,735 in column D. Do you have that?
 16 THE CHAIRMAN: Just one moment. This is for which period?
 17 MR MCGURK: 2010/2011, Sir.
 18 So you see the total —
 19 A. It's November to November. So November 2010 to
 20 November 2011.
 21 Q. I am grateful, Mrs Raff. Thank you.
 22 So you see the total "bank receipts" in column D,
 23 row 6?
 24 A. Yes.
 25 Q. Then if we can go to the "bank receipts" tab.

33

1 Now, we will see there were multiple entries.
 2 I think that has taken you to the bottom of the sheet.
 3 We can probably flick up slowly. You see some of
 4 the usual affiliate networks from whom you are receiving
 5 income in this period?
 6 A. And a bunch of individual merchants as well.
 7 Q. Yes, the bikers. We covered those.
 8 We see the receipts from the Affiliate Windows
 9 networks — affiliate networks between a few hundreds
 10 pounds and up to I think the maximum you received from
 11 any one of them this year is £8,000; that is right, is
 12 it not?
 13 A. I don't know. You scrolled up and down.
 14 Q. If we go to row 101.
 15 Now. You mentioned Burson—Marsteller. They
 16 provided the secretariat for ICOMP, did they not?
 17 A. Yes, that's correct.
 18 Q. We see you are receiving £108,000 from them on
 19 6 May 2011; that is right, is it not?
 20 A. That is correct.
 21 Q. Then row 107, please.
 22 You receive another £36,000 from ICOMP; correct?
 23 A. That's correct.
 24 Q. Row 158, another £108,000?
 25 A. Correct.

34

1 Q. Then, finally — sorry, penultimately, row 182, 22,000,
 2 again from ICOMP, and finally, row 212, this is
 3 30 November 2011, and another £108,000 from ICOMP.
 4 If you total those five receipts it comes to about
 5 £383,000, if you are prepared to take my word for that?
 6 A. Yes, I was tallying up in my head and I'd agree with
 7 roughly that.
 8 Q. Thank you, Mrs Raff.
 9 So over two-thirds of your income that year is from
 10 ICOMP, a Microsoft-backed organisation, which is
 11 outstripping your income from your CSS business quite
 12 considerably, is it not?
 13 A. Yes, that's not surprising, because this is post—Panda.
 14 Q. So instead of developing your site in this period, in
 15 relation to which we see from this document your
 16 affiliate revenues were falling off, you were in fact
 17 working very closely with and being indirectly paid by
 18 Microsoft, who are in effect supporting and funding your
 19 complaint against Google to the Commission; that is
 20 right, is it not?
 21 A. I think it is fair to say that if we had not moved to
 22 find ourself an alternative consultancy stream, Foundem
 23 would have had extreme difficulties surviving the Panda
 24 penalty and also extreme difficulty pursuing our
 25 competition complaint against Google.

35

1 Q. The following year, 2011/2012, I do not have time to
 2 take you to the document, but the receipts you made from
 3 ICOMP were even higher. So from income of about half
 4 a million, again, you received £445,000 that year from
 5 ICOMP. That sounds about right, does it not?
 6 A. I can't remember, but I — I will believe you,
 7 Mr McGurk.
 8 Q. Can we turn to our final topic, Mrs Raff, and thank you
 9 for your patience.
 10 You mentioned yesterday your publisher business?
 11 A. Yes.
 12 Q. The purpose of — in opting to establish your CSS
 13 business on the basis of standardised affiliate feeds,
 14 you, in addition, partnered with a number of third party
 15 publishing businesses, did you not?
 16 A. Do you mean people like Bauer —
 17 Q. Yes, I do.
 18 A. Yes.
 19 Q. The purpose of that was to combine your technology with
 20 the content that the publisher provided, was it not?
 21 A. Yes, to help them to monetise their content.
 22 Q. It was the integration of both your tech and their
 23 content that would allow that partnership to generate
 24 good conversion; that was the thinking, was it not?
 25 A. It would allow the partnership to generate revenues for

36

1 both ends of the partnership, yes, correct.
 2 Q. Yes, and higher conversion rates in relation to
 3 product —
 4 A. Well, no, actually, it's surprising, but if you're
 5 looking at a price comparison widget on a product
 6 review, it doesn't tend to convert as well as if
 7 the traffic is coming from Google later in the journey
 8 to purchase. I think Kelkoo call it "the funnel". But
 9 when you're looking at reviews on something like a T3 or
 10 a Good Housekeeping, you're in the early stages of
 11 a journey to purchase, whereas when you're on Google
 12 looking for the particular product you've chosen, you're
 13 much closer to that purchasing moment and that converts
 14 better, that traffic.
 15 Q. Well, you are alluding to the exchanges with Mr Stables.
 16 I am not going to go back to that.
 17 But let us see how this played out —
 18 A. No, no, I'm not. I'm independently telling you my
 19 view —
 20 Q. Fair enough.
 21 A. — my experience —
 22 Q. Fair enough.
 23 A. — and my expertise.
 24 Q. Well, let us look at how it played out —
 25 A. I just used the term "funnel" to show how we — I call

37

1 it "journey to purchase".
 2 Q. That is understood. I think we have a range of terms
 3 for it.
 4 But let us look at a document, {J2B/13/1}.
 5 So this is a slide deck you prepared in June 2007 by
 6 which you were proposing to provide search functionality
 7 on The Gadget Show's site; that is right, is it not?
 8 A. The Gadget Show's website. So that was for Channel 5.
 9 Q. Yes.
 10 A. Which was a separate — separate to The Gadget Show's
 11 production company. But, yes, it was shown on Channel 5
 12 and they had the website.
 13 Q. Yes.
 14 MS ROSE: Remind me, what is the Gadget Show?
 15 A. It used to be the UK's leading technology television
 16 programme. So it was an hour a week and I think it was
 17 on Channel 5.
 18 MR MCGURK: Can we turn in this document to {J2B/13/5},
 19 please. So you see, as part of your pitch to
 20 The Gadget Show, you say:
 21 "Our Strategy — Content Search Integration ...
 22 "Our commercial aim is to maximise conversion."
 23 Which was to my question a few minute ago:
 24 "This is achieved [as you tell us] by giving users
 25 full confidence to move to purchase."

38

1 You say:
 2 "This is the best product at the best price from
 3 the full range available that meets my criteria."
 4 Then we can see on the right, Foundem's role in this
 5 partnership is to identify the range of products and
 6 provide the technology; that is correct, is it not?
 7 A. Yes, that's correct.
 8 Q. Then the two arrows on the left are its content
 9 partners' functions, and the content partner would
 10 provide "Authoritative Review" and "Shopping Guidance",
 11 would it not?
 12 A. Yes, that's correct.
 13 Q. So it is right, is it not, that this is Foundem
 14 acknowledging that it needed a content partner to
 15 provide things like reviews and analysis to help users
 16 decide what they want to buy when they got to the bottom
 17 of the funnel; correct?
 18 A. No, that's completely wrong. This was us pitching to
 19 the publishers to say they needed a technology partner
 20 to provide the price comparison to complement their
 21 authoritative reviews and shopping guidance and monetise
 22 their content —
 23 Q. But you were bringing —
 24 A. — the other way round.
 25 Q. I am so sorry. You were bringing no content to this

39

1 party —
 2 A. Absolutely.
 3 Q. — you were bringing tech to the party?
 4 A. We were bringing unique, market-leading tech, that is
 5 correct.
 6 Q. Well, we disagree on that, but let us have a look at one
 7 final document. It is {J2B/12}.
 8 You mentioned T3, and I want to come back to that in
 9 a moment, but this is a presentation you made to Jongo.
 10 If we pick up — and this is, sorry, December 2007.
 11 If we pick up at {J2B/12/6}, we see the same image
 12 we have just looked at, so emphasising the tech content
 13 split that you and a content partner would bring
 14 together in these publisher partnerships?
 15 A. Yes.
 16 Q. And then turn to {J2B/12/7}.
 17 So if we make that a little bit larger, this is how
 18 it actually looked on the page on The Gadget Show's
 19 website. So what we see across the top, the blue bar —
 20 A. I think that's two different pages, just to be clear.
 21 Q. Well, let us take each of them in turn.
 22 On the left, you see at the top there is a homepage
 23 then there is a "best buys" section, there is an "on TV"
 24 section, there is "news", there is "features", there is
 25 "video". There is the "shopping" tab, which we are on,

40

1 and then, having clicked the "shopping" tab, you see
 2 the "shopping categories".
 3 So what we are seeing here is the search
 4 functionality being provided in this tab in the context
 5 of a site that is providing an awful lot of original
 6 content to users; that is right, is it not?
 7 A. So what this slide is showing, it's a Foundem slide, on
 8 the left—hand, it's showing a bespoke
 9 comparison shopping domain which is narrowed down to
 10 just the categories that are relevant to this particular
 11 service, in this case The Gadget Show, but in other
 12 cases it might be golf or it might be DC Mag, which is
 13 cameras, that is the bespoke comparison shopping service
 14 that we provided.
 15 On the right—hand side, there's a page where they
 16 have written reviews for three different Blu Ray
 17 players, that's a blast from the past, and at the bottom
 18 of each of those there's a widget. There is what I was
 19 describing yesterday, my intelli—widgets. There's
 20 the cheapest three prices, but then at the bottom
 21 there's a link that says "compare prices from nine
 22 stores" or "compare prices from 11 stores". So — so on
 23 the right, those are our intelli—widgets and on
 24 the left, those are our bespoke comparison shopping
 25 domains.

41

1 I think I've — I think I've set out these two types
 2 of integration in my witness statement and this is
 3 a beautiful illustration of it.
 4 Q. Well, just focusing on the right, you see under the
 5 products — I think you have already told us that
 6 the content, the reviews were being provided by
 7 The Gadget Show?
 8 A. This is on The Gadget Show's site.
 9 Q. You see the rating of the products underneath, that is
 10 a Gadget Show rating, is it not?
 11 A. Yes.
 12 Q. Yes.
 13 You do not see any of that on Foundem's own site, do
 14 you?
 15 A. No, that's correct.
 16 Q. Just to finish this, Mrs Raff, you mentioned T3, so in
 17 fairness I will show you that page, it is page —
 18 THE CHAIRMAN: Just a minute. Who are Jongo?
 19 A. So this — you know, yesterday, I mentioned that
 20 Alan Wheatley was this indefatigable networker? So
 21 after we'd politely declined investment, occasionally
 22 he'd phone me up and he'd want me to go and talk to
 23 another one of his protege companies, and I believe that
 24 Jongo was one of the companies that Alan Wheatley
 25 introduced us to.

42

1 THE CHAIRMAN: But what do they do? Why are they here?
 2 A. I'm so sorry, Sir, I can't remember. But because we did
 3 a presentation to them, it was sitting in our potential
 4 partner folder and so it was disclosed, but I don't
 5 think it ever came to anything.
 6 MR MCGURK: Yes, but I think we can probably agree that (a)
 7 Jongo was a publisher that you were seeking to partner
 8 with through this pitch but it did not come to anything;
 9 that is right, is it not?
 10 A. That — yeah, I — I would definitely know if we had
 11 partnered with Jongo.
 12 Q. Yes.
 13 THE CHAIRMAN: This does look, from the title page, like
 14 a pitch —
 15 A. Yes.
 16 THE CHAIRMAN: — to Jongo, does it not?
 17 MR MCGURK: I am grateful, Sir.
 18 Then finally, on page 8, this is slide 8, which is
 19 part of the same pitch, to be clear, this is screenshots
 20 from the T3 website.
 21 T3 was a technology lifestyle magazine, was it not?
 22 A. Yes, and on the left—hand side is Good Housekeeping.
 23 Q. So focusing on the right—hand side, you see T3. If we
 24 can make that right—hand side a bit bigger, please.
 25 I was focusing on the grey bar in the middle. You see

43

1 "home", "news", "reviews", "entertainment", various
 2 categories of technology that you can find out more
 3 information about, and there is compare prices at
 4 the bottom. Then in the middle you have got a Sony TV
 5 for which a review is given and there is various other
 6 content features that you can click through to on this
 7 page, is there not?
 8 A. Yes. So this just looks like a screenshot of T3
 9 magazine. I can't see any of our intelli—widgets on it
 10 at this point.
 11 Q. Right. Well, you have given this to us. You partnered
 12 with T3, did you not?
 13 A. That is correct.
 14 Q. Yes.
 15 My simple point, and we can leave it at this, Mrs
 16 Raff, is that in contrast to what we see here, which is
 17 a combination of tech and content, you see nothing
 18 equivalent to this on Foundem's page, do you?
 19 A. So I would reiterate that the publishers were content
 20 providers and we were providing the technology.
 21 Q. Yes.
 22 THE CHAIRMAN: Have I understood it, you were — this was
 23 part of a pitch to Jongo —
 24 A. Yes, Sir.
 25 THE CHAIRMAN: — and you were showing them this is the kind

44

1 of thing we can do, look what we have done with
 2 The Gadget Show, look what we have done with T3 —
 3 A. And Good Housekeeping.
 4 THE CHAIRMAN: — and therefore you were giving these as
 5 illustrations to Jongo of what could be done? Is
 6 that ...?
 7 A. That is exactly correct. I am surprised that
 8 the screenshot of T3 doesn't have a T3 intelli—widget
 9 visible on it.
 10 THE CHAIRMAN: Yes, but I now understand the context.
 11 Sorry, I was a bit slow on that, but I have got it now.
 12 Yes.
 13 MR MCGURK: Mrs Raff, I am very grateful for your time.
 14 A. Before we go to re—examination, would it be possible for
 15 me to revisit my catastrophic failure to answer
 16 Ms Rose's question of yesterday, briefly?
 17 THE CHAIRMAN: Well, it is certainly open to Mr West to
 18 raise that with you if ...
 19 MR WEST: Can we proceed with the re—examination in
 20 the first instance?
 21 THE CHAIRMAN: Yes.
 22 Re—examination by MR WEST
 23 MR WEST: It was put to you, Mrs Raff —
 24 THE CHAIRMAN: Just a minute, the microphone.
 25 MR WEST: It was put to you that the angel investment was

45

1 still on foot in April 2005 and I think that was
 2 document {M2/39}.
 3 Do you remember that?
 4 A. Yes, I do.
 5 Q. You were also shown the draft investment agreement at
 6 {M2/41}, and just to note on this the parties to that,
 7 including, first of all, Mr Wheatley.
 8 You were then shown a document at {M2/64}, where you
 9 sent certain accounting figures to Mr Wheatley.
 10 Can we look at that?
 11 A. Yes.
 12 Q. It was put to you that this shows the investment was
 13 still on foot at this stage.
 14 A. Yes, which I disagreed with, because that's August 2005,
 15 is it not?
 16 Q. Yes.
 17 I just wonder, there are a couple of other documents
 18 I would like to show you to see if they jog your memory.
 19 The first is {M2/55}.
 20 A. Yes, so that was — we still had a very warm
 21 relationship with both Richard Kilsby and Alan Wheatley
 22 and that's clearly me reaching out to let them know that
 23 the site that we had told them we were pivoting to
 24 developing was now about to be officially launched.
 25 Q. The other one is the next document {M2/56}; do you see

46

1 that?
 2 A. Yes. I do love Alan Wheatley.
 3 Q. Does that assist you in relation to the circumstances in
 4 which you came to send those figures to Mr Wheatley?
 5 A. Yes. So he was very sweetly offering to give us some of
 6 the benefit of his expertise in terms of managing
 7 cashflow as an early stage company, I think, is what
 8 that is suggesting. So "Money Marketing Management
 9 [and] Mentoring".
 10 Q. That is the four Ms, is it?
 11 A. Yes. Where he is very avuncular. He calls it
 12 mentoring. He's very avuncular.
 13 Q. Moving on. You were then shown a document, {M2/1338},
 14 you will recall.
 15 A. Yes.
 16 Q. Page {M2/1338/27}, possibly?
 17 Sorry, my page reference is missing. Could we just
 18 scroll through to see if we can find ... search box,
 19 I am looking for. Sorry, I am missing a page reference.
 20 THE CHAIRMAN: Within the report?
 21 MR WEST: Yes.
 22 THE CHAIRMAN: What are you looking ...
 23 MR WEST: That is it. {M2/1338/23}. I am sorry.
 24 You explained that as the user types a search into
 25 the box, the results are dynamically generated and you

47

1 refer to there being a screenshot of that.
 2 Could you look at {M3/491}. Sorry, it is {M3/493}.
 3 Is that what you wished to refer to?
 4 A. Yes, that's exactly right. So here we've typed in just
 5 "f-i-n" and you get an immediate dropdown of all of
 6 the models that would match "f-i-n", and each one of
 7 those is a link, so — so you could immediately go, if
 8 you know the particular camera that you're looking for,
 9 you don't have to type in the full model code, you can
 10 just go and click on whichever of those models is the
 11 one you were looking for.
 12 It was — in the early days, it was quite
 13 market—leading technology, because we had implemented it
 14 for travel and we were the first, or one of the first to
 15 bring this kind of very dynamic site search to
 16 comparison shopping. So those are all of the relevant
 17 FinePix models. I think I'm right in saying, though,
 18 that this is a very recent screenshot; is that right?
 19 So we made those screenshots — although we shut down
 20 our service in 2017, miraculously, our site search still
 21 works, so these are the models that are in the database
 22 from quite a while ago.
 23 Q. When was the functionality itself introduced?
 24 A. Really early. I think before 2010. I think Adam has
 25 that in his witness statement, exactly when it was

48

1 implemented, probably, is my memory. Certainly well
 2 before the Receptional thing.
 3 Q. I have been asked to show you the next slide as well
 4 {M3/493/2}.
 5 A. Right, so someone's typed one more letter and it narrows
 6 down. It only gives you models with "f-i-n" and "e" in.
 7 Q. The next slide {M3/493/3}.
 8 A. Yes, so obviously you shouldn't really continue typing
 9 at this point, because you've got all the models already
 10 and you could just click on the one you're interested
 11 in. But for completeness, I think we've included all of
 12 the screenshots.
 13 Q. You were asked a lot of questions about the Receptional
 14 report. Can I just show you two specific documents to
 15 see if they help refresh your memory. I think one of
 16 them you were shown this morning, but the first one is
 17 {M3/547}.
 18 A. Ah, yes. Yes. So Mr McGurk wasn't asking me about this
 19 at all.
 20 So when Wag Ed —
 21 MR MCGURK: (Off microphone — inaudible).
 22 A. Well, I think it is, because it goes to the whole —
 23 THE CHAIRMAN: Well, at the moment — just a moment, you
 24 have just been taken to a document.
 25 Mr West, you have not asked a question, I think.

49

1 A. Oh, gosh, sorry.
 2 MR WEST: Yes. The other document I was going to show you
 3 is {M3/548}.
 4 THE CHAIRMAN: Just look at those two for a moment and wait
 5 for the question.
 6 MR WEST: Which I think you were shown —
 7 A. Sorry, Sir.
 8 Q. — the same document at {M2/1162}, but it is essentially
 9 the same document. I think this carries on, so
 10 the beginning is on the next page {M3/548/2}. It may be
 11 helpful to start at {M3/548/1} with the second email.
 12 I think you were shown this this morning.
 13 (Pause)
 14 A. Thank you, yes, I've read it.
 15 Q. Over to the next page {M3/548/2}.
 16 (Pause)
 17 A. Yes, thank you, I've read it.
 18 Q. We looked at this this morning, did we not?
 19 Then your reply is on {M3/548/1}.
 20 (Pause)
 21 A. Yes, thank you.
 22 Q. My first question is, having looked at those documents,
 23 when Foundem retained Receptional, what did Foundem tell
 24 Receptional about why Foundem was suffering low
 25 rankings?

50

1 A. We said it was a penalty.
 2 Q. How did Mr Jones suggest he might be able to assist you?
 3 A. So he said that he was going to be at a search
 4 conference with members of the Google Search quality
 5 team in Iceland, and I must admit, that was the point
 6 where we got quite excited about hiring Receptional, not
 7 really for their SEO expertise, but for the fact that
 8 they might be able to have a man-to-man conversation
 9 with, in this case, Adam Lasnik. So, actually, when we
 10 hired them, we had a two-pronged hiring strategy where
 11 we — a much larger amount of the potential payment was
 12 what we called a "bonus", which we were going to pay to
 13 Receptional if they managed to persuade Google to lift
 14 our penalty, and the reason that we made such an
 15 enormous bonus is because we were concerned from our
 16 initial conversations that Receptional was having
 17 trouble really assimilating the fact that we had
 18 a penalty and that we had been whitelisted out of that
 19 penalty for AdWords, and so we wanted them to
 20 concentrate on the key pieces of information that we
 21 wanted them to advocate on our behalf to Google, such as
 22 our unique content.
 23 I believe that this email is Dixon Jones reporting
 24 back from his chat with Adam Lasnik, who's a member of
 25 Matt Cutts' Search Quality team, to me.

51

1 Q. How, if at all, did that background affect Foundem's
 2 view of Receptional's recommendations?
 3 A. Okay, it is coming back to me. So my memory is that
 4 the conversations that we were having with Receptional,
 5 following this conversation, were essentially, "We
 6 think, if we do a reconsideration request on your
 7 behalf, that might give Adam Lasnik the opportunity to
 8 properly consider whitelisting Foundem". So, after
 9 this, our focus was on the reconsideration request that
 10 Receptional was going to file on our behalf, and
 11 I believe Mr McGurk took me, yesterday, to some of
 12 the back and forth, where we were saying, "We'd like you
 13 to focus on the fact that we do have unique content,
 14 which is, for example, our price history graphs and how
 15 we process the data in order to present high quality,
 16 detritus free, comprehensive comparison shopping
 17 results". So, yes, all of that — I think, yesterday,
 18 I commented on how I was being surprisingly polite in my
 19 responses to their suggestions given that I thought they
 20 were off — incorrect, for example, in terms of
 21 the response to the site search, and actually that
 22 reminds me why I was being so polite. Thank you.
 23 Q. In any event, what did Receptional's intervention
 24 achieve?
 25 A. Nothing, because of course that reconsideration request

52

1 went into a process where no human being looked at it,
 2 because it was against an algorithmic penalty.
 3 Q. You mentioned in your evidence that certain — moving on
 4 to a different topic — manual reviewers within Google
 5 had realised the value of Foundem's site and you asked
 6 to be shown those documents, just to confirm what they
 7 are. {J2B/19}. Is that one of the documents you had in
 8 mind?
 9 A. Yes. So this is Dave W.
 10 Q. I don't think you need to go beyond identifying that
 11 that is what you had in mind.
 12 The other is {M1/183}.
 13 A. Oh, do you not want to leave the Tribunal time to read
 14 this?
 15 Q. We are going to come back to this document.
 16 A. Okay.
 17 Q. {M1/183}, please.
 18 Is that the other one you had in mind?
 19 A. This is an internal Google bug report against Foundem's
 20 penalty.
 21 Q. Yes. Again, we will come back to this in the course of
 22 the Trial.
 23 A. Oh, good.
 24 Q. You then refer to a — sorry, moving to a different
 25 topic — a Peter Barron email about whether Foundem had

53

1 been fully whitelisted.
 2 Can I ask you, is that {J3M/19/2}. Is that what you
 3 were referring to?
 4 A. Yes, the one at the bottom. So that's 8 December, so
 5 that's a week after we were whitelisted.
 6 Q. That is reporting a conversation with you?
 7 A. Yes, where I had said, "I believe that our score has
 8 risen" — well, according to this, I must admit, I can't
 9 remember the conversation, but, as is quite common now,
 10 some of my — my memory is refreshed from
 11 the disclosure.
 12 Q. If we look at the response you received to that request,
 13 {J2B/4/1}.
 14 A. Yes, so I found that — we found that response quite
 15 concerning, the final sentence:
 16 "... it can take a while for us to index large
 17 sites, so as we complete the process of indexing, you
 18 may see more incremental improvements."
 19 So that conflicted with our understanding of how
 20 whitelisting works, which I think has been confirmed
 21 throughout these proceedings, which is that
 22 the whitelisting is instantaneous, and so when they were
 23 saying that, we sort of interpreted it as potentially
 24 suggesting: if you're good and don't run to the press,
 25 it's possible that your rankings will improve more

54

1 significantly in some weeks or months.
 2 Q. How did Foundem react to receiving this message?
 3 A. I can't remember.
 4 Q. You were asked about when Foundem first raised
 5 the question of whether it had been fully restored and
 6 you referred to the Further Particulars. Could we look
 7 at those at {C3/2/1}.
 8 We see here that, from paragraph 1, that these are
 9 provided pursuant to an order of Mr Justice Roth in
 10 December 2015.
 11 A. Yes.
 12 Q. Requiring that you set out certain evidence, and we see
 13 that that is in 2:
 14 "... contemporaneous evidence which indicated,
 15 individually and ... cumulatively, that following
 16 Foundem's whitelisting ... Foundem's Google rankings ...
 17 had not ..."
 18 Go over to the next page {C3/2/2}, please:
 19 "... been restored to levels commensurate with
 20 a full lifting of all penalties ..."
 21 Do you recall when this pleading was first filed in
 22 its original form?
 23 A. So it followed this 2015 order, so I suspect it will
 24 have been some weeks after that order.
 25 Q. So early 2016, or thereabouts?

55

1 A. Oh, was it? Okay.
 2 Q. Well, based on your suggestion — I am sure we can find
 3 out the exact date from the records.
 4 If we go through towards the end of this document
 5 {C3/2/27}, if we go back a little bit — sorry, I do not
 6 have a page reference again —
 7 A. Oh, those are our ... oh.
 8 Q. {C3/2/16}. So you see these graphs comparing Foundem's
 9 performance on Yahoo! against Google set out in
 10 the Further Particulars?
 11 A. Yes.
 12 Q. Now, when did Foundem collect that information?
 13 A. My memory is that we started collecting it almost
 14 immediately after whitelisting, but Adam is better
 15 placed to answer that kind of question.
 16 Do we set it out in the Further Particulars, when we
 17 started to gather it?
 18 Q. Sorry, we have finished with that question.
 19 A. Okay, thank you.
 20 Q. I am just checking if there is anything else I need to
 21 ask you.
 22 Can I just have a second to take instructions?
 23 (Pause)
 24 I am going to address the point to which you
 25 referred in submissions rather than in re-examination,

56

1 unless the Tribunal wishes to ask anything further
 2 about it. So those are all the questions that I had.
 3 Questions from THE TRIBUNAL
 4 THE CHAIRMAN: Yes, just a couple of questions, Mrs Raff.
 5 If we go into your statement, your Fifth Statement,
 6 which is the one at tab 3 in the bundle {H2A/3/1}, and
 7 you go to paragraph 33 {H2A/3/15}, you see Figure 1:
 8 "The Wayback Machine's copy of Foundem's home page
 9 ... on ... May 2005."
 10 A. Yes, Sir.
 11 THE CHAIRMAN: There are the various — I think they are
 12 called "Available Now ...", "Flights", "Hotels", "Rental
 13 Cars", "Books", and then "Coming Soon ...", "Music",
 14 "Autos".
 15 But what happened to the flights and the hotels
 16 and — because then everything thereafter seems to be
 17 a comparative shopping site. What happened to them,
 18 the flights?
 19 A. Oh, yes. No, they were — absolutely, they were
 20 maintained. So we had — we were a — we were
 21 a multi-vertical vertical search service, so we had
 22 flights, hotels and rental cars in our travel domain, we
 23 had a property search service and a job search service.
 24 Because the Decision focuses on comparison shopping,
 25 that tends to get most of the attention, but also, from

57

1 the point of view of our claim, the vast, vast majority
 2 of our pages that were pages that are crawlable by
 3 Google are comparison shopping pages, because the — for
 4 example, the flights search form is just a search form,
 5 it's very dynamic inventory, so we wouldn't have any
 6 static pages for Google to index and rank, and so it is
 7 the comparison shopping pages that are central to our
 8 claim.
 9 THE CHAIRMAN: But how successful was the flights comparison
 10 aspect of the business?
 11 A. It — we didn't know at the time that the penalties were
 12 focused on the characteristics of comparison shopping.
 13 THE CHAIRMAN: No, I am asking you how successful in your
 14 business was the flight service?
 15 A. The flight search element, because we were under
 16 a site-wide penalty, we — we didn't do anything to
 17 market the flight search service, so it wasn't
 18 successful independently. If we had known at the time
 19 what we know now, we may well have taken the travel
 20 search service and launched it separately, but that is
 21 hindsight, we didn't know that the penalties were
 22 targeted at comparison shopping.
 23 THE CHAIRMAN: But why did you not market the flight search
 24 service?
 25 A. Separately?

58

1 THE CHAIRMAN: Yes.
 2 A. Because the USP of Foundem is a multi-vertical vertical
 3 search service and we didn't know that if we had hived
 4 off travel separately, it would have been penalty-free
 5 to a different domain.
 6 THE CHAIRMAN: But you did not know how the penalties
 7 operated at that time? You have learnt a lot since, but
 8 you did not know then?
 9 A. That is correct.
 10 THE CHAIRMAN: There are, as one knows, quite a lot of
 11 flight comparison services that seem to do quite well;
 12 that is right, is it not?
 13 A. That's correct, yes.
 14 THE CHAIRMAN: Here you are with your new technology
 15 launching a service which includes flight comparison.
 16 Why did you not market that?
 17 A. We didn't hive it off separately, because we didn't know
 18 that that would allow it to emerge unpenalised.
 19 THE CHAIRMAN: But you could market it still so that people
 20 would type in "Foundem flights" or whatever?
 21 A. It didn't — it didn't feel like an option, because we
 22 were suffering from a site-wide penalty. With
 23 the benefit of hindsight, that would have been a good
 24 idea, but at the time, we were just — Foundem was under
 25 a site-wide penalty.

59

1 THE CHAIRMAN: I see.
 2 Then, again in your statement, going on to page
 3 {H2A/3/30}, you have got Figure 2 on page 30, and then
 4 page {H2A/3/31}, a similar Figure 3, that is taken from
 5 your presentation to Jongo, which we heard a bit about.
 6 I did not — can you just explain what these figures are
 7 showing?
 8 A. Yes, Sir.
 9 THE CHAIRMAN: I just do not understand it at the moment.
 10 A. Yes, Sir.
 11 So when we were doing pitches to publishers, and
 12 actually, yeah, the one on the — on page {H2A/3/30} is
 13 from The Gadget Show pitch, which I think Mr McGurk
 14 brought up earlier —
 15 THE CHAIRMAN: Yes.
 16 A. — then the one on the right is the Jongo pitch. So
 17 when we were preparing to do a pitch, we would take
 18 Amazon's best-selling products across and we would
 19 compare them to — compare Foundem's results for those
 20 best-selling products to the other leading CSSs in
 21 the UK at the time, so PriceRunner, PriceGrabber, Kelkoo
 22 and Shopping.com, because back in 2007 Google Product
 23 Search was not one of the leading CSSs, and we would
 24 compare them for what we felt were the two critical
 25 success — critical performance factors for a CSS, so

60

1 best price and most merchants, where if you — if you
 2 return results from the most merchants that shows you're
 3 the most comprehensive comparison shopping service. In
 4 each of these, for the best price and the most
 5 merchants, for each one of these bundle of Amazon best
 6 sellers, so the hot products at that moment, we would
 7 highlight the result that had the most merchants or
 8 the cheapest price.
 9 THE CHAIRMAN: I understand. So in the one on page
 10 {H2A/3/30}, for the "Digital SLR", the Canon model —
 11 A. Yeah.
 12 THE CHAIRMAN: — PriceRunner had 16 merchants and a price
 13 of 426 —
 14 A. Yes.
 15 THE CHAIRMAN: — and Foundem has 22 merchants and a best
 16 price of £429.87.
 17 A. Exactly.
 18 THE CHAIRMAN: Yes, I understand. Thank you.
 19 A. So in each of those cases you're seeing that — so this
 20 is not — we're not picking the things that we're best
 21 at, we're using the Amazon's best sellers.
 22 THE CHAIRMAN: No, I have got it. I just did not understand
 23 it, and it was entirely my fault.
 24 A. No, I —
 25 THE CHAIRMAN: I have got it now.

61

1 A. When I brought up the slide I would always do lots of
 2 talking to explain it and you do have the benefit of
 3 that, Sir.
 4 THE CHAIRMAN: Yes, I have got it now.
 5 A similar question, on {H2A/3/47} of your statement
 6 —
 7 A. Yes.
 8 THE CHAIRMAN: — there is another, Figure 6, and that is —
 9 there is the date of the 24-hour whitelisting, I think.
 10 A. 24-hour de-whitelisting.
 11 THE CHAIRMAN: De-whitelisting, which is the —
 12 A. Yes, so the algorithm — sorry.
 13 THE CHAIRMAN: — I think 21 to 22 September, and that, in
 14 the middle, what it is saying is it is going down and
 15 then it goes back up; is that what you are showing on
 16 these?
 17 A. Yes, so it's — it's — there is a one-day period where
 18 they switched — where Google switched back on our
 19 Algorithm A penalty.
 20 THE CHAIRMAN: Yes.
 21 A. And that shows very clearly the direct effects of
 22 switching a 90% penalty on and off in ranking.
 23 THE CHAIRMAN: But when it says in number — and
 24 the percentages in "#1 on Google", "Top 3 on Google",
 25 what is that?

62

1 A. Yes, Sir. I'm so sorry, I have done a really rubbish
 2 job of explaining this. This is one of Adam's things,
 3 he's much better. So basically, we were monitoring
 4 Foundem's rankings —
 5 THE CHAIRMAN: Yes.
 6 A. — across — I can't remember exactly how many keywords,
 7 300 springs to mind, product price comparison keywords,
 8 and the blue line shows the percentage of those keywords
 9 for which Foundem was number 1 on Google and then
 10 the green line is the percentage of those keywords for
 11 which we were top 5 on Google, and as you can see, for
 12 the keywords for which we were relevant, we were getting
 13 60% number 1 until the moment of the penalty when
 14 suddenly we disappeared completely.
 15 THE CHAIRMAN: Yes.
 16 What sort of keywords were you then using for this?
 17 What kind of keyword?
 18 A. So they were product price comparison keywords for which
 19 Foundem would be relevant, and I can't remember any
 20 specific examples, I'm so sorry.
 21 THE CHAIRMAN: But what — can you give an illustration?
 22 A. So maybe "Fuji FinePix DX60" or "Compare prices Fuji
 23 FinePix DX60" or "cheapest".
 24 THE CHAIRMAN: But with — identifying a particular product?
 25 A. That's — I think there definitely will have been lots

63

1 and lots of those, but probably with additional words
 2 that make it clear that you're looking for
 3 a comparison shopping, so "cheapest" or "best price".
 4 I'm really not the person to ask, though. Adam would
 5 probably do better at answering this.
 6 THE CHAIRMAN: (Overspeaking) — ask him —
 7 A. I'm so sorry.
 8 THE CHAIRMAN: — I ask because it is in your report. Thank
 9 you.
 10 Then the Receptional report, you remember you were
 11 asked quite a lot of questions about that?
 12 A. Yes.
 13 THE CHAIRMAN: You were taken through it in some detail.
 14 They were experts in — consultants in search engine
 15 optimisation, I think, and you engaged them and you paid
 16 them for the service, no doubt; that is right?
 17 A. Yes, Sir.
 18 THE CHAIRMAN: They produced reports suggesting various
 19 things that you might do, and we saw some you did and
 20 some you did not agree with. I think that is right, is
 21 it not?
 22 A. Yes, Sir.
 23 THE CHAIRMAN: But when you were first asked about how that
 24 report arose, you said to counsel that the reason for
 25 going to Receptional was to get "a clean bill of health

64

1 from an SEO ... firm", but actually, what you were
 2 getting was detailed advice on how to optimise your site
 3 and service, were you not?
 4 A. Yes, Sir. The detailed advice was not all accurate.
 5 THE CHAIRMAN: Maybe, but that is what they were giving you?
 6 A. Yes, that's correct.
 7 THE CHAIRMAN: So how does that fit with saying that you
 8 went to them to get "a clean bill of health"?
 9 A. Well, sometimes people that you engage don't give you
 10 what you want. But taking a step back, when we — in
 11 the beginning of 2009, after The Gadget Show enquiry,
 12 we'd reached out to Google and they'd essentially told
 13 us, "Do not darken our door again", and so we felt we
 14 had no choice but to take our case public —
 15 THE CHAIRMAN: Yes.
 16 A. — and because it's complicated, we had engaged
 17 a technology PR company to assist us with that, and one
 18 of the things they did was they said, "Well, maybe it
 19 would be a good idea to engage an SEO company to get
 20 a clean bill of health so that if any journalists ask
 21 about that, you can say 'Yes, we have had an independent
 22 SEO company look over our site and we don't have any
 23 basic structural issues that would, for example, prevent
 24 it being crawled'".
 25 THE CHAIRMAN: Yes.

65

1 A. So that was the idea, and they knew of an SEO company,
 2 it sounds to me from Mr McGurk's stuff, this morning,
 3 like perhaps they knew of them as part of their
 4 Microsoft engagement, but we will never know that, and
 5 so they introduced us to Dixon Jones.
 6 Did that answer your question?
 7 THE CHAIRMAN: Yes, I think so.
 8 So you were hoping they would give you a clean bill
 9 of health, is that right, that you could then use if
 10 anyone in part of your PR campaign —
 11 A. Yes, and —
 12 THE CHAIRMAN: — is that right?
 13 A. Yes, and —
 14 THE CHAIRMAN: But that is not what you got from them,
 15 was it?
 16 A. No, we got some advice, some of which might — some of
 17 which would have been very helpful if we had not been
 18 suffering under a penalty, some of which was definitely
 19 down right wrong.
 20 THE CHAIRMAN: Yes.
 21 A. But the key thing is that the reason — once we had been
 22 introduced to them, what actually, as we've been
 23 reminded this morning, we were most interested in was
 24 the potential of a direct contact to Google to try and
 25 persuade them to lift the penalty —

66

1 THE CHAIRMAN: Well, I think you said there were two aspects
 2 of engagement.
 3 A. Yes, exactly.
 4 THE CHAIRMAN: That was one.
 5 A. Yes.
 6 THE CHAIRMAN: The other was getting a report.
 7 A. Yes.
 8 THE CHAIRMAN: But it was not really, reading the report,
 9 whether you agree with it or not, it was not the clean
 10 bill of health that you could show other people that you
 11 had hoped for, was it?
 12 A. I don't think we were ever expecting to show a report to
 13 anyone, but, yes, you're correct, Sir.
 14 THE CHAIRMAN: Any questions arising out of that?
 15 MS ROSE: You said that you politely declined investment.
 16 A. Yes.
 17 MS ROSE: How much investment were you being offered?
 18 A. I can't remember, but I think it was 140,000. Does
 19 Mr McGurk know?
 20 MS ROSE: So it is just the investment that was in that
 21 draft agreement?
 22 A. Yes, that's correct.
 23 MS ROSE: That is the only investment that you politely
 24 declined?
 25 A. That's correct, yes, and we didn't seek funding after

67

1 that.
 2 MS ROSE: But why did you not seek funding? Why did you not
 3 seek investment?
 4 A. Because once we were under a penalty, it was not
 5 possible to go to investors.
 6 MS ROSE: But this was before you had launched the site.
 7 This was the beginning of the year.
 8 A. Yes, so — so the reason that we politely declined it
 9 was because we knew that we had developed sufficient
 10 that we would be able to get to the end point of
 11 launching a service without requiring investment. So we
 12 thought: well, let's launch our service and then we can
 13 think about going back for investment. Because your
 14 valuation rises a lot when you have a functioning
 15 service, and so we had developed so much of it already
 16 by the time of our US — second US trip that we decided,
 17 strategically, it would be smarter to just finish that
 18 development effort and launch the service and then go
 19 back for more investment.
 20 But in the event, within days of us launching
 21 the service, we were struck by the site-wide penalty and
 22 that immediately rules out being able to seek
 23 investment, because any internet-savvy investor knows
 24 that all these websites are dependent on traffic from
 25 Google, and if you are under a penalty, then that is not

68

1 investable in.
 2 MS ROSE: In order for your site to be successful, it needs
 3 lots of merchants with — who are on your site, whether
 4 through direct relationships or through affiliate
 5 networks, and it needs lots of consumers clicking onto
 6 your site and coming to your site and then buying stuff,
 7 and it needs to be — to come up in search results.
 8 Those are the sort of three key things?
 9 A. Yes.
 10 MS ROSE: Now, you thought you could get the merchants for
 11 free using the affiliate feeds?
 12 A. Easily. It was low—hanging fruit, Madam.
 13 MS ROSE: You thought you could get the search results for
 14 free using Google's generic search, the organic search?
 15 This is before you launched.
 16 A. Yes, I mean, that is sort of the promise of the internet
 17 in those days —
 18 MS ROSE: But for people to know your brand when you are
 19 a new comparison shopping website, and you are not
 20 the only one, did you not need an advertising campaign
 21 to raise your profile with the public so that people
 22 associate Foundem with multifactorial vertical search?
 23 A. Multi—vertical vertical search service.
 24 MS ROSE: Yes.
 25 A. No, that just isn't how it works in comparison shopping.

69

1 MS ROSE: What about comparethemarket.com?
 2 A. That is slightly different. So Compare the Market and
 3 MoneySuperMarket, they're in financial
 4 comparison shopping and that has an enormous revenue per
 5 visitor, and so that sector does appear to have done
 6 television advertising campaigns, and I think that that
 7 is down to the revenue per visitor.
 8 I'd also say it's slightly different because
 9 financial comparison shopping, once they have you, they
 10 have your details and they know they can get you to come
 11 back. So, for example, if you're looking for car
 12 insurance or — they know that your car insurance is
 13 going to come back up in a year, and so the value of
 14 attracting a new user is massively greater than
 15 the value of a visitor to a comparison shopping service.
 16 So I — I believe that no comparison shopping services
 17 have ever done television campaigns, because it just
 18 isn't economically viable in this market.
 19 MS ROSE: But, I mean, it would not necessarily have to be
 20 a television campaign. There are other kinds of
 21 advertising.
 22 A. Yes, and we do do a little bit of that. We did do
 23 the sort of PR name checks.
 24 MS ROSE: Can we just go to {M4/229}.
 25 I think we looked at this earlier when you were

70

1 being cross—examined this morning.
 2 A. Yes.
 3 MS ROSE: It is the — as I understand it, this is your
 4 organic traffic from Google?
 5 A. Yes, I believe that's true.
 6 MS ROSE: It shows the dramatic impact of the whitelisting?
 7 A. Yes, so it goes from essentially zero to 2,500 visitors
 8 per day, roughly, I think.
 9 MS ROSE: But there is a spike earlier, which you linked,
 10 I think, to The Gadget Show in December 2008?
 11 A. That's correct.
 12 MS ROSE: Which is quite a significant spike.
 13 A. Yes, but very short—lived.
 14 MS ROSE: So that is the impact — is that the impact of
 15 publicity?
 16 A. So that's the impact —
 17 MS ROSE: (Overspeaking — inaudible).
 18 A. Yes, the leading technology television programme did
 19 a survey of, I think, the 12 leading comparison shopping
 20 services and they unequivocally named Foundem the best,
 21 and they did it in December, so the month before
 22 Christmas, and that is the impact of really a very
 23 positive national television name check, and you'll see
 24 that for one day it hits 40,000 and then it tails off
 25 within a week or two. So, yeah, that — that is better

71

1 than an advertisement in the middle of —
 2 MS ROSE: So there was no algorithmic change at that point?
 3 A. No, that's correct. That was —
 4 MS ROSE: That is caused by publicity, right?
 5 A. Exactly, and that is better than an advert in the — in
 6 the advert break of Love Island, because that's people
 7 watching a television programme and having television
 8 editorial saying: this is the best CSS and you should
 9 use a comparison shopping service if you're doing your
 10 Christmas shopping. In fact, thank you so much for
 11 raising this, Ms Rose, because that is showing you that
 12 television advertising is not effective, because that's
 13 the best possible name check you could possibly get and
 14 it hits 40,000 for one day and then it massively tails
 15 off.
 16 MS ROSE: That is just one TV show on one occasion, right?
 17 A. Yes.
 18 THE CHAIRMAN: Is that not something you could use in
 19 magazine advertising, the fact that The Gadget Show has
 20 named you as the best comparative shopping site and that
 21 you have got that accolade —
 22 A. So —
 23 THE CHAIRMAN: — to perpetuate the message?
 24 A. Magazine advertising really doesn't translate to online.
 25 So if you put an advert for a web service in a magazine,

72

1 the translation to online visits is incredibly poor.
 2 THE CHAIRMAN: Yes.
 3 Professor Smith has a question.
 4 PROFESSOR SMITH: I would like to come back to the first
 5 issue that the Chair raised with you a few minutes ago,
 6 the screenshot showing your homepage in 2005. We
 7 possibly do not need to go to it again, but it is
 8 {H2A/3/15}. I want you to say a little bit more about
 9 your answer to the Chair's question about why you did
 10 not pursue these, the service in "Flights", "Hotels",
 11 "Rental Cars" and so on.
 12 At some point after this, if I recall what you said
 13 yesterday rightly, you decided really to focus on
 14 comparative shopping using affiliate sites largely, and
 15 at some point along the way you got hit by — or you
 16 realised you would be hit by a Google penalty and you
 17 learned from Receptional and others that the Google
 18 penalty was associated with the kind of content that
 19 affiliate sites produce, which Google did not like.
 20 That problem would not have affected you if you were
 21 running a flight service or a hotel service or a rental
 22 car service. You would not be using affiliates for
 23 those things, would you?
 24 A. Yes, Professor, we would.
 25 PROFESSOR SMITH: You would?

73

1 A. Yes. So — so long before the Receptional thing, which
 2 was in 2009, as soon as we were hit by the penalty in
 3 the summer of 2006, we suspected that it was to do with
 4 a lack of original content, because Google had been
 5 making quite a lot of public noises that it doesn't like
 6 a lack — that it likes original authored content, and
 7 if you look at our initial appeals to Google, way back
 8 in the summer of 2006, we're trying to explain that
 9 although we don't have original authored content, like
 10 you would see on the Good Housekeeping website, our
 11 value is a service, and those "Flights", "Hotels" and
 12 "Rental Cars" domains were also monetised with affiliate
 13 relationships. But I agree with you, they weren't
 14 through feeds, they were — particularly in the flights
 15 domain, they were live searches. But that dynamic
 16 inventory is only — flights has incredibly dynamic
 17 inventory, and so those pages are only there when you,
 18 as a user, fill in a search form for flights to New York
 19 in September; they're not crawlable by a search engine.
 20 PROFESSOR SMITH: So they would not be hit by a Google
 21 penalty had you — had you dropped the comparative
 22 shopping service and concentrated on the things in this
 23 screenshot here?
 24 A. So our understanding was that we had a site-wide
 25 penalty. So I hear you now, with hindsight, but just

74

1 back in 2006, we did not know that. The existence of
 2 penalties was secret.
 3 PROFESSOR SMITH: But when the — but you knew that
 4 the penalty was associated with your comparative
 5 shopping service?
 6 A. No, we didn't. We knew it was associated with a lack of
 7 original content and being a vertical search service.
 8 So I think some of our original — so now everyone's
 9 focusing on the comparison shopping element for various
 10 reasons, but back then, we were saying to Google, "We
 11 are a vertical search service and the value of vertical
 12 search is that". So vertical search doesn't have much
 13 original content because we're searching and summarising
 14 the content of others, be it live in flights or
 15 aggregated in comparison shopping. So, no, we
 16 absolutely, in those days — if we had known, we
 17 definitely would, Professor, have launched a travel only
 18 service, but we definitely did not know that, because it
 19 also lacks original content, because it's a search
 20 service.
 21 PROFESSOR SMITH: I am sorry, I am probably repeating
 22 a question, but if it lacked original content, it would
 23 have been hit by a penalty, would it?
 24 A. Well, exactly. That was what we thought in 2006, yes.
 25 PROFESSOR SMITH: But in fact there are plenty of non-Google

75

1 services that do hotel bookings and comparative car
 2 rentals —
 3 A. Yes, and in —
 4 PROFESSOR SMITH: — that have not been wiped out by Google
 5 penalties?
 6 A. That is correct, and in 2006, there were plenty of CSSs,
 7 established incumbents, that had not been wiped out by
 8 Google penalties. So we saw established players in both
 9 of those markets, we saw us as a new entrant being hit
 10 and we didn't know that the travel search would probably
 11 have been fine if we had launched a separate service.
 12 I wish we had. We all might not be here today.
 13 PROFESSOR SMITH: Thank you.
 14 THE CHAIRMAN: Any questions arising out of?
 15 Further re-examination by MR WEST
 16 MR WEST: One question arising out of Ms Rose's questions to
 17 you about the traffic graph. If I can find the graph
 18 (inaudible), yes, {M4/229}. In particular, the spike
 19 around December 2008.
 20 The question is simply how did those users find you?
 21 A. They came to Google and they typed in "Foundem",
 22 I believe.
 23 Q. So that is what is known as a navigational search; is
 24 that right?
 25 A. Yes, a navigational query.

76

1 Q. Thank you.
 2 A. For some of our penalty we did not even get returned for
 3 the keyword "Foundem", but during this period, we were
 4 being returned for the keyword "Foundem".
 5 Further cross-examination by MR MCGURK
 6 MR MCGURK: Sir, just one follow-on question from me, if
 7 I may.
 8 THE CHAIRMAN: Yes.
 9 MR MCGURK: On the same graph, Mrs Raff, and the spike in
 10 December 2008 following The Gadget Show. In response to
 11 Ms Rose, you indicated that that generated, is it,
 12 40,000 hits?
 13 A. I'm looking at the dot there.
 14 Q. Yes, and that constitutes the spike as a result of that
 15 publicity. Those 40,000 people tailed off very
 16 quickly —
 17 A. Yes.
 18 Q. — and they did — that is nothing to do with an
 19 algorithm and everything to do with the fact that, when
 20 they got to your site, they did not like what they saw
 21 and they did not come back; that is the reason for
 22 the fall-off, is it not?
 23 A. No, absolutely not. We have lots and lots of very
 24 positive user feedback. The reason for the rapid
 25 tail-off is that when you get a mention in the press or

77

1 on television, that is very — the traffic that that
 2 brings is very ephemeral and you will see similar
 3 traffic graphs for any site that is mentioned in
 4 the press like that —
 5 Q. They came to your site?
 6 A. Yes.
 7 Q. They could have come back to your site if they thought
 8 the site was good?
 9 A. Well, you'll see there is a bit of tailing off, up to in
 10 fact January to February, and so those are probably
 11 people doing repeat visits. But the way that
 12 comparison shopping works is that people don't tend to
 13 have a favourite comparison shopping service. They
 14 start their search on Google and they are expecting to
 15 be presented with, for whatever particular thing they're
 16 searching for, the most relevant page on the most
 17 relevant CSS for that particular query, because Google
 18 is the gateway to the internet.
 19 Further re-examination by MR WEST
 20 MR WEST: Could you be shown {M3/491}. The date of
 21 The Gadget Show was December 08; is that about right?
 22 A. Yes. I think it might have been sort of — yes,
 23 mid-December/early December.
 24 Q. So this is in chronological order and it sets out some
 25 customer feedback. So if we go to December 2008.

78

1 The date is on the right-hand side. Do you remember
 2 the date of The Gadget Show?
 3 A. I don't know, but this is clearly soon after it, so ...
 4 Q. (Inaudible).
 5 A. Yeah, so that looks like it, doesn't it? So sort of
 6 13th — 12th or 13th onwards.
 7 Q. (Off microphone) Just looking, for example, at 108
 8 {M3/491/7}; do you see that one?
 9 A. I'm so sorry, what do you mean? Oh, 108. Right, yes.
 10 Q. Does this assist you with answering Mr McGurk's question
 11 about what users found when they got to your site
 12 following this recommendation?
 13 A. Well, clearly this user found it very useful and much
 14 better than Froogle.
 15 Q. If one goes down to the bottom of the page, at 117, one
 16 sees another user from The Gadget Show. 115.
 17 Over the page again to page {M3/491/8}.
 18 A. Right, that's the price history graph that they're
 19 saying they found useful.
 20 MR WEST: I do not propose to go through all of these, Mrs
 21 Raff, but you have the point.
 22 Questions from THE TRIBUNAL
 23 MS ROSE: Can I just ask you, what is this document?
 24 A. So this is a concatenation of positive — a selection of
 25 positive user feedback. So Google — we had disclosed

79

1 all of our user feedback, maybe over a decade ago now,
 2 and Google added a selection of negative feedback to
 3 the bundle, so we added a selection of positive feedback
 4 to the bundle and then we created one document where we
 5 concatenated that into one for easy look-up.
 6 MS ROSE: But this is only positive feedback?
 7 A. Exactly. In the same way that Mr McGurk was taking you
 8 to only negative feedback.
 9 THE CHAIRMAN: It was put together, not something you did at
 10 the time when preparing —
 11 A. No, this was put together very recently after Google
 12 added to the Trial bundle the negative, we added lots of
 13 positive stuff to the Trial bundle, and then we created
 14 one concatenation of that, rather than leaping
 15 through —
 16 MS ROSE: So it is a compilation of positive feedback?
 17 A. Exactly.
 18 I would say that in terms of —
 19 PROFESSOR SMITH: So —
 20 A. Sorry, Professor.
 21 PROFESSOR SMITH: So if we looked at the concatenation
 22 document, we would see if there was any negative
 23 feedback from —
 24 A. No, no, no, this is only positive —
 25 (Simultaneous speakers — inaudible)

80

1 THE CHAIRMAN: There are two different compilations.
 2 A. Yes, I would say that all services, if they invite
 3 feedback, and we had a, "How are we doing", on every
 4 page of our site, all services get negative feedback,
 5 and that isn't just a guess, because of my background in
 6 developing internet services before I founded Foundem,
 7 I know that all services that invite feedback get
 8 negative feedback.
 9 I think the point of this is that no truly spam
 10 service gets positive feedback, so what this is showing,
 11 whether it's, you know, it doesn't matter
 12 the percentages of positive feedback or bug reports or
 13 negative feedback, the key is that no spam site or low
 14 quality site gets positive feedback like this. So this
 15 is just — it doesn't matter the percentages, all sites
 16 get negative feedback.
 17 I'm so sorry I didn't answer your question from
 18 yesterday.
 19 THE CHAIRMAN: Which question are you referring to?
 20 A. So Ms Rose asked me a question which — it was quite
 21 stressful yesterday, and my brain just fried, but
 22 actually, overnight, at 2 in the morning, I realised it
 23 was a very important question.
 24 (Off microphone discussion)
 25 Well, we'll come back to it in closings, with

81

1 apologies.
 2 THE CHAIRMAN: Yes, I think you can do that, unless Mr West
 3 wants to ... no. No.
 4 Thank you very much, Mrs Raff. You have been in
 5 the witness box a long time. You are now discharged as
 6 a witness.
 7 A. Thank you, Sir.
 8 THE CHAIRMAN: Not only can you leave the witness box, you
 9 can talk about the case with your team and anybody else.
 10 We will take a short break and come back at 10 to
 11 12.
 12 A. Thank you, Sir.
 13 (The witness withdrew)
 14 (11.42 am)
 15 (A short break)
 16 (11.53 am)
 17 THE CHAIRMAN: Mr McGurk, we will sit until 1.15 so that you
 18 can have that time fully for cross-examination and then
 19 any re-examination after lunch.
 20 MR MCGURK: Thank you, Sir.
 21 There is one matter I need to raise with you that is
 22 relevant to Mr Raff's cross-examination.
 23 THE CHAIRMAN: Yes.
 24 MR MCGURK: On Saturday, my solicitors requested that
 25 Hausfeld give consent for the addition of a single graph

82

1 to the Trial bundle. I am going to hand up the graphs
 2 that we are seeking to add. We were told this morning
 3 that consent would not be forthcoming.
 4 (Handed)
 5 It is in relation to the new entrants point, and
 6 the graph we are seeking to add to the bundle simply
 7 pulls out several new entrants to the CSS market and
 8 plots their traffic over the period 2005/2010 in light
 9 of the newly emphasised allegation that new entrants
 10 were precluded from market entry by operation of
 11 Algorithm A.
 12 Now, just to be clear about this —
 13 NEW SPEAKER: (Off microphone — inaudible).
 14 MR MCGURK: I am so sorry. It was sent to Hausfeld on
 15 Saturday, as I say.
 16 It is important that the Tribunal is aware that this
 17 is simply the representation of data that is already in
 18 the bundle and that has already in fact been used by
 19 Mr Raff to prepare Figure 30 of his witness statement,
 20 and he indicates at footnote 28 of his —
 21 MS ROSE: (Off microphone — inaudible).
 22 MR MCGURK: {H2A/2/60}.
 23 So it is the very same data that was used to produce
 24 this graph, and if you look at footnote 28, you see
 25 the GOOG-SHOP reference, and the data is also in

83

1 the Trial bundle separately at {J2A/21}.
 2 I should say, this graph was physically produced by
 3 Oxera. The objection that is now taken is that it
 4 is "expert evidence". It is nothing of the sort. It is
 5 just simply extracting from the data the traffic figures
 6 for new entrants and in the same way that Mr Raff has
 7 sought to do by reference to the same data in his
 8 Figure 30.
 9 MS ROSE: (Off microphone — inaudible) — very hard to read
 10 Figure 30 because it is very, very tiny. Are the lines
 11 that we see on the new graph also on Figure 30?
 12 MR MCGURK: No, not all of them. We have very deliberately
 13 focused on the new entrants.
 14 THE CHAIRMAN: If we could make Figure 30 slightly bigger,
 15 please. I am looking at Twenga.
 16 MR MCGURK: Twenga —
 17 THE CHAIRMAN: It is the same — it should show exactly
 18 the same going up to — so (inaudible) shows Twenga at
 19 up to —
 20 MS ROSE: (Overspeaking — inaudible).
 21 THE CHAIRMAN: — 30 million, and here Twenga is more like
 22 2 million. It is not clear what period this is, is it?
 23 MR MCGURK: Well, it is November '04 through to
 24 November 2010.
 25 THE CHAIRMAN: No, no, it is per month, each month,

84

1 the number of clicks. If we compare that — so it
 2 should be the same. But November '09, Twenga is
 3 20 million, and November '09 here, it is nothing like
 4 that —
 5 MR MCGURK: The difference, Sir, if I may, is that Figure 30
 6 traffic is UK traffic, whereas if you look at the top of
 7 the graph that has been prepared from the data —
 8 THE CHAIRMAN: Oh, I see, this is all over —
 9 MR MCGURK: So it is 13 countries, yes.
 10 THE CHAIRMAN: This is 13 countries. Oh, I see, so it is
 11 actually quite different.
 12 MS ROSE: So it is different data.
 13 THE CHAIRMAN: So it is different data.
 14 MR MCGURK: I am sorry, Madam? Yes. So there is an overlap
 15 in data, but the reason they do not track is because —
 16 THE CHAIRMAN: Yes, so the position is very different from
 17 other countries from the UK, clearly.
 18 MR MCGURK: We did prepare another version showing monthly
 19 organic traffic of the same new entrants in the UK only.
 20 THE CHAIRMAN: Well, I mean, aside from the fact that it is
 21 a little hard to read because of its size, given that
 22 Twenga and — what are the other ones, the shops down
 23 the side — the others are not in the UK, are they?
 24 The find is not — well, it does not feature much, does
 25 it? But Ceneo, is that not in the UK at all?

85

1 (Off microphone discussion)
 2 MR MCGURK: So, Ceneo is in a European country —
 3 THE CHAIRMAN: Just a moment.
 4 (Pause)
 5 As far as Twenga is concerned, it is on this graph,
 6 so the point — and if it is a new entrant in 2006, we
 7 can certainly blow up the graph, you can make the same
 8 point. To start going into other countries at this
 9 point and bringing in data from other countries in this
 10 way, part-way through the Trial, after experts' reports
 11 are in, the point that Foundem could not get enough
 12 traffic to satisfy certain aspects of assessment has
 13 been that because it is a new — just started, has
 14 certainly been a point in play from the witness
 15 statements.
 16 MR MCGURK: Well —
 17 THE CHAIRMAN: It was pretty clear to us reading in that
 18 that was a point being made. So we think it is just
 19 a bit late to introduce that at this stage, so
 20 the answer is no.
 21 But the point about Twenga as a new entrant is there
 22 on the graph, and we did actually want to ask for
 23 a blown-up, a better enlarged, probably on A3. Even on
 24 screen, zooming up, it is still a bit small and hard to
 25 read, so if we could please have that, and —

86

1 MR MCGURK: Just a final point —
 2 THE CHAIRMAN: I mean, can I also — while we have this page
 3 open, can I just ask, looking at pages 61 and 62 and 63
 4 {H2A/2/61–63}, there is a Confidential highlighting of
 5 Figure 31, just where it says "Figure", similarly on
 6 page 62 and 63 of the statement figure. I am not clear
 7 at all what that means. Is it that the data in — above
 8 that is all Confidential or is it — can we have some
 9 clarity on that, please? The same for Figure 34.
 10 If they are Confidential, it would be presumably
 11 Google's confidentiality, would it not, that would be
 12 your client, Mr McGurk, who is saying these are — are
 13 those Figures 31, 32, 33 and 34, are they Confidential?
 14 MR MCGURK: This is the redesignation point I made
 15 yesterday.
 16 THE CHAIRMAN: Yes.
 17 MR MCGURK: Post-redesignation, it was for Hausfeld to apply
 18 the redesignations to their own statements.
 19 THE CHAIRMAN: Well, has it been redesignated? I do not
 20 know. It would be your client's confidence, I think.
 21 MR MCGURK: We are checking that, Sir.
 22 THE CHAIRMAN: Yes, that is all I want —
 23 MR MCGURK: Thank you.
 24 THE CHAIRMAN: — want to know. If it is Confidential,
 25 presumably it is the data at the graph above and

87

1 the tables above that are Confidential.
 2 The other thing I would say is that on page
 3 {H2A/2/65} of the statement, that illustration is quite
 4 difficult or impossible to read in the statement and
 5 blowing it up does not really help because it starts
 6 getting pretty fuzzy, the screenshot, and so even in
 7 the larger version in the appendix, which is page
 8 {H2A/2/114}, it is still very hard to read.
 9 So I do not want to hold things up, but if at some
 10 point we could get a better copy of that Figure 35 and
 11 of the graph which we have just been looking at of
 12 the comparison performance.
 13 Right, with that, I think we can call Mr Raff.
 14 MR WEST: Yes, I call Adam Raff.
 15 MR MATTHEW ADAM RAFF (affirmed)
 16 Examination—in—chief by MR WEST
 17 THE CHAIRMAN: Do sit down, Mr Raff.
 18 A. Thank you.
 19 MR WEST: Good afternoon, Mr Raff. Could you be shown,
 20 please, {H2A/2}.
 21 Is that your witness statement for this Trial?
 22 A. It is, yes.
 23 Q. If we turn on to {H2A/2/95} in this tab.
 24 Is that your signature?
 25 A. Yes, it is.

88

1 Q. Are the contents of this statement true to the best of
 2 your knowledge and belief?
 3 A. To the best of my knowledge and belief, yes.
 4 Q. Is this statement the evidence you wish to give in these
 5 proceedings?
 6 A. Yes, it is.
 7 MR WEST: Thank you.
 8 THE CHAIRMAN: Mr Raff, just before any questioning, could
 9 you turn to page {H2A/2/61} in your statement.
 10 At 147, paragraph 147, you say:
 11 "The following tables set out the traffic data from
 12 the above ... on a year-by-year basis."
 13 Do you see that?
 14 A. Yes.
 15 THE CHAIRMAN: The following tables are on the next page
 16 {H2A/2/62}, and there you have, on page 62, you see it
 17 is — the top line, 2006, 2007. We do not have actually
 18 2008/9, it jumps to 2010/2011, and then below that
 19 2012/13/14/15.
 20 If you go then to {H2A/2/63}, you say that you
 21 have — this is adding Google Shopping. The top line,
 22 we have not got any years, they seem to have been cut
 23 off. Are they the same years as in the other table?
 24 A. Yes, Sir, they will be.
 25 THE CHAIRMAN: So it is 2006, 2007, 2010, 2011; is that

89

1 right?
 2 A. Yes, apologies. I don't know where they went. Yes.
 3 THE CHAIRMAN: Yes. Thank you.
 4 Cross-examination by MR MCGURK
 5 MR MCGURK: Afternoon, Mr Raff.
 6 A. Afternoon.
 7 Q. I am going to cover some matters that are LEO
 8 Confidential and I am going to save those to the end of
 9 our discussions so that we can cover them in a closed
 10 session all at once, but I just remind you not to refer
 11 to Confidential or LEO material until we get there.
 12 Can we go to {M2/133}, please.
 13 Now, this is an image of your website taken from
 14 the Wayback Machine from June 2006. That is what your
 15 website looked like in June 2006, is it not?
 16 A. That is an approximation of what it looked like, because
 17 the Wayback Machine drops graphics. That's not what it
 18 looked like, it's missing — clearly you can see it's
 19 missing images and those images would not have been
 20 missing on our site.
 21 Q. What is it missing?
 22 A. There's something at the top and the bottom of that —
 23 that rectangle in the middle had a rounded top. I mean,
 24 I — yeah, and at the bottom also, a rounded bottom, and
 25 I think there is various other things, probably, but

90

1 certainly those.
 2 Q. We note the blue livery in the top banner, do we not?
 3 A. Yes.
 4 Q. That was the same, was it not?
 5 A. I assume so. I see some vertical lines there that don't
 6 make a lot of sense.
 7 Q. The blue backdrop — well, the blue backdrop against
 8 which the search categories are set was as it was in
 9 June 2006, was it not?
 10 A. I think so. To the best of my recollection, yes.
 11 Q. We note at the top, at this stage, the primary domain
 12 was Foundem.com, was it not?
 13 A. Yes.
 14 Q. Can we move on to {M4/178}, please.
 15 So this is another image of the site taken from
 16 the Wayback Machine, this time from April 2007.
 17 That is what the site would have looked like in
 18 April 2007, would it not?
 19 A. Again, apart from all the missing images.
 20 Q. Yes.
 21 We note the blue banner at the top remains the same?
 22 A. Yeah, I can see where you're going to go with this and
 23 that isn't what it would have looked like. Again,
 24 I would put that down to missing images that would have
 25 presumably acted as space —

91

1 Q. I am not talking about images —
 2 A. Okay.
 3 Q. — I am just talking about the blue livery at the top,
 4 the blue bar?
 5 A. Yes.
 6 Q. Yes.
 7 That is what it looked like, was it not?
 8 A. The blue bar. But I think you are going to be talking
 9 about the menu links on that blue bar.
 10 Q. Well, do you want me just to take the questions as I am
 11 going to put them?
 12 A. Yes. I am just trying to understand when you say
 13 "livery", I just want to know the —
 14 Q. Yes, just the banner.
 15 A. Yes, yes.
 16 Q. Yes.
 17 Again, this is at the time when the primary domain
 18 was Foundem.com; that is right, is it not?
 19 A. That is correct, yes.
 20 Q. Now, Foundem transitioned its primary domain from .com
 21 to .co.uk on 28 October 2007; that is right, is it not?
 22 A. That sounds right. I always forget, but that sounds
 23 right.
 24 Q. Yes, it is taken from paragraph 34A(1) of your reply,
 25 which we do not need to go to, but that is where I get

92

1 the figure from.
 2 We see an image of the website after your relaunch
 3 as Foundem.co.uk at {M4/180}, if we can bring that up,
 4 please.
 5 So this is the date's cut off by
 6 the "Non—Confidential" designation unfortunately, but
 7 take it from me that this is dated 31 October on
 8 the Wayback Machine, Mr Raff.
 9 So we see, first of all, in the URL bar, the change
 10 from .com to .co.uk, do we not?
 11 A. Yes.
 12 Q. We see the bannerimg has changed from blue to purple,
 13 has it not?
 14 A. It has.
 15 Q. The backdrop to the search categories has changed from
 16 blue to white, has it not?
 17 A. Yes.
 18 Q. The images above the search categories within the search
 19 — that constitute the search categories have changed as
 20 well, have they not?
 21 A. They have, yes.
 22 Q. Can we go into your statement, please, at {H2A/2/91},
 23 and I wanted to look at Figures 48, 49 and 50 on those
 24 pages, and in particular the Foundem screenshots on
 25 the left—hand side.

93

1 A. Yes.
 2 Q. Now, you say these are images of Foundem's CSS since
 3 June 2006, do you not?
 4 A. No, I mean, I can see what you're getting at, but what
 5 that's — as —
 6 Q. Can you just answer my question?
 7 You say under —
 8 A. (Overspeaking) No, I'm saying that's —
 9 Q. — (inaudible) — CSS since June 2006, that is what you
 10 are telling us?
 11 A. No, this is not saying this — I am very precise when
 12 I say a screenshot was taken. This is a representation
 13 of Foundem's CSS in terms of its layout, right? Well,
 14 you saw the grid from 2006, it had — it had a grid of
 15 the various verticals and on the left—hand side — it's
 16 — it's simply pointing out — I'm making a point here
 17 comparing and contrasting our interface to Google's
 18 interface.
 19 Q. Mr Raff, people coming to Foundem in June 2006 did not
 20 see these images on the left, did they?
 21 A. No, they saw what you showed earlier.
 22 Q. Yes, the earlier version.
 23 So the problem here, Mr Raff, is that this risks
 24 misleading the Tribunal into thinking that what your
 25 website looked at, at the crucial moment of your

94

1 launch —
 2 A. No, that certainly wasn't my intent. My intent was to
 3 show —
 4 Q. Can you let me finish my question?
 5 THE CHAIRMAN: Just listen to the question, Mr Raff.
 6 A. Sorry.
 7 MR MCGURK: This risks misleading the Tribunal into thinking
 8 this is what your website looked like in June 2006 when
 9 it launched, when manifestly it did not; do you accept
 10 that?
 11 A. I don't, because I believe my witness statement started
 12 off by showing screenshots from the Wayback Machine
 13 which clearly showed how it had progressed from a sort
 14 of proof of concept through time. So that made it
 15 absolutely clear, the various "livery" as you call it.
 16 This is showing you — because it's — I'm having to
 17 take this from the screenshots that I have. If I had
 18 the screenshots from the appropriate era in June 2006,
 19 then I would have used that, but as you saw, I had to go
 20 to the Wayback Machine and get a sort of poor copy of
 21 that that's missing lots of images.
 22 Q. Moving on to {H2A/2/92} and Figure 2 [sic] in this
 23 witness statement — Figure 52 [sic], if we can blow up
 24 the left—hand side, or at least the top, I am keen to
 25 have both of them there.

95

1 So we see that in your Foundem page, you are
 2 referring to a Panasonic and there are three rectangular
 3 boxes relating to the same Panasonic product giving
 4 the very same product description; that is right, is it
 5 not?
 6 A. Sorry, I can't — I can't zoom in. Where are we talking
 7 about?
 8 Q. Your Figure 52, the left—hand side —
 9 A. So that's not zoomed in right now; is that correct?
 10 THE CHAIRMAN: 51, is it not? Figure 51?
 11 MR MCGURK: Yes, we can stay on Figure 51. I am so sorry,
 12 that was my mistake.
 13 It is this that I want you to look at, Mr Raff.
 14 A. Right.
 15 Q. Those three references to the Panasonic HX—WA3 give
 16 the same description of the camcorder, do they not?
 17 A. I'm wanting to say yes, but I'm seeing no.
 18 Q. Well, let me give you —
 19 A. I am sorry, I fear I'm missing your point.
 20 Q. Well, let me make the point perhaps more clear by going
 21 to {M2/635}.
 22 This is a presentation, Mr Raff, just to situate
 23 you, given by Mr Cutts to the European Commission in
 24 November 2011.
 25 If we go to slide {M2/635/63}, he is identifying to

96

1 the Commission the problem Foundem faced with regard to
 2 duplicate content in relation to its description of
 3 products returned pursuant to a search. So what this
 4 slide is telling the Commission is that in relation to
 5 a search for that particular Samsung Silver Tocco Lite
 6 phone, what Foundem's site has returned here at this
 7 point in 2011 is 130 versions of the same — containing
 8 the very same description repeated across eight and
 9 a half pages.

10 You served 15 results per page, did you not?

11 A. We varied that. I don't remember —

12 Q. Right, well, at this point of time, Mr Cutts is likely
 13 not to be wrong, it was 15 results per page?

14 A. I would take his word for it, yes.

15 Q. So what he is showing to the Commission is the problem
 16 with your search functionality is you are serving
 17 the very same product description 130 times to the user
 18 across eight and a half pages. That is a very poor user
 19 search experience, is it not?

20 A. No, because what this image is missing, it's taken
 21 a slice of our website from the middle and it's missing
 22 all of the filters on the left, and it has also chosen
 23 cellphones, and I think that's not an accident, because
 24 whereas a retailer selling a television, a single
 25 merchant will tend to offer maybe one or two varieties

97

1 of any given model, mobile phones, and particularly at
 2 that time, a retailer selling one mobile phone model
 3 will offer it hundreds of times, because it's
 4 the network and different packages and different minutes
 5 and different ... So the filters on the left are
 6 absolutely vital to understanding the quality of our
 7 service, because you can instantly click a button and it
 8 would narrow those whatever the number was you said, I'm
 9 sorry I don't remember, if you said "Orange", it would
 10 narrow it down to the Orange network.

11 Q. Go back to {H2A/2/92}.

12 Your statement seeks to contrast the way you serve
 13 repeat description results with Google's page. Google's
 14 CSS is giving you one description of the product at
 15 the top and then it is providing the pricing information
 16 from different merchants on the same page below, it is
 17 not serving you 15 or 130 descriptions of the product
 18 across multiple pages, is it?

19 A. At this point in time. But prior to around about 2012,
 20 it absolutely did do that, because it was just a random
 21 selection.

22 Q. I do not accept that. I am asking you about this page,
 23 Mr Raff.

24 A. Yes, and this — the point about this page is it's
 25 saying circa 2012 onwards is when Google's looked like

98

1 this, whereas ours looked approximately, although not
 2 the same colour—way, since June 2006. So I'm just
 3 showing that they're showing a very similar thing about
 4 a product you're interested in with a picture,
 5 a summary, and then, yes, there was a choice and there
 6 still is, between how you decide to show results where
 7 you can decide to show one product description at
 8 the top and then just summarise prices. We take — made
 9 a conscious decision to show some of the description
 10 from each merchant so that users could see if it said
 11 "including a camera case" or "free offer now", and also
 12 if it's Currys, Dixons and Comet and they all have
 13 the exact same description, then that's an indicator to
 14 the consumer that they're possibly the same merchant
 15 posing under different names.

16 Q. Could we go back to {M2/635/64}.

17 So what he has then shown to the Commission is
 18 a slide here "Duplicate content on Foundem". He has
 19 taken from one of your product descriptions the exact
 20 wording in relation to that product and this time it was
 21 a pink Tocco Lite, not the white one we saw in slide 63,
 22 but he has taken the exact description of the product
 23 that appears on Foundem's site and plugged that into
 24 Google and he has been returned 4,620 sites that have
 25 the very same product description.

99

1 The point he is making to the Commission is that you
 2 cannot possibly assume Foundem should rank number 1 on
 3 the SERP ahead of 4,619 other sites showing exactly
 4 the same product and product description, and he is
 5 right about that, is he not?

6 A. He is quite right about that, yes.

7 Q. Can we then turn on to paragraph 87 of your witness
 8 statement {H2A/2/30}.

9 Now, you will recall, Mr Raff, that you contend that
 10 Foundem's service featured several user-facing
 11 innovations, and I just want to explore some of
 12 the claims that you make as to Foundem being the first
 13 or one of the first CSSs to have some of this
 14 functionality.

15 Paragraph —

16 A. I'm sorry, I'm regretting my previous answer because
 17 I assumed there was going to be a follow-up to that.

18 Q. We have moved on and I am struggling for time.

19 A. Oh, right, but this is — it is now unclear. My
 20 previous answer, I would revise under, given that you
 21 haven't allowed the next step, which is to differentiate
 22 between a merchant and a comparison shopping service.

23 Q. 87(a) {H2A/2/31}, you say:

24 " ... Foundem was the first CSS in the UK (... [and
 25 possibly] the world) to introduce auto-completion

100

1 functionality to its comparison—shopping—related search
 2 forms."
 3 A. Sorry, which number was that?
 4 Q. 87(a).
 5 A. "To the best of my knowledge ... (or, as far as I am
 6 aware, anywhere else in the world) ... "
 7 So that's quite different, because I'm qualifying it
 8 because I might not know.
 9 Q. Can we turn on then, please, to {M2/1222/1}. Blow up
 10 the first paragraph.
 11 This indicates that:
 12 "In the ... realm of the internet, where information
 13 is abundant and searches are incessant, Google
 14 Autocomplete stands out a powerful and convenient
 15 feature that streamlines the search process for users
 16 worldwide. Introduced by Google in 2004, Autocomplete
 17 has ... "
 18 Etc., etc.
 19 So in fact, in the context of search, Google
 20 developed autocomplete, did it not?
 21 A. I think you'll find that that's not quite true. You'd
 22 have to qualify where this was. So I don't believe it
 23 was on Google's main search site until years after that,
 24 and we never — we didn't claim to pioneer — what's it
 25 called? — "Autocomplete", in this case. We said we

101

1 took that from the travel domain, who I do believe
 2 pioneered it, because the best useful aspect of this is
 3 airport names and airline codes, where you don't know
 4 what the airport code is so you need to start typing in
 5 "London" —
 6 Q. You are not agreeing with me, are you? Is that right?
 7 THE CHAIRMAN: At the moment what you have said here is this
 8 is Google Autocomplete, but it — does this say that it
 9 is on Google Shopping?
 10 MR MCGURK: I am putting it more generally that this is
 11 a piece of functionality that Google has introduced to
 12 Google's search site.
 13 THE CHAIRMAN: Yes, but what Mr — I thought you were
 14 questioning what Mr Raff says when he in sub—paragraph
 15 (a) of paragraph 87 {H2A/2/31}:
 16 "... Foundem was the first CSS in UK (or ...
 17 anywhere in the world) to introduce auto—completion
 18 functionality to its comparison—shopping—related search
 19 form."
 20 MR MCGURK: My point, Sir, is that Google Search was used to
 21 start shopping enquiries and users starting shopping
 22 queries on Google had the benefit of Autocomplete in
 23 2004, that is the short point.
 24 A. I'm quite certain that that is not true, and it
 25 certainly wasn't on their CSS, and you would think, if

102

1 they could bring it to their main search box and somehow
 2 miraculously do autocompletes based on querying their
 3 CSS underlying it, that they would have brought that to
 4 their CSS, but they didn't.
 5 Q. Paragraph 87(d) of your statement {H2A/2/31}, you refer
 6 to the fact that:
 7 "From April 2007, Foundem could automatically detect
 8 and correct erroneous or out—of—date prices in a product
 9 feed ... "
 10 Mr Raff, I am going to show you three documents, and
 11 before you say anything, let me read them to you and
 12 then let me ask you a question about them, please.
 13 {M2/165}. Blow that up.
 14 This is a user feedback form from November 2006.
 15 The user says:
 16 "Your website shows the LG GR419BSCA Fridge Freezer
 17 for £370 + £29.99 Delivery at Dixons. Click on the link
 18 to Dixons and the price has increased to £499.99 +
 19 Delivery.
 20 "I am not impressed."
 21 Then if we could, having read that, go to {M2/326},
 22 please.
 23 This is 12 December 2008, so this is a couple of
 24 days after The Gadget Show appearance:
 25 "Not confident of your pricing checks following

103

1 a quick search — Sony HDR—SR1 OE listed as [£]578.46 on
 2 Amazon, but my own independent search found the cheapest
 3 price on Amazon as [£]449.99 — cheaper than your listing
 4 of Comet."
 5 Then the third document I wanted to show you was
 6 {M2/285}, which is from 17 July 2008.
 7 The user says:
 8 "I searched your site for the following item — SHARP
 9 LC46XL2E LCD — and was given the result of [£]980.05
 10 from Dixons. I was very disappointed, when linking to
 11 their site to purchase the item found the price to be
 12 [£]1,209.09. Why was your information incorrect?"
 13 Mr Raff, these complaints show that Foundem had
 14 entirely inadequate processes to identify or correct
 15 the errors in the affiliate feeds they were receiving,
 16 does it not?
 17 A. No, because this is a bane to all comparison shopping
 18 services is stale feeds, stale information, so this is
 19 commonplace, unfortunately, it's far too commonplace,
 20 and what I was saying in whatever paragraph it was of my
 21 witness statement, I was pointing out that when there
 22 were particularly bad cases, so if there was a repeat
 23 offender, a merchant who regularly — their feeds went
 24 stale or their prices were just inaccurate, it might not
 25 even be stale, it just might not accurately reflect the

104

1 price on the website, then we could auto detect that.
 2 We would switch it on and it's something that we could
 3 do where we would sample — just doing the entire site
 4 was quite a painful thing, so what we tended to do was
 5 sample, and it was something that we could switch on or
 6 off. So I'm not surprised at all to see, as with all
 7 CSSs, that sometimes the information is out of date;
 8 it's not inaccurate, it's out of date.

9 Q. 87(f) at {H2A/2/32}, you say:

10 "In June 2008, Foundem was the first ... (or among
 11 the first) to introduce price history graphs that
 12 tracked ... the lowest available price for ...
 13 product[s] over time."

14 Do you stand by that evidence?

15 A. I stand by that where I'm saying "the first ... (or
 16 among the first)", because, again, I accept that I might
 17 not know about somebody's price history graphs.

18 Q. Well, let me show you some that you might not have
 19 known, {M2/20/1}.

20 This is Pricescan and this is from August 2004.
 21 Now, if we can blow that up and see, at the top, you
 22 have a reference to a Minolta camera, and then there's
 23 a series of hyperlinks below the description, including
 24 "Product Photo", "Price Trend Graph", "Product Reviews"
 25 and "Buying Tips", and you have got the simple grid

105

1 format indicating who the vendor is, whether it is in
 2 stock, the price and a vendor rating with a link to
 3 the merchant site.

4 Now, the "Price Trend Graph", if you click that,
 5 Mr Raff, we see what you get at {M2/22/1}. So, here,
 6 the time period, if you can see that, just above
 7 the graph is July 2001 to 16 August 2004, and what
 8 Pricescan do is provide a red line, which is the high
 9 price in that period, blue is the average price in that
 10 period and green is the low price, so the user can see
 11 the overall price trend at a glance on Pricescan from
 12 2004, can they not?

13 A. I'm a bit puzzled by this, because this is implying they
 14 could do this from 2001, in which case I really take my
 15 hat off to them. They were clearly monitoring prices in
 16 2001.

17 Q. Yes, well, that is sort of why I am showing you this.
 18 Then if we can go to Idealo. Do you recall Idealo
 19 had a price graph?

20 THE CHAIRMAN: This is just before — this Pricescan is a US
 21 CSS; is that right?

22 MR MCGURK: Yes, but the claim —

23 THE CHAIRMAN: No, I understand.

24 MR MCGURK: Yes.

25 THE CHAIRMAN: I have seen that. I just wanted to —

106

1 MR MCGURK: Thank you.

2 THE CHAIRMAN: — (inaudible).

3 MR MCGURK: {M2/70/1}.

4 So this is in German, but it is on the screen
 5 because it was taken from August 2005 on
 6 the Wayback Machine. Annoyingly again,
 7 a "Non—Confidential" banner hides the date. Please take
 8 it from me. You see in the top right—hand corner with
 9 the red perimeter "Produkt Features", and there is
 10 a price graph there that you can click through to, and
 11 just to show you an English equivalent from slightly
 12 later in 2006, can we go to {M2/127}.

13 A. Are you not showing that because you don't have
 14 the screenshot of the blow up of what you'd get if
 15 you clicked on that?

16 Q. We did not get that. But you can see that that
 17 functionality was there, can you not?

18 Just doing this quickly, Mr Raff, because I have
 19 a lot to cover, were you aware also that Nextag had
 20 a price graph?

21 A. No, and that surprises me, because —

22 Q. (Overspeaking — inaudible) —

23 A. — (inaudible).

24 Q. — a substantial number of things that other CSSs did
 25 that Foundem did not do —

107

1 A. Can I just finish the answer to that previous one?

2 Because I would point out that The Gadget Show
 3 specifically narrowed down and said our price history
 4 graph was one of the nice features we had, presumably
 5 that's because none of the others had that and they
 6 thought it was unusual, and in fact lots of the user
 7 feedback comments note how unusual it is.

8 Q. We will come back to The Gadget Show.

9 I am going to cover some other things that other
 10 CSSs did that Foundem did not do and I want to take this
 11 reasonably quickly.

12 You did not have a merchant rating feature on your
 13 site, did you?

14 A. We didn't, and because we were hit at launch, I am aware
 15 that a lot of this is to do with knocking you down and
 16 then saying — you know, taking away your traffic and
 17 your incentive to add these features.

18 Q. Can we stay on the subject, Mr Raff, because we are
 19 struggling for time?

20 A. Well, that's not my —

21 Q. You did not have a merchant ratings feature on your
 22 site, did you?

23 A. No.

24 Q. Turning to user product ratings, you did not have a user
 25 product rating function on your site either, did you?

108

1 A. That's clearly not true. We showed screenshots, I think
 2 yesterday, showing some examples from 2007.
 3 Q. Can we go to {M4/29}, please.
 4 This is a mySimon page. You see under each product
 5 description, there is a product rating bar?
 6 A. Mm—hm.
 7 Q. Do you see that?
 8 A. Yes.
 9 Q. Above there is a link, just under the word the "Sony"
 10 tab, you see "Product name", "Lowest price", "Product
 11 rating", so you could click on the product rating as
 12 a user, give your feedback there as well.
 13 Foundem did not have the equivalent to this, did it?
 14 A. Foundem had user reviews and star ratings.
 15 Q. Foundem did not require —
 16 A. So not — not an 8 out of 10, but a star rating, I think
 17 it was 5 stars, up to 5.
 18 Q. Almost all of them were empty —
 19 A. Yes, again that's taking away your traffic. But the
 20 users that came to our site, the few intrepid users that
 21 found our site, left genuine user reviews as compared to
 22 Google's, which were scraped illegally from Amazon.
 23 Q. Foundem did not require merchants who wished to list on
 24 its platform to have any third-party quality rating as
 25 a seller, did it?

109

1 A. No. That would limit the number of merchants.
 2 Q. Can we go to {M2/693/8}.
 3 So this is an article by Mr Michael Baye and others.
 4 It is going back as far as 2001, if you see at the top,
 5 Figure 1, reference to Shopper.com. There are two
 6 ratings here on this, there is the Gomez rating, which
 7 every merchant needs to have, and also some of them are
 8 shown to have a CNet certification as well. You did not
 9 do —
 10 THE CHAIRMAN: Sorry, can you pause a moment —
 11 MR MCGURK: Yes, certainly. Third column, Sir, beside
 12 the "Store" column, if we blow up the top part of this
 13 page, you will see "Gomez Merchant Review". Gomez was
 14 a big reviewing site in the States at this point in
 15 time, and Shopper.com required those who they listed to
 16 have a Gomez rating.
 17 You did nothing similar with Foundem, did you?
 18 A. This is strange, because this is a US example —
 19 Q. Why is a US example strange?
 20 A. Because they had a very different development in terms
 21 of —
 22 Q. But you have made a claim about being the first anywhere
 23 in the world potentially —
 24 A. About what? What are you talking about? We're talking
 25 about ratings here, aren't we?

110

1 Q. Yes, first —
 2 A. I didn't say anything about being the first to have user
 3 ratings.
 4 Q. Well, I'm suggesting there is a lot of things that other
 5 CSSs did that you did not do, and I am showing you an
 6 example —
 7 A. So — and what you're showing me here is that there was
 8 this Gomez in the US, some independent, I assume,
 9 ratings service, that this price comparison service paid
 10 to access their data, and I'm not really sure what point
 11 you're trying to make.
 12 Q. I do not know also why you are running away from the US,
 13 because you were Foundem.com until 2007 —
 14 A. I was hoping you would come back to that, because back
 15 in the day, 2006, it was not by any means de rigueur that
 16 your UK site was co.uk, that has sort of gradually come
 17 into being, so it was quite commonplace back then to
 18 have UK sites with a .com, otherwise obviously we would
 19 have launched as a .co.uk.
 20 THE CHAIRMAN: Can I just ask, was there anything — if
 21 Gomez is an independent rater, was there anything
 22 equivalent to Gomez, that you knew of, that operated in
 23 the UK?
 24 A. There certainly were at some stage. I am aware of some.
 25 MS ROSE: (Off microphone) Would that be like Trustpilot?

111

1 A. Yes, good example.
 2 MR MCGURK: Can we go to {M2/1291}.
 3 I am going show to you a Bizrate page. You
 4 obviously know Bizrate, Mr Raff?
 5 A. Yes.
 6 Q. {M2/1291}.
 7 So I am just going to read you the top and the third
 8 paragraphs:
 9 "Bizrate helps shoppers find the very best value for
 10 all the products they are looking to buy online. [It]
 11 also allows shoppers to provide candid opinions on their
 12 experiences with different online retailers and allows
 13 retailers to find new audiences as well as discover
 14 insights on how to provide the best customer service to
 15 all their shoppers."
 16 Then if you go to the last paragraph, it refers to
 17 their Bizrate Insights feature, which is:
 18 "... the customer feedback and ratings platform of
 19 Bizrate, providing tools and reports to over 6,000
 20 retailers worldwide and empowering retailers to achieve
 21 their end goal of growing sales and customer loyalty."
 22 Just pausing there. Foundem did not take customer
 23 feedback or offer a service of providing that feedback
 24 as insight to merchants on its page, did it?
 25 A. No, but this is a screenshot from 2026 from

112

1 a comparison shopping service that — that escaped quite
 2 unscathed from penalties whereas we were hit from
 3 day one with these penalties.
 4 Q. This is not a 2026 document.
 5 A. Isn't it? I see 20 — well, okay, 2026 is on
 6 the bottom, "Connexity, Inc".
 7 Q. I understand this was an earlier feature. If I am
 8 wrong, Mr Raff, I will stand corrected and I will
 9 withdraw that point.
 10 You did not offer side-by-side product comparison,
 11 did you?
 12 A. I don't understand the question.
 13 Q. Can we go to M2 —
 14 A. I think I now understand the question. Where you select
 15 two different products and this creates a page where you
 16 see them together. No, we did not, and again, that's an
 17 example of advanced functionality that we were
 18 absolutely capable of doing and it would have been very
 19 easy using our technology, but there was no point or
 20 little point —
 21 Q. You did not do it —
 22 A. — when we were struggling to survive —
 23 THE CHAIRMAN: Let Mr Raff answer.
 24 A. Yes, I mean, I think this is going to be a common theme,
 25 to be honest. I think I should say it at least once,

113

1 because the answer to your question about why didn't you
 2 bother developing that advanced feature as opposed to
 3 all the advanced features that you did develop and
 4 the answer will be: we absolutely, I assume, would have
 5 developed those features where we thought them useful if
 6 we had had the organic growth that we were denied by
 7 this Algorithm A penalty that took away all of our
 8 traffic .
 9 MR MCGURK: {M4/69/1}, please.
 10 This is SHOP.COM, and if we can blow up paragraph 3
 11 under the "Safe Shopping Guarantees" that SHOP.COM
 12 offered, you will see they say:
 13 "SHOP.COM will be your advocate for every purchase
 14 made through us and we'll guarantee your satisfaction —
 15 start to finish — or your money back. In the unlikely
 16 event that any merchant ever fails to deliver on their
 17 promise regarding any purchase you make through
 18 SHOP.COM, we will intervene on your behalf and assure
 19 that they deliver on their promises or we'll guarantee
 20 that you'll get your money back."
 21 Foundem did not offer anything similar, did it?
 22 A. No, that is quite a bold promise, so I'd be very
 23 interested to know when that's from.
 24 Q. Unlike BuySafe, Foundem did not provide its customers
 25 with anti-fraud guarantees, did it?

114

1 A. Do we not know the answer to where this screenshot comes
 2 from?
 3 Q. Well, I am asking you the question.
 4 A. It's a fair question.
 5 THE CHAIRMAN: Well, I think it is reasonable to know when
 6 this is from. There is something at the top that
 7 says "25 captures" from 2007 to 2009, is it? But ...
 8 I think it looks like, at the bottom, there is
 9 a copyright —
 10 MR MCGURK: It is 8 December 2007.
 11 A. I'm guessing they didn't last long with a promise like
 12 that.
 13 Q. Well, you are just guessing, but we are not asking you
 14 to guess in the witness box, Mr Raff.
 15 A. I have never heard of them.
 16 Q. Unlike BuySafe, you did not provide your customers with
 17 an anti-fraud guarantee, did you?
 18 A. No.
 19 Q. Some CSSs, like PriceGrabber, allowed shoppers to
 20 specify their threshold price for a particular product
 21 and then would receive alerts when that threshold was
 22 hit; that is right, is it not?
 23 A. I know that several CSSs did that, yes, at some point.
 24 Q. Yes, you did not do that?
 25 A. No, that would fall into the product roadmap as

115

1 discussed earlier .
 2 Q. Compare Store Prices had such a price alert feature,
 3 were you aware of that?
 4 A. Oh, Compare Store Prices?
 5 Q. Yes.
 6 A. I think I probably was. I'm not sure if it worked, but,
 7 yes.
 8 Q. Foundem could not do that because it did not operate on
 9 a sign-up model and therefore you could not identify
 10 your users, could you?
 11 A. Again, when you're hit from day one or two or three,
 12 that is the least of your worries. What we were doing
 13 was ensuring that our core price comparison service was
 14 a high quality service that delivered the best results
 15 we could, and the features that we developed were
 16 the features that we thought were the most important.
 17 We certainly would have got round to all of those things
 18 were we not struggling for survival for the entirety of
 19 the time we ran our service.
 20 Q. CSSs, like mySimon, operated on a sign-up model and that
 21 allowed them not only to deliver things like price
 22 alerts, but it allowed them to send out original content
 23 in the form of newsletters, did it not?
 24 A. Oh, and I'm sure their users loved that original content
 25 by way of newsletters, as we all do.

116

1 Q. Quite a sarcastic answer —
 2 A. Well —
 3 Q. — but my question is, you did not send out a newsletter
 4 because you could not, because you could not identify
 5 users, could you?
 6 A. I would disagree with the "we could not". We didn't
 7 because we didn't develop that.
 8 Q. Foundem did not offer any social features, like forums,
 9 for users to discuss products, did it?
 10 A. No.
 11 Q. Do you recall The Find, a CSS that got established in
 12 the UK around the same time?
 13 A. I do. The Find is a bit of a murky one, so I don't
 14 really remember. It has come to my attention a lot
 15 because it's in the data or evidence.
 16 Q. {M4/64} is a screenshot from The Find.
 17 So what we see here is The Find has a blog and this
 18 article is all about fashion through the ages, and they
 19 have created content as a segue into providing the links
 20 at the bottom to 70s, 80s and 90s attire, and users
 21 could engage with this blog.
 22 You had nothing like that, did you?
 23 A. It's very interesting that you used the word "segue",
 24 because I would call that a content farm. So in order
 25 to satisfy Google's valuing of original content over

117

1 service, they have gone the route of deciding to try and
 2 satisfy that and so they have created what I assume is
 3 not very high quality prose —
 4 Q. You assume, but you have not read it?
 5 A. Well, because we all know what made for AdSense, we all
 6 know what content farms are. That's what — The Find
 7 did not launch a comparison shopping service, I assume,
 8 in order to write the "Time Keeps on Slippin' ..." and
 9 then putting a few links below. That is what is
 10 classically known as a content farm.
 11 Q. Well, I do not agree at all that this is a content farm
 12 and we have had evidence from —
 13 A. What I mean is the content that they're generating is
 14 low quality content for the sole purpose of feeding
 15 Google's search algorithm.
 16 Q. Right, well, you are making that statement not having
 17 read what this blogger has said, but let us move on.
 18 We saw with your wife's observation that Foundem had
 19 a huge number of empty product review pages. Are you
 20 aware that Shopping.com had lots of reviews because it
 21 built its own review community, Mr Raff?
 22 A. Was Shopping.com under a penalty that meant it didn't
 23 get any users —
 24 Q. Can you answer my question —
 25 THE CHAIRMAN: The question — just —

118

1 A. Right.
 2 THE CHAIRMAN: We have got your general point —
 3 A. Yes.
 4 THE CHAIRMAN: — Mr Raff, which is that —
 5 A. (Overspeaking) — I did say (inaudible) —
 6 THE CHAIRMAN: — there are various things you did not do
 7 and you say you would have got round to doing or you
 8 would have intended to do but did not because you were
 9 deprived of traffic by the penalty. We have got that
 10 general point.
 11 You are being asked specific questions. If you
 12 could focus on the question rather than repeating
 13 the general response.
 14 A. Thank you, Sir, and my apologies, but if you could
 15 repeat the question, because I —
 16 MR MCGURK: Of course, Mr Raff.
 17 Are you aware that Shopping.com had lots of reviews
 18 because it built its own review community?
 19 A. No.
 20 Q. Can I show you that? It is {M4/18/1}.
 21 So this was the initial public offering in 2004 by
 22 Shopping.com for ordinary shares and this is in a filing
 23 they made in relation to the initial public offering
 24 with the Securities and Exchange Commission.
 25 If we can go to {M4/18/19}.

119

1 You see at the top:
 2 "If members of the Epinions community cease to
 3 provide us with reviews or remove their content from our
 4 service, the number of consumers using our service and
 5 our revenues could decline.
 6 "Our service contains a significant amount of
 7 consumer-generated content, primarily reviews of
 8 products, services and merchants. This content is
 9 created for us by members of our Epinions community,
 10 many of whom receive nominal payments from us for our
 11 use of this content."
 12 So two years before Foundem launched, here is
 13 another CSS that had already built a strong community
 14 for user feedback; that is right, is it not?
 15 A. That would appear to be the case, yes.
 16 MS ROSE: (Off microphone) Is that what we call influencers?
 17 MR MCGURK: No. That was too withering. No.
 18 MS ROSE: Paid reviews?
 19 MR MCGURK: Paid reviews. I mean, it was not very much, but
 20 these were people who — so Epinions — just to be
 21 clear, Madam, you have asked the question, Epinions was
 22 a separate .com, and because it was focused on product
 23 review Shopping.com acquired it.
 24 Now, can we go then to —
 25 A. That is quite relevant information to be fair to

120

1 the answer to my question, because ---
 2 Q. I am asking the questions and I do not have much time,
 3 Mr Raff.
 4 If we go to {M2/217}.
 5 So this is a page from PriceRunner's site from 2007.
 6 Do you see at the top in the yellow:
 7 "Read Expert Reviews ..."
 8 A. Yes.
 9 Q. So that takes you to a PriceRunner expert review page.
 10 You had no expert review offering, did you?
 11 A. I'm not sure that doesn't take you to a third party.
 12 I'm noticing that "alaTest", which is a third party.
 13 Again, so it just could be a partner that they're taking
 14 you to, which would make sense, linking you to ---
 15 Q. Assuming my question is right, you did not have
 16 a similar offering?
 17 A. We didn't have a partner in reviews, because that's what
 18 I was going to say before was that there is/tends to be
 19 a distinction between a review site, where people go for
 20 reviews, and where people go to compare prices, and
 21 obviously there is the opportunity to marry those two
 22 things together, which is what we did back in 2006 and 7
 23 in order to try and survive our penalty when we reached
 24 out to publishers. So it's a natural thing to do, but
 25 the idea that a CSS, in order to be a great CSS, has to

121

1 have user reviews, I would take exception with that.
 2 It's certainly a nice to have.
 3 Q. I do not accept that evidence. I cannot engage with you
 4 here, given the time I have got, Mr Raff, so I am going
 5 to move on and look at some other problems that
 6 Foundem's site had.
 7 Can I go to {M2/273}.
 8 A regular criticism of Foundem's site was its
 9 failure to actually match results with user queries or
 10 provide links to search results; that is right, is it
 11 not?
 12 A. No, I don't recognise that. What do you mean? "Search
 13 results have no relevance to ...", no. Again, I think
 14 this might be ---
 15 Q. Well, this is one of your users, Mr Raff.
 16 A. Yes, and so what we would do when we get this, we would
 17 trace it through and we'd hopefully be able to see
 18 exactly what they did and we'd make sense of it, and
 19 perhaps this is a valid criticism because something was
 20 broken, but also some users do get confused and
 21 sometimes get things wrong.
 22 Q. (Inaudible).
 23 A. I don't know.
 24 Q. Okay.
 25 A. You can see that there is all kinds of tracing

122

1 information that we would use to go and debug something
 2 like this.
 3 Q. Another category of criticism that Foundem received was
 4 that you did not always do a good job of getting
 5 the best and most competitive prices on your site; that
 6 is right, is it not?
 7 A. So I think we saw a table earlier that showed whenever
 8 we did a comparison, we tended to do better than others
 9 overall, but no one site does best for all products.
 10 Q. Well ---
 11 A. We tended to do very well on that, so I do disagree with
 12 you, if that was the question.
 13 Q. Look at {M2/173} to give you an example of this.
 14 This is again one of your users. This is
 15 5 January 2007:
 16 "I found the SONY HDR-HC3 much cheaper on
 17 pricegrabber ..."
 18 Again, if users had this experience ---
 19 A. I'm sorry, I can't --- you asked me about an overall sort
 20 of statistical question and you're just picking out
 21 random examples of where people ---
 22 Q. I cannot go through a thousand feedback forms with you,
 23 Mr Raff.
 24 A. Well, no, but you could have. Google could have done an
 25 analysis. I think you were throwing at me, you were

123

1 saying that somehow Foundem was worse, whereas there's
 2 nothing here that suggests that, there's just the odd
 3 example in isolation.
 4 THE CHAIRMAN: Is what you were showing, Mr Raff, there will
 5 be cases where you do not get the cheapest price?
 6 A. Yes.
 7 THE CHAIRMAN: That will no doubt anger the user who
 8 experiences that, but what you say is that is something
 9 that all CSSs experience ---
 10 A. Yes, and in fact ---
 11 THE CHAIRMAN: --- is that the point?
 12 A. It is, and in fact in the table that you asked my wife
 13 about, that was exactly the point. You know, we
 14 didn't --- we weren't all yellow.
 15 THE CHAIRMAN: Yes.
 16 A. We didn't come out on top every time. We just said we
 17 tended to come out on top more than others.
 18 MR MCGURK: M2/2/324.
 19 Many of your users complained that the site was just
 20 too slow, did they not?
 21 {M2/324}.
 22 THE CHAIRMAN: Sorry, 324?
 23 MR MCGURK: Yes, if I misspoke, I apologise. Thank you.
 24 A. So, no, and I'm now looking at the data on that one and
 25 that's December 9, 2008.

124

1 Q. Immediately after The Gadget Show?

2 A. Immediately after The Gadget Show, where it is true,

3 when you've been under a penalty — sorry — but we then

4 had a recommendation from the UK's leading television

5 programme for gadgets in the lead up to Christmas, and

6 unsurprisingly, that was a massive surge for which our

7 service wasn't completely configured because we didn't

8 have that kind of traffic to tune it to.

9 Q. Mr Raff, to finish this point I need to put my case, to

10 the extent that anything turns on this, and more so

11 given the reference to your summary table both by

12 Mr West and you in evidence. I am going to suggest that

13 however you cut it, the majority of feedback you got

14 from your users and which you have disclosed was

15 negative, was it not?

16 A. No, I think the single highest category was praise, and

17 you can't really classify — if you're inviting your

18 users on every page to let us know if we're doing

19 something wrong to report bugs, you can't really count

20 that as negative, I don't think that's right, because

21 everybody has bugs.

22 Q. Can we go back to a couple of points on the business

23 plan.

24 Your second trip to the US was to explore licensing

25 your technology to a set of candidate, general and

125

1 vertical search services, was it not?

2 A. I believe that was the first trip. The second trip was

3 very much a follow-on, so we were seeing — I think we

4 were tending to see people we had already seen.

5 Q. So are you disagreeing with my description of

6 the purpose of the second trip?

7 A. You'd have to take me to that.

8 Q. Let me read it to you again. The purpose of your second

9 trip was to explore licensing your technology to a set

10 of candidate, general and vertical search services,

11 was it not?

12 A. How's that different from the first trip? That just

13 sounds to me like the first — can I see it?

14 Q. Yes, well, this is your wife's evidence.

15 A. Ah, okay.

16 Q. {H2A/3/11}.

17 A. So how does that differ from the purpose of our first

18 trip? I'm not being difficult, I am trying to

19 understand —

20 Q. I am asking you the purpose of your second trip —

21 A. Yes, and I gave you my honest recollection of that

22 second trip. It was very much to revisit people we had

23 already seen. Yahoo!, for example, had expressed a lot

24 of interest, so we went to see them again on our second

25 trip.

126

1 Q. Now, your business plan of February 2005 identified, as

2 we saw yesterday, some classifieds, or verticals, who

3 were target licensees, but it was more circumspect about

4 who might ultimately acquire Foundem or its technology.

5 For that, can we please go to {M2/1181}.

6 So this is a slightly earlier version of

7 the business plan. This is October 2004, is it not?

8 A. I can't see, but I will take your word for it.

9 Q. Then if we go, please, to {M2/1181/55}.

10 This earlier draft version of the business plan does

11 identify target acquirers, but I just want to take this

12 in stages.

13 You say, at the very top, under the heading "Exit

14 Strategies":

15 "The most likely investor exit strategy for this

16 company is through Infederation Ltd's acquisition by an

17 existing search engine, classified, or Instant Messaging

18 provider. Infederation ... plans to grow its revenues

19 and brand to the point where it becomes a compelling,

20 high value, acquisition target."

21 The second paragraph, under 7.1, where you

22 discuss "Industry Consolidation", you tell us that:

23 "Rapid growth and an increasing commoditisation of

24 search engine technology are leading to a period of

25 intense consolidation. The major players are hunkering

127

1 down and marking their territory as competition for

2 market share intensifies. Google's long-established

3 channel partnerships are breaking down and search

4 providers are actively investing to increase their share

5 of the market. To this end, many companies with

6 promising search technologies are being acquired in the

7 relentless pursuit of competitive edge."

8 So it is right, is it not, that you were keeping

9 a very close eye on the market for the acquisition of

10 search, and in particular vertical search technology,

11 both here and in the US?

12 A. I wouldn't say that's true. I would say, for

13 the purposes of generating this business plan, clearly,

14 yes.

15 Q. We see that you were monitoring acquisitions for search

16 technology in the table below, where you list some of

17 the big search acquisitions within the search market,

18 and we can note many of these acquisitions were being

19 made by general search services. Google, Yahoo!,

20 Ask Jeeves and Overture were all search services,

21 were they not?

22 A. Yeah, I mean, again, I'm going to take objection — I'm

23 not trying to be difficult but — with the word

24 "monitoring". "Monitoring" implies an ongoing process;

25 this is a snapshot. So, yes, I clearly — or my wife

128

1 and I clearly analysed this data at that time. Those
 2 acquisitions at that time. I don't think we were
 3 monitoring. I'm just —
 4 Q. This acquisition — I am so sorry.
 5 This acquisition activity, this purchasing of search
 6 technology, continued into 2005. I just want to show
 7 you a few more examples not covered in the table, and in
 8 fairness to you, it is because they were 2005.
 9 {M4/22/1}.

10 Connexity started life as Bizrate, did it not,
 11 Mr Raff?

12 A. I get confused, but I believe that's right, yes.
 13 Q. It changed its name in 2004 to "Shopzilla", before
 14 becoming Connexity in 2004; that is right, is it not?
 15 A. I think so. I think it's even more conflicted than
 16 that, but later on maybe.
 17 Q. Maybe.
 18 Were you aware that it was acquired in June 2005 by
 19 E.W. Scripps for \$525 million?
 20 A. I don't recall, but probably not.
 21 Q. Shopping.com was acquired by eBay for a total cash
 22 consideration of approximately 620 million later on, or
 23 in the second quarter of 2005; do you remember that?
 24 A. I do remember that one, yes.
 25 Q. Were you aware that Experian, the credit reference

129

1 company, acquired PriceGrabber in December 2005 for
 2 \$485 million?
 3 A. No, this is a long time ago. I may have been, I may not
 4 have been aware at the time.
 5 Q. My point, Mr Raff, is that multiple deals for
 6 the acquisition of CSSs and search technology were being
 7 done for hundreds of millions of dollars between 2003
 8 and 2005. If ever there was a time to sell viable
 9 vertical search technology, this was it, was it not?
 10 A. No. If ever there was a time to sell a successful
 11 comparison shopping service, I'd agree with you, before
 12 Google introduced its conduct that basically took it
 13 down to zero, yes, I agree with you, this is a very
 14 healthy time for vertical search services to build up
 15 a service, get a certain penetration and sell
 16 themselves. It's a very, very, very different
 17 proposition to encourage — to persuade an existing
 18 vertical search service provider or general
 19 search engine, "Don't do what you're doing, you're doing
 20 it all wrong; ditch it and come and licence our
 21 technology", as Google found when they did exactly
 22 the same thing with their search engine. They went
 23 round and they tried to hawk it round and licence it,
 24 and when people weren't interested they —
 25 Q. Let us stay on topic, please —

130

1 A. — built it themselves. I think that's highly relevant,
 2 surely, to what we're talking about.
 3 Q. It is not a coincidence that you went back to the US in
 4 March 2005 because you were not only seeking to licence
 5 your technology, but you were, given the acquisition
 6 climate that you were fully aware of, seeking to sell
 7 your technology, were you not?
 8 A. No, that's false. We went back, primarily — I mean,
 9 well, for a number of reasons, but one of the main ones
 10 was we had promised Yahoo! we would come back when we
 11 had built a proof of concept, which is what we did.
 12 Q. Mr Raff —
 13 THE CHAIRMAN: What is being put to you is that you went on
 14 the second trip primarily to see if you could find
 15 a buyer.
 16 A. That's just patently false —
 17 THE CHAIRMAN: I think that is the question. Is that right?
 18 A. — unless —
 19 MR MCGURK: Either licenced or get acquired.
 20 A. Just not true. Not even vaguely true.
 21 Q. Mr Raff, notwithstanding from 2003 to 2005, on your own
 22 evidence, represented perhaps the high point in CSS and
 23 search acquisition activity, still nobody who considered
 24 your tech —
 25 A. I just said to you —

131

1 Q. I have not finished my question.
 2 Nobody who considered your tech was interested in
 3 licensing it, investing in it or acquiring it,
 4 were they?
 5 A. I just clearly distinguished between all the examples
 6 you've shown me, are people buying existing, successful
 7 businesses; they are not buying technology.
 8 Q. Successful businesses run on viable and successful
 9 technology, do they not, Mr Raff?
 10 A. That — you're — you're acquiring a tech — licensing
 11 a technology is completely different from acquiring —
 12 I don't know the reason they bought those companies and
 13 neither do you.
 14 Q. Sir, I need to move into closing now — closed.
 15 Freudian.
 16 THE CHAIRMAN: Yes, but just to be clear, you say you do not
 17 think your second trip was trying to see if anyone would
 18 license the — that was not the purpose, to licence your
 19 technology?
 20 A. I think, Sir, I specifically was pushing back against
 21 the idea of being purchased.
 22 THE CHAIRMAN: Yes, to purchase. A buyer of the business,
 23 which was essentially the technology at that point. But
 24 as regards licensing, was that —
 25 A. It was. So when we went back to Yahoo!, they had

132

1 expressed interest the first time round and we were
 2 definitely pursuing coming back with a proof of concept
 3 to see if they were still interested.
 4 THE CHAIRMAN: They decided not to?
 5 A. Well, interestingly, Disney, I think, had just acquired
 6 Yahoo!, they had a new CEO in town and things were all
 7 changed is what had happened. So the person who we had
 8 seen, who was a very senior guy, VP of Search, his
 9 position had changed, the power structure had changed,
 10 as does often happen.
 11 MR MCGURK: Just to finish this ---
 12 THE CHAIRMAN: The result of that is they were not
 13 interested?
 14 A. Yes.
 15 MR MCGURK: Just to finish this point before going into
 16 closed, {M2/1181/56}.
 17 This is back to the earlier business plan, 7.2
 18 lists "Example Potential Purchasers", and as you have
 19 told us on the previous page, ideal acquirer targets
 20 were search engines, classifieds or instant messenger
 21 services, and, here, you are logging which of
 22 the companies in the left-hand column met those metrics?
 23 A. That looks right, yes.
 24 MR MCGURK: Can we then, if I may, Sir, go into closed
 25 session?

133

1 Yes, just to be clear, it's an LEO ---
 2 THE CHAIRMAN: Which level of ---
 3 MR MCGURK: LEO closed, please.
 4 THE CHAIRMAN: LEO?
 5 MR MCGURK: Yes, please.
 6 THE CHAIRMAN: Yes.
 7 So we will turn off the live stream and anyone who
 8 is not within the inner confidentiality ring should
 9 please leave court.
 10 Is everyone satisfied that is now done?
 11 The solicitors know, of course.
 12 We are now in LEO closed session.
 13 (In private)
 14 (1.26 pm)
 15 (The short adjournment)
 16 (2.12 pm)
 17 THE CHAIRMAN: We are now in open session.
 18 (In public)
 19 Re-examination by MR WEST
 20 MR WEST: Mr Raff, just some very brief points.
 21 You were asked about an example of some search
 22 results on Foundem's site about mobile telephones. Do
 23 you remember that?
 24 A. I do.
 25 Q. You said that the screenshot omitted the filters.

134

1 Can I ask you to look at {M3/496/7}. Is this what
 2 you were referring to?
 3 A. Yes, so the central bit is what I was shown,
 4 the results, although it was a slightly different
 5 results page but it was for a cell phone, and what was
 6 missing were the context-specific filters on the left
 7 that take however many search results are presented
 8 there and instantly filter it down by what the user is
 9 looking for.
 10 Q. So how would you evaluate the user experience if
 11 presented with this page?
 12 A. Great.
 13 And in terms of the multiple descriptions, again, we
 14 took the decision, other CSSs can take a different
 15 decision that you just put the summary at the top and
 16 then you only show the prices. We took the deliberate
 17 decision to show all the information that the merchant
 18 has, or at least within reason, because we truncate it
 19 if it's too much, but we think that provides interesting
 20 information a lot of the time.
 21 Q. You were also asked about when Foundem's site had user
 22 reviews and star ratings and you said it did and
 23 referred to a screenshot.
 24 Could we look at {M3/498/14}.
 25 Is that the screenshot you were referring to, or

135

1 something like it?
 2 A. It is, yes. So that's just a couple of screenshots,
 3 apparently from August 2010, showing two different user
 4 review pages for two different products, showing that
 5 there is a --- when the user adds a review, they can
 6 write a lengthy review, but they can also record a star
 7 rating, and then we provide the average rating across
 8 all of those reviews.
 9 MR WEST: Thank you very much.
 10 Those were all my questions.
 11 Questions from THE TRIBUNAL
 12 THE CHAIRMAN: We have just got a couple of questions, but
 13 we did also --- there were a couple of technical
 14 expressions and terms that appear in Mr Raff's statement
 15 which we may understand but we are not fully sure we do,
 16 and we thought rather --- and we do not think they are
 17 controversial, but rather than asking him to explain
 18 them through the process of giving evidence, that we
 19 will set them out in writing and give them to
 20 Professor Ounis and he will give a response and that
 21 will be shared with you, and if you want to correct that
 22 response and say, "No, that is not quite right", then
 23 you can do that. We think that is a rather more
 24 efficient way of dealing with things and it gives us
 25 the benefit of the independent expertise. Things like

136

1 a form—based interface versus a hierarchical interface
 2 and so on. We do not think those are controversial, but
 3 we just want to make sure we understand them. So we are
 4 not going to ask any questions about that.

5 So there were really just a couple of things.

6 In your statement, Mr Raff, which you have got in
 7 front of you, let us go to the enlarged one, if you
 8 like, which is {H2A/2/114}. This is
 9 the CompareStorePrices.com screenshot, and you refer to
 10 that, of course, in your evidence and you say that this
 11 is a thin affiliate, or at least it is a poor site
 12 compared to Foundem.

13 Can you just, partly because we perhaps cannot see
 14 it very well, what are the things that are negative
 15 about it? Can you just expand on that a bit?

16 A. Yes, so generally speaking, for perhaps — I don't want
 17 to cast aspersions on the whole site, but generally
 18 speaking, what you are seeing, they take all of those
 19 affiliate feeds that there's been so much discussion
 20 about and the fact that lots of affiliates have access
 21 to the same feeds, but they are, to my knowledge, they
 22 are taking those feeds, dumping them into a database,
 23 albeit with, you know, some structure to them, so they
 24 know what the price is and they know what the product
 25 name is and the description, but what they're not

137

1 apparently doing, and if they are, I just don't think
 2 there's any evidence of it on this page, is when
 3 somebody types for — somebody else might be able to
 4 help me out who that is — Elmo, of some description,
 5 you would like — if I am I'm searching for that Elmo,
 6 I would like all of the offers from all of the merchants
 7 that are selling that particular cuddly toy to arrange
 8 or to gather all the prices together so that I can
 9 compare the prices. Whereas I think what this site is
 10 doing is just taking some keywords and saying: well,
 11 here are some offers in my database that match those.
 12 I don't see any evidence of a price comparison. So for
 13 example, I think, below, on the top right, I believe —
 14 is that a single offer for Argos? There's nothing there
 15 that says "Available from X merchants" and "this is
 16 the best price".

17 MS ROSE: (Off microphone — inaudible).

18 THE CHAIRMAN: Well, we have asked for a —

19 A. There certainly are, but today it might be tricky, but,
 20 yes.

21 THE CHAIRMAN: Yes, I have asked for that earlier.

22 This is — what we are seeing here is four different
 23 screenshots?

24 A. Yes.

25 THE CHAIRMAN: Is that the progression you get, that

138

1 the first one on the left, the top left, is where you
 2 would start, and then if you click on the toy, you come
 3 to the one on the —

4 A. Thank you, I think you've jogged my memory. I think
 5 that's certainly right for the top two —

6 THE CHAIRMAN: Top two.

7 A. — and it might well be right — because this was a long
 8 time ago that I gathered these.

9 THE CHAIRMAN: Yes.

10 A. Then what that is on the left — on the bottom left,
 11 that might look like a price comparison, but again, it's
 12 actually just a set of individual products, and I think
 13 — so I think this has broken away from what I was
 14 saying before, this is not clearly anything to do with
 15 the Elmo, this is now something else.

16 THE CHAIRMAN: It is a camera, I think.

17 A. Yes, digital cameras, and it's just showing you all it
 18 is is a dump of what I will return if I just do a very
 19 crude search on all of the merchant feeds for "digital
 20 cameras", and if I'm sorting by price, which I guess
 21 I did or maybe that's the default, then naturally
 22 the lowest price items that are relevant to the term
 23 "digital cameras" are going to be accessories for that
 24 camera — or for cameras, rather than the cameras
 25 themselves.

139

1 THE CHAIRMAN: You are saying if you select — again, we
 2 cannot see what has been chosen, but the Nikon Coolpix,
 3 you are just given one?

4 A. Yes.

5 THE CHAIRMAN: Is that the point? You are not given any
 6 comparison.

7 A. I believe that's right, yes.

8 THE CHAIRMAN: Is that the point you are making?

9 A. Yes. And as for the — there's also a lot of
 10 the furniture that's gathered around the site, you know,
 11 a bunch of ads, and this is what I was saying, if
 12 that — I think it was put to me that Mr Cutts had
 13 suggested that these are signs of high quality because
 14 they're original content, I'm not sure if they are
 15 original content, but if they are, they don't shout out
 16 quality or careful editorial control, it just looks like
 17 a bunch of ads. This is what — this is what gives
 18 affiliate marketing a bad name, where you can — anybody
 19 can take all of these feeds and as long as they get
 20 approved, so somebody like John Lewis, I think, would be
 21 unlikely to improve this site, but I might be wrong —
 22 then they can just take those feeds, dump them on some
 23 pretty low quality pages and start earning money if they
 24 can garner traffic from Google, and to, in my view,
 25 the great discredit of Google's much vaunted penalty

140

1 algorithms, CompareStorePrices, as I think go through in
 2 my witness statement, it fared very well through
 3 the various stages of Algorithm A and then
 4 the introduction of early Panda and then late Panda and
 5 Coati, a hallmark of this site is that for some reason
 6 it just did very well, it was getting millions of views,
 7 while proper bona fide CSSs were being demoted.
 8 THE CHAIRMAN: Yes. Yes, I see.
 9 CompareStorePrices, is that a US — UK —
 10 A. I believe so, yes. This site certainly is. I don't
 11 think they had any others.
 12 THE CHAIRMAN: Yes, because then if we go back to your
 13 graph, which is also something we struggle to read, I am
 14 afraid, on page {H2A/2/60} in this document, but which
 15 we are going to get in a larger copy. So, it is in
 16 the same document, page 60. Enlarge that one.
 17 CompareStorePrices, because they are not on that graph,
 18 are they?
 19 A. No, and that's because I was showing different things.
 20 So, here, I'm trying to show the effect on what
 21 I consider to be bona fide CSSs. So it would have been
 22 misleading to put CompareStorePrices on here. I would
 23 put that in a separate category.
 24 THE CHAIRMAN: Yes.
 25 We see what is shown here, Figure 30 of course does

141

1 not include Google Shopping, and you say on the previous
 2 page {H2A/2/59} in paragraph 124 — paragraph 145:
 3 " ... my analysis of the various penalty data
 4 documents provided by Google in disclosure show that,
 5 from at least 2011 onwards, Google applied the Panda
 6 and/or Algorithm A penalties to an increasingly broad
 7 array of CSSs, with increasing severity and extent over
 8 time. As can be seen from the following graph, as
 9 Google's Panda and/or Algorithm A penalties began to be
 10 applied as vigorously to Foundem's competitors as to
 11 Foundem ..."
 12 So are you saying that the penalties were imposed to
 13 a different degree over time?
 14 A. Yes.
 15 THE CHAIRMAN: On what basis are you saying that?
 16 A. Yes, so the basis is not clear here. The bases are tens
 17 of thousands of data files that Google has provided that
 18 show you the various penalties, and to understand
 19 the severity of a penalty, there's two dimensions on it.
 20 There's the extent, which is whether it applies to
 21 the entire domain or whether it applies to just
 22 subsections of that site, and if it's just one small
 23 subsection, then obviously that's going to have a minor
 24 effect, but if it applies to subsections that in our
 25 case were materially identical to the entire domain,

142

1 then it's going to affect the whole site, and then there
 2 is what we were talking about earlier, which I think I'm
 3 probably not allowed to talk about properly, but I can
 4 I think say the score, the severity of the penalty that
 5 is applied to the affected either site or subsections of
 6 the site, and that's not here. So that's all behind
 7 the scenes. That's what I've analysed and I'm
 8 summarising when I say that the following graph, which
 9 is showing you the impact of those penalties in terms of
 10 the traffic, I'm not showing you here the analysis of
 11 the underlying penalty data that allows me to state so
 12 confidently that what happened was, over time, these
 13 penalties are applied to a greater severity and extent.
 14 Sorry, that was quite a long-winded answer, but ...
 15 THE CHAIRMAN: I see. Thank you.
 16 Any questions arising out of that?
 17 Thank you, Mr Raff.
 18 A. Thank you.
 19 THE CHAIRMAN: That concludes your evidence, you are
 20 discharged as a witness and you can discuss the case
 21 with your wife, your lawyers and anyone else.
 22 (The witness withdrew)
 23 I should, just before you call Google's first
 24 witness, say we have received an updated and amended
 25 note, it is a confidential note, in answer to

143

1 the questions that we raised, and I take it that
 2 the Claimants have also been given it.
 3 Yes, Mr McGurk.
 4 MR MCGURK: Sir, thank you.
 5 With your permission, may I call Mr Matt Cutts,
 6 please.
 7 MR MATTHEW CUTTS (affirmed)
 8 THE CHAIRMAN: Do sit down, Mr Cutts.
 9 Examination—in-chief MR MCGURK
 10 MR MCGURK: Mr Cutts, good afternoon.
 11 I think, in the file in front of you, you should
 12 have two witness statements that you have given in these
 13 proceedings.
 14 If you could open your First Witness Statement and
 15 then please turn in that to page 66. For
 16 the transcript, that is {H3A/5/66}.
 17 Is that your signature on page 66, Mr Cutts?
 18 A. Yes.
 19 Q. Have you re-read your statement recently?
 20 A. Yes.
 21 Q. Does it remain true to the best of your knowledge and
 22 belief?
 23 A. Yes.
 24 Q. Does it contain the evidence that you wish to give to
 25 this Tribunal?

144

1 A. Yes.
 2 Q. Can we then please turn to {H3A/10/1} and your Second
 3 Witness Statement.
 4 A. I'm not sure whether I have a second binder, but I can
 5 see it on the screen, so ...
 6 Q. Well, let us stay with that for now.
 7 A. Okay.
 8 Q. Could you turn in that, please, to {H3A/10/29}.
 9 A. Ah, yes. Mm—hm.
 10 Q. Is that your signature, Mr Cutts?
 11 A. Yes.
 12 Q. Have you re—read your Second Statement recently?
 13 A. Yes.
 14 Q. Does it remain true to the best of your knowledge and
 15 belief?
 16 A. Yes.
 17 Q. Do you wish to give it as your evidence in these
 18 proceedings?
 19 A. No additional.
 20 Cross—examination by MR WEST
 21 MR WEST: Good afternoon, Mr Cutts.
 22 I would like to begin, with the Tribunal's
 23 permission, with a session in private, and hopefully
 24 then the rest of the questioning can be in open court.
 25 THE CHAIRMAN: Yes, very well.

145

1 So we will now go — and this is LEO private, is it?
 2 Inner confidentiality? Yes.
 3 So we are going into camera and anyone not in
 4 the LEO Confidentiality ring should please leave
 5 the court and the live stream turned off.
 6 (In private)
 7 (In public)
 8 MR WEST: Could we look at the Webmaster Guidelines, that is
 9 {M2/1234}.
 10 One sees at the outset:
 11 "Following these Guidelines will help Google find,
 12 index, and rank your site, which is the best way to
 13 ensure you'll be included in Google's results. Even if
 14 you choose not to implement any of these suggestions, we
 15 strongly encourage you to pay very close attention to
 16 the 'Quality Guidelines', which outline some of
 17 the illicit practices that may lead to a site being
 18 removed entirely from the Google index."
 19 That sounds like it is talking about a spam
 20 algorithm?
 21 A. Yes, I wrote these Guidelines, or at least the first
 22 version.
 23 Q. If we then turn to {M2/1234/4} within the document —
 24 yes, sorry, this is the right page {M2/1234/2}.
 25 These are the Quality Guidelines which that passage

146

1 was discussing?
 2 A. Correct.
 3 Q. One sees, under the final bullet point:
 4 "Avoid ..."
 5 Then missing the "'doorway' pages" section:
 6 "... other 'cookie cutter' approaches such as
 7 affiliate programs with little or no original content."
 8 So this is the same issue we have been debating
 9 about whether original content is necessarily a sign of
 10 quality in a site?
 11 A. It's certainly related.
 12 Q. Can we also look at the human raters guide, which is
 13 {M3/41}, and specifically {M3/41/54}.
 14 Do you recognise this document? This is the human
 15 raters guide.
 16 A. I was not involved in writing the human raters
 17 guideline.
 18 Q. So this is guidance for people who are rating Google's
 19 search results and reviewing changes and so on?
 20 A. We had two different kinds of raters. We had web spam
 21 raters, who could actually take action on web spam, and
 22 then we had thousands of outside sort of contractor
 23 people who were trained on these Guidelines to rate
 24 things. Those raters would look at side—by—sides and
 25 say this set of search results looks better or worse,

147

1 but they wouldn't affect the algorithms or sites
 2 directly. The web spam raters, who were not directly
 3 under my team but related, could take action on spam.
 4 So this is the guidance to people who were not Googlers,
 5 we called them, but rather people who were rating things
 6 to inform the decisions that the Search Quality team
 7 made.
 8 THE CHAIRMAN: Web spam raters were Google employees?
 9 A. They were, yes.
 10 THE CHAIRMAN: The other — the outside raters were —
 11 A. I think they were outside contractors or, you know, paid
 12 by the hour kind of thing.
 13 PROFESSOR SMITH: How did their work feed into what Google
 14 did?
 15 A. That's a great question. The outside raters, their job
 16 was to inform the decisions of the Search Quality team,
 17 but not to impose. Like, the raters could say, "We
 18 thought this was good" or "We thought this was bad", but
 19 you'd see, you know, familiarity bias, all sort of
 20 things where people have heard of sites and so they're
 21 like, "Oh, this is good". But any time you wanted to
 22 launch a new algorithmic change, which happened 400 or
 23 500 times a year, you'd send it out for a side—by—side
 24 and you'd ask the Evaluation team, which was a part of
 25 search quality, to take all of those ratings and

148

1 synthesise a recommendation.
 2 MR WEST: If we look at the bottom of this — sorry,
 3 I should say, I believe this is from 2007. I do not
 4 know if — you said you were not familiar with it.
 5 If one looks at the bottom of this page:
 6 "Not all affiliates are thin.
 7 "If a page offers some value in addition to its
 8 links to the merchant, then it is not a thin affiliate .
 9 For example, if the affiliate offers price comparison
 10 functionality , or displays product reviews, recipes,
 11 lyrics , etc. , it is not a thin affiliate , and,
 12 therefore , not Spam. Some companies that offer price
 13 comparisons or other helpful shopping features in
 14 addition to the affiliate link are."
 15 Then we have some examples of well-known CSSs there.
 16 So this was a point Google understood well in 2007,
 17 is it not, that if a site had comparison shopping
 18 functionality , then it was not spam?
 19 A. It — it could not be spam. It could be high quality.
 20 But again, these rater Guidelines are a little bit more
 21 for the rote, the 12,000 raters, not for the more
 22 nuanced web spam raters.
 23 Q. We were discussing earlier —
 24 THE CHAIRMAN: That may be, that they are for the — but the
 25 view expressed here, whether it is for the outside or

149

1 the inside raters , you do not disagree with that, do
 2 you?
 3 Do you agree with that statement or ...?
 4 A. I guess I'd characterise it as this was a little bit
 5 more rote yes/no flowchart kind of thing. I think there
 6 is a more recent rater Guidelines in the documents, from
 7 2012 or something, that made it a little more nuanced
 8 and left it a little bit more up to the rater, like , you
 9 know: would you find this helpful or not? People could
 10 rate things as "maybe spammy", for example.
 11 MR WEST: But this is a Google document, is it not?
 12 A. I don't know if it's a Google document or produced by
 13 the whatever outside contracted company, but I suspect
 14 it's a Google document.
 15 Q. If we take an example of a site which has been penalised
 16 and as a result appears very far down Google's list of
 17 results , in practice, that site is unlikely to obtain
 18 any material traffic from Google's search results; that
 19 is right, is it not?
 20 A. It depends very much on you're saying "penalised", what
 21 that means. For example, web spam raters could take
 22 action on sites that were selling links . That wouldn't
 23 affect that site's ratings at all , but it meant that we
 24 didn't trust their links to other sites .
 25 Q. But if it is demoted by the algorithm that we have been

150

1 discussing , in practice that site will obtain minimal
 2 traffic from Google?
 3 A. Well, certainly less traffic .
 4 Q. Now, Google operated an appeal process whereby
 5 webmasters could ask Google to look again when they were
 6 subject to penalties or other ranking issues, did it
 7 not?
 8 A. No, that's not correct .
 9 Q. It did operate something called the reconsideration
 10 request procedure, did it not?
 11 A. Yes, but the reconsideration request only applied to
 12 manual spam penalties, not to ranking issues or
 13 algorithms.
 14 Q. So if a penalty — if a site was penalised by an
 15 algorithmic penalty and the webmaster then put in
 16 a reconsideration request, Google would not even
 17 consider that?
 18 A. That's correct .
 19 Q. Neither would it acknowledge receipt of the request?
 20 A. I don't — I don't — it evolved over time. The early
 21 reconsideration requests would send the request off and
 22 I don't know that it acknowledged receipt. Eventually,
 23 we launched something called a webmaster console or
 24 a search console, where people could submit the requests
 25 and see, you know, the status of those requests, but

151

1 I don't know. I don't think it showed anything related
 2 to algorithmic demotions.
 3 Q. So, in fact, I think your evidence is that there were no
 4 official means available to webmasters by which they
 5 could seek to appeal an algorithmic penalty?
 6 A. I — I disagree with that, because we went to search
 7 conferences, we were very active on a webmaster forum
 8 that we ran, I was on Twitter. You could — you know,
 9 if a reporter wrote about something, we would try to
 10 investigate it . I would go to blogs, I would look in
 11 comments. So I feel like if people had complaints, we
 12 wanted to hear that feedback, and we had a variety of
 13 channels by which people could provide feedback to
 14 Google.
 15 Q. But there was no formal mechanism?
 16 A. I think the most formal would be to post in
 17 the webmaster forum that we — that we offered on our —
 18 on groups.
 19 Q. But that was a public forum, was it not?
 20 A. It was.
 21 Q. Google did not make available email addresses whereby
 22 webmasters with such complaints could directly contact
 23 someone within Google to raise them?
 24 A. We did not provide our email addresses to the general
 25 public where they could email us with complaints or

152

1 feedback.

2 Q. You say in your First Statement that the low level of

3 whitelisting from the algorithm we have been discussing

4 shows the quality of that algorithm, but might it not

5 simply reflect the fact that there was no mechanism by

6 which anyone could appeal the imposition of a penalty by

7 the algorithm?

8 A. As I think I've stated, we looked very hard for false

9 positives internally, externally, external reports, on

10 webmaster forums, on Twitter, so we — we tried to pay

11 attention to the quality of our search results and

12 improve it using all manner of feedback.

13 Q. Let us look at what happened with Foundem's appeal.

14 Foundem's website was hit by an Algorithm A penalty on

15 27 June 2006. Were you aware of that?

16 A. I believe I'm aware of that, yes.

17 Q. Foundem immediately submitted a reconsideration request.

18 We can see that at {J2A/18}.

19 This document pulls together the text of all of

20 the reconsideration requests which Foundem submitted

21 over the years. There were eight of them in total, and

22 we see the first one, June 29, 2006, so three days — or

23 two or three days after the penalty struck, but none of

24 them was ever acknowledged or responded to by Google,

25 was it?

153

1 A. We did not acknowledge or respond to the reconsideration

2 requests because, as I've said, those were for manual

3 actions, not for algorithmic demotion. We did tend to

4 respond when they emailed the assistant to the CEO. My

5 boss' boss, 13 or so different Googlers and executives,

6 when they had a Guardian article written about them,

7 like there were many times in which Foundem showed up in

8 my inbox.

9 Q. Yes. Could we look at the first of those. That is in

10 {J2B/1/35}. This tab, again, pulls together

11 the relevant correspondence between Foundem and Google.

12 We see here, this is an email from Shivaun Raff to

13 Jenifer, that is Jenifer Austin, who worked at Google,

14 did she not?

15 A. Yes.

16 Q. She is asking Jenifer to pass the email below on to you,

17 so they do not have your email address but they are

18 trying to get the email in front of you; do you see

19 that?

20 A. (No audible response).

21 Q. "Dear Matt.

22 "I hope you don't mind, but I have asked Jenifer

23 Austin to kindly forward this email to you.

24 "We are a UK-based technology start-up (WebSenticent

25 Ltd) with a patented vertical search technology. Our

154

1 site, www.foundem.com, was hit hard by the June 27th

2 refresh. The majority of our pages fell substantially

3 in the SERPs, typically from pages 1 or 2 to pages 5, 6

4 or below.

5 "Your recent extremely useful and much appreciated

6 videos have led us to suspect that we may be suffering

7 from a perceived over-optimization of our pages due to

8 the inherent nature of our vertical search results. The

9 pages that seem to have been most affected tend to be

10 the results of price comparisons for particular

11 products, e.g. 'Philips 23PF5321'. As a vertical search

12 service, these result pages tend to contain a naturally

13 high concentration of the make/model keywords, as well

14 as a naturally high degree of duplicate content (due to

15 similar or identical descriptions of these products from

16 the various suppliers).

17 "Unlike many websites, the value of our service

18 depends not on the provision of unique content but on

19 the presentation of the broadest possible choice of

20 options. Our WebSenticent technology also allows us to

21 provide automated contextual search and filtering

22 capabilities designed to make comparison shopping fast,

23 intuitive, and fun.

24 "As a fledgling start-up, this severe drop in

25 organic traffic is hitting us very hard. We would be

155

1 extremely grateful for anything you could do or suggest

2 that might help us to overcome this problem."

3 Then they give some examples of how their certain

4 keywords have fallen in the rankings before and after

5 27 June.

6 You will see in the email at the top to

7 Jenifer Austin, she says:

8 "We've been looking into the cause of our ranking

9 issues, and I am now very keen to get the following

10 email in front of our Matt Cutts or Adam Lasnik, but

11 their email addresses are proving impressively elusive."

12 So that is the point we averted to before, that you

13 did not make them publicly available.

14 So Foundem is making a number of salient points

15 here. First, it has its own vertical search technology;

16 do you see that?

17 A. I see the email.

18 Q. So it is not just another what you might call "cookie

19 cutter site", as per the Webmaster Guidelines?

20 A. I disagree.

21 Q. Well, we will come back to that.

22 Secondly, the purpose of a vertical service is not

23 to provide original content, and I think you agreed that

24 is right, is it not?

25 A. I took this as a request to investigate the site. I —

156

1 it reached both my inbox and Adam Lasnik's inbox. We
 2 checked it out and I gave Adam guidance on how to reply.
 3 Q. Yes, we can see that {M1/37}. This is you passing this
 4 email on to Adam Lasnik, the second email:
 5 "Adam, can you take the lead? ... It's a price
 6 comparison search engine that our [Algorithm A]
 7 [doesn't] think much of, so you may have to gently
 8 discuss how affiliate sites and other search engines
 9 aren't always what we want to return."
 10 So your view appears to be that the site has been
 11 correctly demoted because it is an affiliate site or
 12 other search engine site?
 13 A. My opinion was that the site was correctly demoted by
 14 Algorithm A.
 15 Q. We can see from this that you well understood at the
 16 time that vertical search services would tend to be
 17 demoted by Algorithm A. That is what you say.
 18 A. I disagree with that. The intent of Algorithm A was to
 19 catch many different types of spam, porn, pills, casino,
 20 malware, travel, spam directories and shopping, not
 21 intended to catch comparison shopping engines.
 22 THE CHAIRMAN: I do not think the point is whether it was
 23 intended to catch CSSs, but the question is whether —
 24 perhaps contrary to the intention, but whether in fact,
 25 because of the way it was designed, it was catching —

157

1 as well as a lot of spam and low quality, it was
 2 operating in a way that it was catching price comparison
 3 search engines. That is the point that I think was
 4 being raised.
 5 A. I think it wasn't — Algorithm A was not triggering on
 6 all comparison shopping engines. I think I checked out
 7 the site and I concluded it seems like it's falling
 8 within the lines of the kinds of things that Algorithm A
 9 is supposed to take action on.
 10 Later, like 2009, I was on a phone call with
 11 the founders —
 12 THE CHAIRMAN: We will probably come on to that later, but
 13 just dealing with this one.
 14 A. Just answer the question. I'm sorry.
 15 MS ROSE: (Off microphone) So you thought Foundem was a spam
 16 site?
 17 A. Spam, or so low quality as to not draw much distinction.
 18 MS ROSE: But, I mean, this algorithm is for spam?
 19 A. Yes.
 20 MS ROSE: So you must have thought it was a spam site?
 21 A. Spam, or so low quality that it's basically defined —
 22 MS ROSE: Why are you making that qualification? What is
 23 the difference?
 24 A. So later on it became a question of whether the site was
 25 spam or just low quality.

158

1 MS ROSE: I am talking about at this point, at this time.
 2 A. Yeah, at that point, probably I would —
 3 MS ROSE: You say you checked out the website, and when you
 4 checked out the website you thought it was spam?
 5 A. I think that's safe to say, yes.
 6 MS ROSE: So you did not think it was useful to have
 7 the comparison of different prices in order of lowest
 8 price first?
 9 A. What I — my recollection is that I remember a lot of
 10 things that I thought users wouldn't like about
 11 the site, like escaping issues —
 12 MS ROSE: Like what?
 13 A. "Escaping issues" means you're taking feeds but you're
 14 not correctly dealing with things like apostrophes and
 15 punctuation, and so you see —
 16 MS ROSE: These are the typos? The rogue —
 17 A. I'd call them more serious than typos. Like, serious
 18 sites, in my experience, tended to clean that sort of
 19 data up, and I found that sort of stuff very quickly
 20 with Foundem and continued to find that stuff on Foundem
 21 for a year.
 22 MR WEST: But that is not what you say, is it? It says:
 23 "... you may have to gently discuss how affiliate
 24 sites and other search engines aren't always what we
 25 want to return."

159

1 That is why you are objecting to the site: it is an
 2 affiliate site and a search engine?
 3 A. No, I checked in our Penaltyserver. It said this is
 4 detected as affiliate spam. I looked at the site,
 5 I didn't see a reason to disagree.
 6 PROFESSOR SMITH: But you earlier described the fact that
 7 you had a number of criteria for judging whether a site
 8 was useful to users, [redacted — Confidential
 9 information]. Why did you not just trust what these
 10 statistics were saying? You are saying, okay, you have
 11 got these, the fact that it is an affiliate site has
 12 raised a question, and you are now making a judgment
 13 that is possibly different from the judgment that your
 14 own statistics produced about the quality of the user
 15 experience.
 16 A. At that time, I believe I looked it up, I looked at
 17 the data according to Algorithm A, agreed with the data
 18 and thought that the algorithm was working as I thought
 19 it should be working, so I didn't see any reason to
 20 gainsay or reverse what I thought the algorithm was
 21 concluding about the site.
 22 MR WEST: If we look at the email Mr Lasnik then sent out
 23 that is at {J2B/1/32}:
 24 "Hi Shivaun,
 25 "I just learned of your inquiry (below) regarding

160

1 foundem.com ...
 2 "I do note that we have over 70,000 pages of your
 3 site visited. I'm guessing, however, that you're more
 4 concerned with ranking. In that area, I'm afraid
 5 I don't have much in the way of specific insights to
 6 offer.
 7 "Site rankings are determined via an interplay of an
 8 enormous number of algorithms, all of which are designed
 9 to assess and weight the relevance of a specific page
 10 for each specific search query."
 11 Then a few paragraphs down, he says:
 12 "On the whole, I encourage you to build and enhance
 13 foundem.com in ways that provide *unique and compelling
 14 value* to visitors. Continually ask yourself: is this
 15 site offering something that users cannot obtain
 16 elsewhere, or cannot get with the same ease?"
 17 But Mrs Raff had explained in her email, had she
 18 not, that the unique and compelling value of Foundem's
 19 site lay in its patented search technology, its
 20 filtering capabilities and so on, not in its original
 21 content?
 22 A. I haven't reviewed this email. Do you mind if I just
 23 take a minute to?
 24 Q. Certainly.
 25 (Pause)

161

1 A. Okay.
 2 Q. So I suggest to you this is a very unsatisfactory
 3 response.
 4 A. You're asking me whether it's an unsatisfactory
 5 response?
 6 Q. That is what I am putting to you, yes.
 7 A. I disagree. I think we had produced an algorithm that
 8 was very good at catching spam, it was using secret data
 9 that we thought was extremely — are we still in camera?
 10 Q. No.
 11 A. Okay.
 12 It was using data that we considered secret. So we
 13 were loath to reveal the actual ingredients, the secret
 14 sauce that was going to, you know, affect this site, or
 15 directly how to improve its rankings. We got thousands
 16 of emails from sites like this, not specifically about
 17 Algorithm A but just in general: why is my site not
 18 ranking; I want my site to rank better.
 19 Adam writes back and notes there are 70,000 pages
 20 indexed — I think he probably means indexed. He's
 21 pointing to the form, which is the official method of
 22 reported problems that I mentioned, he's pointing to my
 23 blog, he's pointing to resources to read, and then he's
 24 saying, "I encourage you to build and enhance Foundem in
 25 ways that provide *unique and compelling value*", so

162

1 that value—add to the user. Given that Adam, you know,
 2 would know not to reveal secret confidential ranking
 3 signals, I think that was a relatively good response.
 4 MS ROSE: Can I just ask a question? Can you just go back
 5 to page 195 of the [draft] transcript, at the bottom.
 6 You were asked:
 7 "What makes a high quality CSS?"
 8 You said:
 9 "For me, it's the amount of value—add for the user.
 10 Can they find things, is it comprehensive, is the data
 11 up to date, is it fresh, is it accurate, are there
 12 things that are not annoying?"
 13 You identified the characters as "annoying", but you
 14 did not say that you found anything about it not being
 15 comprehensive, fresh and accurate, and we have heard
 16 quite a lot of evidence that it was all those things.
 17 A. I was answering, you know, on the fly about what are
 18 the sort of factors that I would care about to look for
 19 value—add.
 20 MS ROSE: Yes, absolutely.
 21 A. Whenever I was looking at Foundem —
 22 MS ROSE: Well, no, we are talking about this specific time
 23 when you are first asked to look at it and you say you
 24 did look at it.
 25 A. Mm—hm.

163

1 MS ROSE: You said that when you looked at it, you concluded
 2 it was affiliate spam. But did you actually look at
 3 those things, like the freshness of the speed, whether
 4 it was comprehensive, whether it was accurate? Did you
 5 look at any of that?
 6 A. I — I recall doing a search on the site and finding
 7 many other sites that had the same content.
 8 MS ROSE: But that is not the point, is it? The point is
 9 about whether the way it is presented is helpful to
 10 the user as a comparison and whether it is
 11 comprehensive, up to date and accurate.
 12 A. Those are all great ideal factors —
 13 MS ROSE: But did you check any of those factors before you
 14 decided it was spam?
 15 A. In practice, seeing the stats of the Penaltyserver would
 16 mean users were not finding it useful, and —
 17 MS ROSE: Yes, but you were looking at the site because it
 18 had been flagged to you, but you did not check any of
 19 those factors, is that what you are saying? You just
 20 thought it was a bit annoying because they had got some
 21 rogue characters in; is that right?
 22 A. More than rogue characters. They were not dealing with
 23 their data in a way that —
 24 MS ROSE: But you did not check the issues of whether it was
 25 comprehensive, accurate and up to date?

164

1 A. My version of checking that was trying to click around
 2 on the site, see the impression that it gave, check for
 3 searches and see how much of this content is unique,
 4 or —
 5 MS ROSE: But I think we have already been discussing
 6 whether unique content is really relevant. It is more
 7 about whether the way the comparison is being presented
 8 is helpful, surely?
 9 A. Coming from the lens where the vast majority of spam
 10 that I saw was often affiliate spam where people are
 11 just taking feeds and dumping them without doing much
 12 due diligence or care and cleaning up those feeds,
 13 I will absolutely say maybe I was more sensitive to
 14 those kinds of issues rather than, you know, comparing
 15 it on the basis of it being a comparison shopping
 16 engine.
 17 MS ROSE: So you did not actually do that exercise?
 18 A. I don't recall doing that.
 19 MS ROSE: Okay.
 20 MR WEST: You did not say anything to Mr Lasnik, that
 21 the problem with this site is that it has got wrongly
 22 escaped characters or anything like that, did you?
 23 A. That was, yeah, Mr Lasnik — Adam Lasnik was commenting
 24 more about the fact that he knew it was deemed by
 25 Algorithm A as not great, and so trying to give guidance

165

1 about adding more value was a good piece of advice.
 2 THE CHAIRMAN: If we look, Mr Cutts, at your statement at
 3 {H3A/5/47}, paragraph 132, at (a), paragraph 132(a):
 4 "In August 2006 I discussed with Adam Lasnik and
 5 Larry Page's assistant Jenifer Austin how to deal with
 6 an email from Foundem to Jenifer complaining about
 7 a drop in ranking."
 8 I think that must be this email; is that right?
 9 A. (No audible response).
 10 THE CHAIRMAN: Then you say — you explain who Adam Lasnik
 11 is, and then you say:
 12 "I asked Adam to respond with the expectation that
 13 he would politely relay the quality Guidelines to
 14 Foundem. I recall there were some signs that Foundem
 15 was not a typical spammer, for example they mentioned
 16 their patented vertical search technology, and very few
 17 spammers would have temerity to contact the Google CEO
 18 with their complaints. To me, that implied that Foundem
 19 at least believed their website to be a worthwhile
 20 site."
 21 You do not say anything here about having checked
 22 the site and thought it was of lower quality.
 23 A. Sorry, it would sort of implicitly do — be whatever
 24 I would do whenever I would get these kind of reports is
 25 I'd do a sort of temperature check to get a quick idea.

166

1 I could have said that in my statement.
 2 THE CHAIRMAN: You say — in fact what you say is there were
 3 signs that it was not a typical spammer.
 4 A. There were signs that they definitely thought they had
 5 a great site. Most spammers don't write to the CEO,
 6 that's true.
 7 MR WEST: I suggest, Mr Cutts, you are getting mixed up. It
 8 is only later, in response to appeals in 2009, that you
 9 raised the question of typographical errors. It is not
 10 a point which you raised or considered back in 2006.
 11 A. Each time Foundem reached out, I checked out the site
 12 and didn't see any reason to gainsay the algorithm.
 13 THE CHAIRMAN: But you did not think it is worth mentioning
 14 that when you give an account of your reaction in your
 15 witness statement?
 16 A. Just for context, before I left Google, I did a search
 17 to try to figure out how many emails to people outside
 18 of Google I had sent and it was over 50,000. So these
 19 would be short assessments about whether a site was good
 20 or not. There were a lot of interactions with
 21 webmasters, to the point where we hired Adam to try to
 22 take some of that load off of me so I could do more of
 23 the work of spam-finding.
 24 THE CHAIRMAN: Yes, that was not what I was asking you.
 25 A. Okay, sorry.

167

1 THE CHAIRMAN: I was saying that you go in some detail here,
 2 subparagraph by subparagraph, how you react on each
 3 occasion, and you go on, in October 2009, to talk about,
 4 as counsel just mentioned, looking at the matter. But
 5 here, in August 2006, you do not say that. We can see
 6 what you say.
 7 But is your evidence that now — although not in
 8 your statement, now you remember that you definitely did
 9 go to the site, or could that be, given that it is
 10 a long time ago, actually what you did in 2009, as set
 11 out there?
 12 A. I would not claim my statement is perfect and exhaustive
 13 and comprehensive in all ways. What I would typically
 14 do when someone would complain is I would check in
 15 the Penaltyserver and I would check the site briefly,
 16 and then I would see if there's something more to look
 17 into. So there were many cases where I was, like, "This
 18 seems look a good site; what are we doing; what's going
 19 on", but I — you're absolutely right, my original
 20 statement did not document that I thought that the site
 21 was not — well, I feel like at some point in my
 22 statement I said that it was not fantastic engineering,
 23 but I don't know exactly where or when. I think I used
 24 the word "shoddy".
 25 MR WEST: Mr Cutts, you say part of the problem is the sheer

168

1 number of external queries that you had, but is not
 2 the reason for that that Google did not provide any
 3 appeal mechanism?
 4 A. No, we provided the forum, we eventually hired webmaster
 5 analysts to staff that forum, but there were always
 6 people who would sometimes email the CEO, like,
 7 you know, and then when people had questions, the buck
 8 stopped with me on — where decisions were made about
 9 spam, so people would reach out to me.
 10 Q. Shortly after Foundem was hit with this search quality
 11 penalty, it was also hit with an AdWords penalty; do you
 12 recall this?
 13 A. More through the documentation that I've reviewed in
 14 the process of the — preparing.
 15 Q. You did not work with AdWords, did you?
 16 A. Not in that capacity, no.
 17 Q. So I will take this quickly, but the site was hit with
 18 an AdWords penalty, which had increased the level of its
 19 minimum bids. You understand that is how these
 20 penalties worked in AdWords?
 21 A. I understand that to be true. I don't have direct
 22 knowledge of that.
 23 Q. The algorithm which applied to increase those minimum
 24 bids in AdWords was itself derived from Algorithm A; do
 25 you recall that?

169

1 A. I believe that's correct.
 2 Q. So it is not surprising that the Algorithm A search
 3 penalty then carried over into AdWords when it did?
 4 A. It was rare for the Search Quality team to work with
 5 the Ads Quality team, so it was a bit of a surprise to
 6 see in the documentation that one of our signals made it
 7 over to landing page quality. I hadn't remembered that
 8 before reviewing the documentation.
 9 Q. Now, unlike in the case of search quality, in the case
 10 of AdWords, Google does provide a telephone assistance
 11 line for people to speak to someone at Google about
 12 that. Were you aware of that?
 13 A. I don't have knowledge of that.
 14 Q. Could we look at {J2B/19}. So in response to the appeal
 15 of the AdWords penalty, this individual, who I believe
 16 is Dave Williams, does a manual review of the site and
 17 we will see what he says:
 18 "Hi Kerry,
 19 "I wanted ..."
 20 So this is Dave Williams of AdWords, a Googler:
 21 "I wanted to resubmit this advertiser's site
 22 (www.foundem.com) once more for a possible
 23 LPQ whitelisting. This is a different ticket, but I've
 24 quoted your previous response ...
 25 "First of all, the ads and keywords in this

170

1 advertiser's campaign could not possibly be more
 2 specific and relevant. Here is a typical example.
 3 A search for '42pd7200' serves ... ad."
 4 Which is for a Hitachi television :
 5 "And takes you to this landing page."
 6 We then have the link:
 7 " ... which has 9 listings of the exact model
 8 searched for and mentioned in the advertisement. Each
 9 listing has a price that accurately represents the price
 10 you find when you click through to the shop. In
 11 addition, the page includes the cost of shipping the
 12 item from that website, or just '+ shipping' if they do
 13 not have exact information on the shipping cost.
 14 The landing page even has information on a promotional
 15 offer from one of the sites, how much money you
 16 could ..."
 17 I think that should be "save":
 18 " ... how to access the promotion, and even the date
 19 that the promotion ends. If that is not relevant and
 20 useful, NOTHING is.
 21 "Although the purpose of this website is to generate
 22 revenue by driving traffic to parent companies, there is
 23 still real value present in the comparison shopping
 24 functionality of the site. There are over 100 companies
 25 (and far more brands) whose products are searchable on

171

1 foundem.com. For example, a search for shoes (leaving
 2 all the fields blank) yields 178 pages of results from a
 3 dozen different shopping websites. A search for clothes
 4 yields over 500 (capped at 500) pages, including over
 5 10,000 items from 23 different shopping websites.
 6 Furthermore, you can find... price differences by doing
 7 a search. For example, from a foundem.com search on
 8 flights from San Jose to New York departing Sept. 1
 9 returning Sept. 3, I found 62 results from 5 different
 10 companies with prices ranging from £247 to £571.
 11 "I'm not an expert on e-commerce by any stretch of
 12 the imagination, but wouldn't all comparison shopping
 13 sites be affiliate sites of one type or another? Does
 14 that really mean that they fit the bill of a 'low
 15 quality' site that does not add any value to [the] user
 16 experience? To my mind, www.foundem.com is a useful
 17 site, and users would not have a bad experience if they
 18 clicked on an ad like the one above. In fact, they
 19 would be able to purchase the TV they wanted and save
 20 about £150."
 21 So unlike Mr Lasnik, or indeed you, it appears that
 22 the relevant individual within AdWords who looked at
 23 the site understood immediately the point that Foundem
 24 was making.
 25 A. I haven't seen this document. Could I look at the next

172

1 page of this?

2 Q. Yes, certainly. In the usual way, I think the next page

3 is an earlier email {J2B/19/2}.

4 A. (Pause).

5 So I'm speculating, because I'm not an AdWords

6 person, but this looks like a policy discussion between

7 two people on the AdWords side. One person, Kerry,

8 seems to be saying there's no unique value—add added to

9 the user, instead of going to official sites directly,

10 and then the person Dave is saying he thought it was

11 a useful result, but I can't really — someone in

12 AdWords was saying that they liked the site, but —

13 Q. Are these not all the same factors that you have been

14 telling us are indicators of quality in a CSS?

15 A. I wasn't going to take the word of someone from

16 the AdWords side, the ad side, just because they said

17 that it was good. I don't — I never saw this

18 particular communication in the first place. If someone

19 is advertising in AdWords and wants to appeal, then

20 there's different incentives for the Google AdWords side

21 of the company to respond or let them, you know lift

22 their landing page quality score or whatever. But from

23 my point of view, this is one person at Google saying

24 "This doesn't seem within our policy, there's no unique

25 value—add to the user", and another person who's saying,

173

1 "I like it".

2 THE CHAIRMAN: I am not sure you have quite answered

3 the question, Mr Cutts.

4 A. Okay.

5 THE CHAIRMAN: The question was: are these not all the same

6 factors, just the facts set out, the factors that you

7 have been telling us are qualities — indicators of

8 quality in a CSS, never mind who is writing it?

9 A. I — I take your point that this person is saying,

10 you know, something sympathetic to Foundem.

11 THE CHAIRMAN: Well, he is setting out various facts. Yes,

12 unless what he is saying is not true and he is making it

13 up, and there is no reason to think that, he is

14 setting out various facts. The question you were asked

15 is: are these not the same factors that you have been

16 telling this court are indicators of quality in a CSS?

17 A. The factors are definitely related. In

18 the communication where I saw Foundem communicating with

19 people, I would see things like an email from

20 Richard Ray, I believe, who was a Guardian —

21 THE CHAIRMAN: Just, sorry —

22 A. Yeah.

23 THE CHAIRMAN: — please —

24 A. Okay.

25 THE CHAIRMAN: — answer the question. If you want to add

174

1 some other comments —

2 A. Sure.

3 THE CHAIRMAN: — then do that.

4 A. They're definitely — these are looking at similar

5 characteristics to how Google tried to judge quality for

6 sites.

7 MR WEST: Well, the view of Kerry held sway at that time and

8 the appeal was not upheld, and Foundem then submitted

9 a new appeal, as we see at {J2B/23}, beginning at

10 {J2B/23/2}. That has been sent to Anthony House of

11 Google, and it concerned both the search and the AdWords

12 penalty, and it set out, again, if one begins just on

13 Mrs Raff's email:

14 "Our site ... is built on unique patented

15 technology ...

16 "Since around June last year [it] has been labouring

17 under a site-wide ranking/quality penalty that ...

18 decimated our rankings ...

19 "We believe that the same site-wide penalty

20 currently decimating our organic rankings is also

21 adversely affecting our AdWord quality scores ...

22 "Since last year we have filed several reinclusion

23 requests as well as initiating a manual AdWords quality

24 review ... to no avail ...

25 "In the intervening 12 months since these problems

175

1 began, Foundem.com has emerged from the shadows to

2 become part of the shopper-comparison establishment.

3 Our unique technology has allowed us to beat out

4 competition from the likes of Kelkoo, Shopping.com and

5 PriceGrabber and secure prestigious partnerships with

6 many of the UK's leading online publishers, including

7 Channel 5, IPC ... Emap, and Future Publishing ...

8 "We have ... received excellent press, including

9 most recently featuring as The Times Website of the Week

10 ... also earned a place in The Times' prestigious Top

11 100 Travel Websites, a feat we are particularly proud of

12 as we are the only site featured that does not focus

13 entirely on travel.

14 "Clearly Foundem.com cannot be considered either

15 spam or ... low quality. I would therefore be

16 enormously grateful if you could take a moment to review

17 Foundem's status with a view to amending

18 the ranking/quality penalty ..."

19 So that is the further appeal, this time sent to

20 Mr House.

21 The original answer received in relation to AdWords

22 is at {J2B/1/31}.

23 A. I don't know if you'll ask more questions on this,

24 because I haven't seen this document before, so whether

25 we need to go further up to see additional replies

176

1 beyond —
 2 Q. Well, I am going to show you the replies.
 3 A. Okay.
 4 Q. Yes.
 5 {J2B/1/31}. So this is from AdWords:
 6 "Hello Shivaun.
 7 "I tried to send you an email ... sorry to hear you
 8 did not receive it ...
 9 "I'm writing to follow up regarding the status of
 10 your site evaluation ...
 11 "I've confirmed that the original quality review of
 12 your site was correct, and that your current landing
 13 page quality is very poor. Sites that don't include
 14 useful content, products and/or services for internet
 15 users are often difficult to advertise efficiently and
 16 effectively."
 17 So the initial answer was that the penalty stands;
 18 do you see that?
 19 A. I believe so.
 20 Q. Similarly, on page {J2B/1/27}, Mr House's reply in
 21 relation to search. He says:
 22 "I've called in on the return of a favour with one
 23 of our Webmaster team and finally gotten some info, but
 24 I think I've exhausted all of that goodwill, though ...
 25 "We checked your site in our penalty tool and looked

177

1 at the site's information in webmaster Tools — there
 2 aren't any penalties or crawl errors listed, so I can
 3 only share our best guess as to why your site is
 4 experiencing problems with ranking. It's a search
 5 service, which means it has very little original
 6 content, and could also be considered a doorway page;
 7 other similar sites have experienced ranking changes
 8 like this one."
 9 So the objection, again, is: it is a search service
 10 with little original content; do you see that?
 11 A. I haven't seen this document before. I'm just reviewing
 12 it.
 13 (Pause).
 14 Sorry, what was your question?
 15 Q. So it appears that the result of the search penalty
 16 appeal is that it is dismissed because Foundem is
 17 a search service, which means it has very little
 18 original content. That is the ground given, is it not?
 19 A. I actually don't know what Anthony was saying here.
 20 Typically, someone wouldn't check our internal tools and
 21 then report out externally any information, or they
 22 shouldn't have. So he might have been trying to
 23 summarise what he saw, he might have not seen any
 24 information that was invisible to him, I'm not sure.
 25 Q. Do you mean the point that "there are no penalties or

178

1 crawl errors listed?"
 2 A. Yeah, I don't know whether — I don't know what was —
 3 what was going on there, whether he had access to
 4 the tool, or whether he was able to access the tool but
 5 didn't have permissions to be able to see anything,
 6 because we didn't, obviously, want people reporting
 7 internal information to external sites.
 8 Q. Leaving that aside, it is essentially the same answer as
 9 they got from Mr Lasnik a year earlier, is it not: you
 10 are a search service with no original content?
 11 A. I would be speculating about what Mr House is saying in
 12 this email and about why he said it.
 13 Q. Foundem then spoke to a manager within AdWords by
 14 the name of Fred Vallayes. Do you remember his
 15 involvement?
 16 A. (No audible response).
 17 Q. We see his thinking at {J2B/41}.
 18 So this is an internal Google document which, again,
 19 you did not see, but just to look at it. So this, in
 20 the usual way, is back to front, so the first email is
 21 at the bottom from Mr Vallaeys to Kitty Zhao:
 22 "I investigated an LPQ case where foundem.com is
 23 penalized when I don't believe they should be. They are
 24 a shopping comparison engine with their own technology
 25 (so they're not reusing 3rd party data). They have

179

1 major partnerships in the UK where their technology was
 2 selected because it delivers better results. Could we
 3 please whitelist both of their sites, foundem.co.uk and
 4 foundem.com."
 5 Do you see that?
 6 A. I see the email.
 7 Q. You will see that Mr Vallaeys refers to the demotion, or
 8 rather the increase in minimum bids as a penalty, and
 9 that is right, that is correct terminology, is it not?
 10 A. He's talking about AdWords, so I don't know how they
 11 referred to it in AdWords.
 12 Q. He is seeking whitelisting? Again, that is terminology
 13 that was used within Google at the time?
 14 A. At the time, yes, but this is discussing something
 15 internal to AdWords.
 16 Q. Now, Kitty Zhao's answer, in the middle —
 17 THE CHAIRMAN: Just one sec.
 18 It is obviously terminology that was used in
 19 AdWords. That is clear, is it not? Was that
 20 terminology also used in your department at the same
 21 time?
 22 A. We moved away from terminology like "blacklist" and
 23 "whitelist" towards "exception list".
 24 THE CHAIRMAN: Right, but meaning the same thing?
 25 A. The net effect was the same, yes.

180

1 MS ROSE: What about "penalised"?
 2 A. Tend to say "demoted" rather than "penalised".
 3 MS ROSE: But it means the same thing?
 4 A. The net effect was the same, but it could happen via
 5 multiple mechanisms. Typically, when we say
 6 "penalised", we mean someone manually assessed the site
 7 and put a penalty on it on the manual —
 8 MS ROSE: (Overspeaking — inaudible) an algorithm. So you
 9 would not call an algorithm a penalty?
 10 A. Typically not. Normally, we say an algorithmic demotion
 11 or the algorithmic ranking. Usually we reserve the term
 12 "penalty" for — for manual actions, but I wouldn't
 13 claim that we were 100%, you know, consistent all the
 14 time on that, but that was —
 15 MS ROSE: So you call Algorithm A a "demotion"?
 16 A. Yes.
 17 MR WEST: Kitty Zhao says:
 18 "Maybe I'm ... missing your point here ... please
 19 explain more why this comparison shopping site is so
 20 noteworthy as we've rejected from whitelisting most
 21 comparison shopping sites to date? Isn't this a
 22 syndicated product feed + ads shopping arbitrage site,
 23 no matter what technology they are using?"
 24 Mr Vallaeys responds:
 25 "As I understand [it], we reject syndicated shopping

181

1 feeds but not sites that have their own unique
 2 comparison content. This site has its own crawling and
 3 ranking systems so it does not provide the same results
 4 as any other site. Their site was trying to become
 5 the exclusive shopping comparison engine for
 6 [Channel 5], a major site in the UK, and they beat
 7 pricegrabber, shopping.com and kelkoo in head to head
 8 tests. They had more stores and more prices, so they
 9 ultimately won this deal. Like all shopping comparison
 10 sites, they will take you to the merchant through an
 11 affiliate link so I assume this is the reason they are
 12 impacted by LPQ."
 13 But it is the same point again, is it not? Mr
 14 Vallaeys recognises the unique value of Foundem's site
 15 in its comparison content?
 16 A. Seems to be sympathetic to the points that Foundem was
 17 making.
 18 Q. To show what happened next, it is the next tab, 42
 19 {J2B/42}, and if we start at {J2B/42/3}, this is Mr
 20 Vallaeys again:
 21 "I recently spoke with the owners of foundem ...
 22 a UK price comparison engine that is impacted by [landed
 23 page quality]. I know price comparison engines are on
 24 the grey area list so I talked with Clay because based
 25 on the spirit of the LPQ, I feel they have a legitimate

182

1 request for whitelisting ... They built their own
 2 technology and while bidding to be the price comparison
 3 engine for [Channel 5], they beat out Kelkoo,
 4 pricegrabber and shopping.com because they have more
 5 extensive results and are able to find more prices.
 6 This makes me believe they are a legitimate business and
 7 while their site is not the prettiest, it seems unique
 8 and useful."
 9 So one sees, again, Mr Vallaeys is there of the view
 10 that Foundem's request for whitelisting is legitimate;
 11 do you see that?
 12 A. Sorry, could you repeat the question?
 13 Q. Yes. Mr Vallaeys —
 14 A. I haven't seen these documents, so I'm trying to catch
 15 up.
 16 Q. I am trying to take it reasonably swiftly, but do say if
 17 I am going too quickly.
 18 One has the response there from Rachel, the second
 19 paragraph of this page:
 20 "I trust your savviness in evaluating the site
 21 technology, but I'd feel more comfortable if we drafted
 22 some Guidelines around what types or features or
 23 technology would warrant us making an exception to
 24 the blacklisting criteria."
 25 So one sees there, as well as whitelisting being

183

1 used within Google, also blacklisting ?
 2 A. On the AdWords side.
 3 Q. Then Mr Vallaeys' response on the previous page
 4 {J2B/42/2}:
 5 "I thought we blacklisted shopping comparison
 6 because the sites often just reuse the same results from
 7 one of the major shopping comparison engines that offer
 8 API feeds ... Based on that, I would be open to
 9 whitelist any shopping comparison site that is NOT using
 10 someone else's results. I'd say another criteria would
 11 be that they do not run adsense type ads above the fold.
 12 This means that their shopping data has to be good
 13 enough to be profitable."
 14 Then:
 15 "Based on these criteria, I believe we wouldn't have
 16 too many sites to whitelist."
 17 But in the end, instead of developing a new policy,
 18 one can see under the three bold bullet points at
 19 the top:
 20 "... I'd prefer whitelisting comparison shopping
 21 sites reactively ..."
 22 Then the previous page, page {J2B/42/1} —
 23 A. I'm sorry, I wasn't done reading the previous —
 24 Q. Sorry.
 25 (Pause).

184

1 A. Okay.
 2 Q. On the previous page, page 1, toward the bottom, Mr
 3 Vallaeys' email at the bottom, he identifies
 4 the criteria he would prefer:
 5 "I think the only remaining issue is ... we haven't
 6 defined when we would reactively whitelist a shopping
 7 comparison site. Could we say that whenever the site
 8 has their own technology for building a product index
 9 and ranking the results, we can consider whitelisting?
 10 Using these Guidelines, companies that use 3rd party
 11 feeds would not be eligible and I think this would
 12 appropriately protect the quality of our ads."
 13 Foundem was then whitelisted from its AdWords LPQ
 14 penalty, as we can see at {J2B/1/24}:
 15 "Hello Shivaun,
 16 "This email regards our previous conversations about
 17 the site quality of foundem.com and foundem.co.uk.
 18 I have good news for you. As you may have noticed, our
 19 team has facilitated a change in the site quality
 20 evaluation for both foundem.com and foundem.co.uk. I've
 21 taken a look through your account, and found that
 22 a sweeping majority of your keywords now list a quality
 23 score of great."
 24 So that was the result of whitelisting Foundem from
 25 the LPQ penalty, was it not?

185

1 A. The people on the AdWords side discussing things,
 2 Frederick pushing for that result for Foundem,
 3 reservations from Kitty and Rachel, and the ultimate
 4 outcome of the process appeared to be whitelisting on
 5 the landing page quality score.
 6 Q. The searches — sorry.
 7 THE CHAIRMAN: We have got to wrap up. Would that be
 8 a sensible moment or have you got something that ...?
 9 MR WEST: Can I just finish with the LPQ side?
 10 THE CHAIRMAN: Right, okay.
 11 MR WEST: So following whitelisting from LPQ, the search
 12 penalty remained in place; that is right, is it not?
 13 A. Correct.
 14 Q. Foundem then submitted a reconsideration request to
 15 search quality relying on the fact that it had now been
 16 whitelisted from its AdWords penalty, but of course, as
 17 you would expect, because that reconsideration request
 18 related to an algorithmic penalty, it was not even
 19 looked at. That is what would have happened, is it not?
 20 A. I don't have direct knowledge, but I believe that
 21 probably is correct.
 22 MR WEST: I am happy to leave it there for today.
 23 THE CHAIRMAN: Yes, thank you.
 24 Housekeeping
 25 So we are due to start, is that right, at 9.30

186

1 tomorrow? That is on this table. But we have to —
 2 I mean, if that is necessary, Mr Jowell may have some
 3 additional questions. We have got to rise at 4.15, so
 4 do you think that it is necessary to start at 9.30?
 5 I do not know how you are progressing.
 6 MR WEST: It would be advisable.
 7 MR JOWELL: Yes, I think so, and it may be that Mr Cutts,
 8 I mean, might have to come back on — it is possible
 9 that he might have to come back on Thursday, but I think
 10 we can be quite sure that we will get through everyone
 11 we need to get through by the end of Thursday. It is
 12 simply there is Mr Ginsberg, I think, early, and then
 13 there is just Mr Kim for the rest of Thursday, so even
 14 if Mr Cutts had to come back on Thursday for
 15 half an hour or an hour or so, I think we can be
 16 confident that Mr Kim would be completed by the end of
 17 Thursday.
 18 THE CHAIRMAN: Yes.
 19 It says on the timetable we have that we have to
 20 rise by 3.15 on Thursday. Is that for Mr Kim?
 21 It is not for the Tribunal, I can tell you that.
 22 MR MCGURK: It is an estimate based on the indications from
 23 the Claimants as to when they would be finished by.
 24 THE CHAIRMAN: I see, but we do not have to rise by 3.15?
 25 MR PICKFORD: Then in that case I am sure we will be done

187

1 with Mr Kim by at least 4.15 on Thursday.
 2 THE CHAIRMAN: Yes. Well, then the only question is,
 3 because clearly on Thursday, we have to start at 9.30
 4 because we are hearing a witness from New Zealand.
 5 MR JOWELL: Yes, indeed.
 6 THE CHAIRMAN: But whether tomorrow we need to start at 9.30
 7 or whether we can start at ... if we can start at 9.45,
 8 that, you may think small difference, it does assist
 9 the staff here, I can tell you that.
 10 MR WEST: I think that is fine on the basis that we can come
 11 back the following day if necessary.
 12 THE CHAIRMAN: Shall we say 9.45 tomorrow?
 13 MR MCGURK: I am grateful.
 14 Sir, in case it makes any difference, just to note,
 15 I understand Mr Cutts has a flight to the States on
 16 Thursday early evening. It may not make a difference if
 17 he is here for an hour on Thursday morning, but —
 18 THE CHAIRMAN: Well, you will not be here Thursday
 19 afternoon. You must catch your flight back.
 20 So we are saying 9.45 tomorrow.
 21 Mr McGurk, if you want to answer, not obviously
 22 tonight, the additional information, we will consider
 23 whether we should have it during the evidence or after
 24 Mr Cutts has finished his evidence and we will tell you
 25 tomorrow.

188

1 So Mr Cutts, I think you have probably been told
 2 this, once you have started your evidence you cannot
 3 discuss the case with anyone else.
 4 A. Thank you.
 5 THE CHAIRMAN: You have just heard what has been said, with
 6 luck, you will conclude your evidence tomorrow morning,
 7 if not Thursday morning.
 8 So 9.45 tomorrow.
 9 (4.42 pm)
 10 (The Court adjourned until 9.45 am on Wednesday,
 11 1 July 2026)

189

1	INDEX
2	
3	Housekeeping1
4	MS SHIVAUN EDWINA RAFF (continued)3
5	Cross-examination by MR MCGURK (continued)3
6	Re-examination by MR WEST45
7	Questions from THE TRIBUNAL57
8	Further re-examination by MR WEST76
9	Further cross-examination by MR MCGURK77
10	Further re-examination by MR WEST78
11	Questions from THE TRIBUNAL79
12	MR MATTHEW ADAM RAFF (affirmed)88
13	Examination-in-chief by MR WEST88
14	Cross-examination by MR MCGURK90
15	(In private)134
16	(In public)134
17	Re-examination by MR WEST134
18	Questions from THE TRIBUNAL136
19	MR MATTHEW CUTTS (affirmed)144
20	Examination-in-chief MR MCGURK144
21	Cross-examination by MR WEST145
22	(In private)146
23	(In public)146
24	Housekeeping186
25	

190

A							
a3 (1) 86:23	address (5) 2:9,10 28:1 56:24 154:17	agreed (4) 4:19 25:24 156:23 160:17	123:3 156:18 172:13 173:25 184:10	articulate (1) 20:22	awful (1) 41:5	126:2 129:12 138:13 140:7 141:10 149:3 153:16	
able (13) 1:23 2:6 9:3 51:2,8 68:10,22 122:17 138:3 172:19 179:4,5 183:5	addresses (3) 152:21,24 156:11	agreeing (1) 102:6	answer (28) 8:11 12:10 45:15 56:15 66:6 73:9 81:17 86:20 94:6 100:16,20 108:1 113:23 114:1,4 115:1 117:1 118:24 121:1 143:14,25 158:14 174:25 176:21 177:17 179:8 180:16 188:21	articulated (1) 14:2		160:16 170:1,15 174:20 175:19 177:19 179:23 183:6 184:15 186:20	
above (9) 87:7,25 88:1 89:12 93:18 106:6 109:9 172:18 184:11	adds (1) 136:5	ah (3) 49:18 126:15 145:9	86:20 94:6 100:16,20 108:1 113:23 114:1,4 115:1 117:1 118:24 121:1 143:14,25 158:14 174:25 176:21 177:17 179:8 180:16 188:21	aside (2) 85:20 179:8	b (2) 7:14 12:8	believed (1) 166:19	below (9) 89:18 98:16 105:23 118:9 128:16 138:13 154:16 155:4 160:25
absolutely (17) 5:2 19:20,24 21:5 23:12 40:2 57:19 75:16 77:23 95:15 98:6,20 113:18 114:4 163:20 165:13 168:19	adjoined (1) 189:10	ahead (1) 100:3	115:1 117:1 118:24 121:1 143:14,25 158:14 174:25 176:21 177:17 179:8 180:16 188:21	ask (26) 2:15 6:11 9:17,17 11:1 17:20 54:2 56:21 57:1 64:4,6,8 65:20 79:23 86:22 87:3 103:12 111:20 128:20 135:1 137:4 148:24 151:5 161:14 163:4 176:23	back (62) 9:3 10:13 15:22 20:2 23:15 24:17 31:8 32:11,21 37:16 40:8 51:24 52:3,12 53:15,21 56:5 60:22 62:15,18 65:10 68:13,19 70:11,13 73:4 74:7 75:1,10 77:21 78:7 81:25 82:10 98:11 99:16 108:8 110:4 111:14,14,17 114:15,20 121:22 125:22 131:3,8,10 132:20,25 133:2,17 141:12 156:21 162:19 163:4 167:10 179:20 187:8,9,14 188:11,19	below (9) 89:18 98:16 105:23 118:9 128:16 138:13 154:16 155:4 160:25	
abundant (1) 101:13	adjourment (1) 134:15	aim (2) 3:8 38:22	115:1 117:1 118:24 121:1 143:14,25 158:14 174:25 176:21 177:17 179:8 180:16 188:21	asked (24) 7:7,16 9:21 49:3,13,25 53:5 55:4 64:11,23 81:20 119:11 120:21 123:19 124:12 134:21 135:21 138:18,21 154:22 163:6,23 166:12 174:14	backdrop (3) 91:7,7 93:15	benefit (5) 47:6 59:23 62:2 102:22 136:25	
abuse (2) 20:23 21:3	admit (4) 12:20 26:16 51:5 54:8	airline (1) 102:3	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	asking (12) 28:13 49:18 58:13 98:22 115:3,13 121:2 126:20 136:17 154:16 162:4 167:24	background (2) 52:1 81:5	beside (1) 110:11	bespoke (3) 41:8,13,24
accept (5) 28:8 95:9 98:22 105:16 122:3	advanced (3) 113:17 114:2,3	airport (2) 102:3,4	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	aspect (2) 58:10 102:2	bad (4) 104:22 140:18 148:18 172:17	best (29) 39:2,2 40:23 61:1,4,5,15,20,21 64:3 71:20 72:8,13,20 89:1,3 91:10 101:5 102:2 112:9,14 116:14 123:5,9 138:16 144:21 145:14 146:12 178:3	bestselling (2) 60:18,20
accepted (2) 3:25 4:25	advantage (1) 27:24	alan (4) 42:20,24 46:21 47:2	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	aspects (2) 67:1 86:12	bane (1) 104:17	between (10) 10:22 28:24 34:9 99:6 100:22 121:19 130:7 132:5 154:11 173:6 beyond (2) 53:10 177:1	better (14) 3:19 37:14 56:14 63:3 64:5 71:25 72:5 79:14 86:23 88:10 123:8 147:25 162:18 180:2
access (5) 111:10 137:20 171:18 179:3,4	adversely (1) 175:21	alatest (1) 121:12	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assess (1) 161:9	bar (7) 40:19 43:25 92:4,8,9 93:9 109:5	big (2) 110:14 128:17 bigger (3) 4:14 43:24 84:14 bikers (1) 34:7	bits (2) 13:3,3
accessories (1) 139:23	advance (2) 5:15 9:25	albeit (1) 137:23	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assessed (1) 181:6	barron (18) 5:14,17 7:15 8:21 11:11,14,22 12:17 14:2,10,23 17:20,22 19:22 20:8,10,14 53:25	bill (6) 64:25 65:8,20 66:8 67:10 172:14	bizrate (6) 112:3,4,9,17,19 129:10
accident (1) 97:23	advanced (3) 113:17 114:2,3	alert (1) 116:2	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assessment (1) 86:12	base (1) 18:23	black (1) 145:4	blacklist (1) 180:22
accidentally (1) 1:20	advantage (1) 27:24	alerts (2) 115:21 116:22	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assessments (1) 167:19	based (6) 56:2 103:2 182:24 184:8,15 187:22	blacklisted (1) 184:5	blacklisting (2) 183:24 184:1
accolade (1) 72:21	advertisements (2) 72:1 171:8	algorithm (43) 4:20 7:12	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assimilating (1) 51:17	bases (1) 142:16	blank (1) 172:2	blast (1) 41:17
accommodate (1) 5:8	advertisers (2) 170:21 171:1	algorithmic (10) 53:2 72:2	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assist (5) 47:3 51:2 65:17 79:10 188:8	basic (1) 65:23	blog (4) 27:17 117:17,21 162:23	blogger (1) 118:17
according (2) 54:8 160:17	advertising (7) 69:20 70:6,21 72:12,19,24 173:19	algorithms (4) 141:1 148:1	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assistance (1) 170:10	basically (4) 33:9 63:3 130:12 158:21	blow (8) 86:7 95:23 101:9 103:13 105:21 107:14 110:12 114:10	blowing (1) 88:5
account (7) 5:20 7:23 8:4 10:18 14:13 167:14 185:21	advice (4) 65:2,4 66:16 166:1	allegations (1) 12:3	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assure (1) 114:18	became (2) 176:2 182:4	blownup (1) 86:23	blu (1) 41:16
accounting (1) 46:9	adword (1) 175:21	alleged (1) 13:19	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	assured (1) 8:19	becomes (1) 127:19	blu (1) 41:16	blue (15) 22:3,9 40:19 63:8 91:2,7,7,21 92:3,4,8,9 93:12,16 106:9
accurate (6) 65:4 163:11,15 164:4,11,25	adwords (30) 51:19 169:11,15,18,20,24 170:3,10,15,20 172:22 173:5,7,12,16,19,20 175:11,23 176:21 177:5 179:13 180:10,11,15,19 184:2 185:13 186:1,16 187:1	alluding (1) 37:15	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	attention (8) 1:11,15,20 2:6 57:25 117:14 146:15 153:11	becoming (1) 129:14	bold (2) 114:22 184:18	bona (2) 141:7,21
accurately (2) 104:25 171:9	affect (5) 52:1 143:1 148:1 150:23 162:14	allmost (4) 12:24 27:8 56:13 109:18	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	attraction (1) 70:14	before (36) 1:19 3:3 4:5 6:14,17,21 8:21 18:15 23:3,11,16 45:14 48:24 49:2 68:6 69:15 71:21 74:1 81:6 89:8 103:11 106:20 120:12 121:18 129:13 130:11 133:15 139:14 143:23 156:4,12 164:13 167:16 170:8 176:24 178:11	bonus (2) 51:12,15	bookings (1) 76:1
achieve (2) 52:24 112:20	affected (4) 15:19 73:20 143:5 155:9	along (1) 73:15	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16	being (38) 14:19 19:7 22:18 24:1 28:3 35:17 41:4 42:6 48:1 52:18,22 53:1 65:24 67:17 68:22 71:1 75:7 76:9 77:4 86:18 100:12 110:22 111:2,17 119:11 126:18 128:6,18 130:6 131:13 132:21 141:7 146:17 158:4 163:14 165:7,15 183:25	books (1) 57:13	books (1) 57:13
achieved (1) 38:24	affecting (1) 175:21	already (11) 4:19 10:9 42:5 49:9 68:15 83:17,18 120:13 126:4,23 165:5 25:16 35:24 46:5 57:25 70:8 74:12 75:19 83:25 84:11 87:2 90:24 97:22 99:11 107:19 110:7 111:12 112:11 122:20 135:21 136:6,13 140:9 141:13 144:2 147:12 155:20 169:11 175:20 176:10 178:6 180:20 184:1	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16	belie (4) 89:2,3 144:22 145:15	boss (2) 154:5,5	both (12) 4:10 36:22 37:1 46:21 76:8 95:25 125:11 128:11 157:1 175:11 180:3 185:20
acknowledge (2) 151:19 154:1	affiliate (29) 34:4,8,9 35:16 36:13 69:4,11 73:14,19 74:12 104:15 137:11,19 140:18 147:7 149:8,9,11,14 157:8,11 159:23 160:2,4,11 164:2 165:10 172:13 182:11	also (35) 4:5 22:13 24:10 25:16 35:24 46:5 57:25 70:8 74:12 75:19 83:25 84:11 87:2 90:24 97:22 99:11 107:19 110:7 111:12 112:11 122:20 135:21 136:6,13 140:9 141:13 144:2 147:12 155:20 169:11 175:20 176:10 178:6 180:20 184:1	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16	believe (32) 16:3 17:1 21:12 26:2 36:6 42:23 51:23 52:11 54:7 70:16 71:5 76:22 95:11 101:22 102:1	both (12) 4:10 36:22 37:1 46:21 76:8 95:25 125:11 128:11 157:1 175:11 180:3 185:20	bother (1) 114:2
acknowledged (2) 151:22 153:24	affiliates (3) 73:22 137:20 149:6	amd (2) 30:5 32:9	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16		bottom (23) 30:16,25 31:1 34:2 39:16 41:17,20 44:4 54:4 79:15 90:22,24,24 113:6 115:8 117:20 139:10 149:2,5 163:5 179:21 185:2,3	bought (1) 132:12
acknowledging (1) 39:14	affirmed (4) 88:15 144:7 190:12,19	amend (4) 19:10 21:20 22:14,21	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16		bound (2) 15:6,16	
acquire (1) 127:4	afloat (1) 17:23	amendments (1) 22:7	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16			
acquired (7) 120:23 128:6 129:18,21 130:1 131:19 133:5	afraid (2) 141:14 161:4	among (2) 105:10,16	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16			
acquirer (1) 133:19	after (26) 3:24 12:15 16:2 23:17 33:2 42:21 52:8 54:5 55:24 56:14 65:11 67:25 73:12 79:3 80:11 82:19 86:10 93:2 101:23 103:24 125:1,2 153:23 156:4 169:10 188:23	amount (5) 33:1,4 51:11 120:6 163:9	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16			
acquirers (1) 127:11	again (37) 13:24 35:2 36:4 53:21 56:6 60:2 65:13 73:7 79:17 91:19,23 92:17 105:16 107:6 109:19 113:16 116:11 121:13 122:13 123:14,18 126:8,24 128:22 135:13 139:11 140:1 149:20 151:5 154:10 175:12 178:9 179:18 180:12 182:13,20 183:9	analysed (2) 129:1 143:7	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16			
acquirers (1) 127:11	afternoon (6) 88:19 90:5,6 144:10 145:21 188:19	analysis (4) 39:15 123:25 142:3 143:10	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16			
acquiring (3) 132:3,10,11	ago (13) 8:8,10 12:22 14:9 15:7 32:12 38:23 48:22 73:5 80:1 130:3 139:8 168:10	analysts (1) 169:5	121:2 126:20 136:17 132:17 134:7 143:21 146:3 153:6 189:3	audible (3) 154:20 166:9 179:16			
acquisition (8) 127:16,20 128:9 129:4,5 130:6 131:5,23</							

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87:7,25 89:11 111:10 117:15 124:24 129:1 142:3,17 143:11 159:19 160:17,17 162:8,12 163:10 164:23 179:25 184:12 database (3) 48:21 137:22 138:11 date (18) 13:8,9,15,16 17:18 56:3 62:9 78:20 79:1,2 105:7,8 107:7 163:11 164:11,25 171:18 181:21 dated (2) 17:12 93:7 dates (1) 93:5 dave (4) 53:9 170:16,20 173:10 day (7) 71:8,24 72:14 111:15 113:3 116:11 188:11 days (7) 48:12 68:20 69:17 75:16 103:24 153:22,23 dc (1) 41:12 de (1) 111:15 deal (3) 1:24 166:5 182:9 dealing (4) 136:24 158:13 159:14 164:22 deals (1) 130:5 dear (1) 154:21 debating (1) 147:8 debug (1) 123:1 decade (1) 80:1 december (18) 16:16,20 17:18 19:15 40:10 54:4 55:10 71:10,21 76:19 77:10 78:21,23,25 103:23 115:10 124:25 130:1 decide (3) 39:16 99:6,7 decided (7) 11:17,23 20:3 68:16 73:13 133:4 164:14 deciding (1) 118:1 decimated (1) 175:18 decimating (1) 175:20 decision (11) 11:15 12:1,18 13:24,25 14:4 57:24 99:9 135:14,15,17 decisions (3) 148:6,16 169:8 deck (1) 38:5 decline (1) 120:5 declined (4) 42:21 67:15,24 68:8 deemed (1) 165:24 default (1) 139:21 defined (2) 158:21 185:6 definitely (14) 10:20 12:10 15:18 16:9 43:10 63:25 66:18 75:17,18 133:2 167:4 168:8 174:17 175:4 degree (2) 142:13 155:14 delayed (1) 1:3 deletions (1) 22:13 deliberate (1) 135:16 deliberately (1) 84:12 deliver (3) 114:16,19 116:21 delivered (1) 116:14 delivers (1) 180:2 delivery (2) 103:17,19 demeanour (1) 1:16 demonstrating (1) 16:7 demoted (6) 141:7 150:25 157:11,13,17 181:2 demotion (6) 19:18 21:1 154:3 180:7 181:10,15 demotions (1) 152:2 denied (1) 114:6 departing (1) 172:8 department (1) 180:20 dependent (1) 68:24 depends (2) 150:20 155:18 deprived (1) 119:9 depth (1) 12:13 derived (1) 169:24 described (4) 28:3,9,10 160:6 describes (1) 4:23 describing (1) 41:19 description (19) 28:12 96:4,16 97:2,8,17 98:13,14 99:7,9,13,22,25 100:4	105:23 109:5 126:5 137:25 138:4 descriptions (4) 98:17 99:19 135:13 155:15 designation (1) 93:6 designed (3) 155:22 157:25 161:8 detail (3) 10:15 64:13 168:1 detailed (3) 5:20 65:2,4 details (1) 70:10 detect (2) 103:7 105:1 detected (1) 160:4 determined (1) 161:7 detritus (1) 52:16 develop (2) 114:3 117:7 developed (6) 1:6 68:9,15 101:20 114:5 116:15 developer (1) 26:2 developing (11) 16:24 25:14,19 26:3,6,8 35:14 46:24 81:6 114:2 184:17 development (3) 25:23 68:18 110:20 devoting (1) 16:23 dewitchelisting (2) 62:10,11 dialled (1) 5:4 dialling (1) 10:1 dialogue (4) 4:15 9:6 15:3,17 didnt (35) 9:2,19 21:20 32:7 58:11,16,21 59:3,17,17,21,21 67:25 75:6 76:10 81:17 101:24 103:4 108:14 111:2 114:1 115:11 117:6,7 118:22 121:17 124:14,16 125:7 150:24 160:5,19 167:12 179:5,6 differ (1) 126:17 difference (6) 5:9 85:5 158:23 188:8,14,16 differences (1) 172:6 different (45) 9:14 22:8 24:17 29:15 40:20 41:16 53:4,24 59:5 70:2,8 81:1 85:11,12,13,16 98:4,4,5,16 99:15 101:7 110:20 112:12 113:15 126:12 130:16 132:11 135:4,14 136:3,4 138:22 141:19 142:13 147:20 154:5 157:19 159:7 160:13 170:23 172:3,5,9 173:20 differentiate (1) 100:21 difficult (4) 88:4 126:18 128:23 177:15 difficulties (1) 35:23 difficulty (1) 35:24 digital (4) 61:10 139:17,19,23 diligence (1) 165:12 dimensions (1) 142:19 direct (5) 62:21 66:24 69:4 169:21 186:20 directly (5) 148:2,2 152:22 162:15 173:9 directories (1) 157:20 disagree (10) 7:12 40:6 167:16 123:11 150:1 152:6 156:20 157:18 160:5 162:7 disagreed (1) 46:14 disagreeing (1) 126:5 disappeared (1) 63:14 disappointed (1) 104:10 discharged (2) 82:5 143:20 disclosed (6) 6:24 7:3 8:7 43:4 79:25 125:14 disclosing (1) 11:9 disclosure (5) 15:4,9,16 54:11 142:4 discover (1) 112:13 discredit (1) 140:25 discuss (8) 1:9 29:11 117:9 127:22 143:20 157:8 159:23 189:3 discussed (5) 3:23 7:24 10:21 116:1 166:4	discussing (8) 23:20 147:1 149:23 151:1 153:3 165:5 180:14 186:1 discussion (9) 1:21 8:20 20:13 26:14 32:16 81:24 86:1 137:19 173:6 discussions (2) 20:6 90:9 dismissed (1) 178:16 disney (1) 133:5 displays (1) 149:10 distinction (2) 121:19 158:17 distinguished (1) 132:5 ditch (1) 130:20 dixon (6) 30:18,21,22 32:2 51:23 66:5 dixons (4) 99:12 103:17,18 104:10 document (42) 6:17,21,23 7:3 13:10,13 17:15 18:10 27:2 35:15 36:2 38:4,18 40:7 46:2,8,25 47:13 49:24 50:2,8,9 53:15 56:4 79:23 80:4,22 104:5 113:4 141:14,16 146:23 147:14 150:11,12,14 153:19 168:20 172:25 176:24 178:11 179:18 documentation (3) 169:13 170:6,8 documents (12) 11:6 15:13,22 46:17 49:14 50:22 53:6,7 103:10 142:4 150:6 183:14 does (33) 2:13 13:15 23:24 27:1 32:24 36:5 43:13,16 47:3 65:7 67:18 70:5 79:10 85:24,24 88:5 102:8 104:16 123:9 126:17 127:10 133:10 141:25 144:21,24 145:14 170:10,16 172:13,15 176:12 182:3 188:8 doesnt (11) 37:6 45:8 72:24 74:5 75:12 79:5 81:11,15 121:11 157:7 173:24 doing (19) 60:11 72:9 78:11 81:3 105:3 107:18 113:18 116:12 119:7 125:18 130:19,19 138:1,10 164:6 165:11,18 168:18 172:6 dollars (1) 130:7 domain (10) 41:9 57:22 59:5 74:15 91:11 92:17,20 102:1 142:21,25 domains (2) 41:25 74:12 done (13) 12:3 28:7 45:1,2,5 63:1 70:5,17 123:24 130:7 134:10 184:23 187:25 dont (64) 6:22 8:23 16:3 17:22 27:14 28:11 29:2 32:5 33:1 34:13 43:4 48:9 53:10 54:24 65:9,22 67:12 74:9 78:12 79:3 90:2 91:5 95:11 97:11 98:9 101:22 102:3 107:13 113:12 117:13 122:12,23 125:20 129:2,20 130:19 132:12 137:16 138:1,12 140:15 141:10 150:12 151:20,20,22 152:1,1 154:22 161:5 165:18 167:5 168:23 169:21 170:13 173:17 176:23 177:13 178:19 179:2,2,23 180:10 186:20 door (1) 65:13 doorway (2) 147:5 178:6 dot (1) 77:13 doubt (3) 28:6 64:16 124:7 down (27) 6:2 10:24 11:2 12:6 13:18 30:25 34:13 41:9 48:19 49:6 62:14 66:19 70:7 79:15 85:22 88:17 91:24 98:10 108:3,15 128:1,3 130:13 135:8 144:8 150:16 161:11	dozen (1) 172:3 draft (5) 10:24 46:5 67:21 127:10 163:5 drafted (1) 183:21 dramatic (1) 71:6 draw (1) 158:17 drawing (1) 3:24 driving (1) 171:22 drop (2) 155:24 166:7 dropout (1) 48:5 dropped (1) 74:21 drops (1) 90:17 due (4) 155:7,14 165:12 186:25 dump (2) 139:18 140:22 dumping (2) 137:22 165:11 duplicate (3) 97:2 99:18 155:14 during (4) 7:13 11:14 77:3 188:23 dx60 (2) 63:22,23 dynamic (4) 48:15 58:5 74:15,16 dynamically (1) 47:25	emails (4) 1:11 4:24 162:16 167:17 emap (1) 176:7 emerge (1) 59:18 emerged (1) 176:1 emphasis (1) 25:7 emphasised (1) 83:9 emphasising (1) 40:12 employees (2) 9:9 148:8 empowering (1) 112:20 empty (2) 109:18 118:19 encourage (4) 130:17 146:15 161:12 162:24 end (13) 6:2 7:16 8:19 13:15 15:2 56:4 68:10 90:8 112:21 128:5 184:17 187:11,16 ends (2) 37:1 171:19 energy (1) 16:24 engage (4) 65:9,19 117:21 122:3 engaged (3) 31:23 64:15 65:16 engagement (2) 66:4 67:2 engine (15) 23:14 64:14 74:19 127:17,24 130:19,22 157:6,12 160:2 165:16 179:24 182:5,22 183:3 engineering (3) 11:19 13:5 168:22 engines (8) 133:20 157:8,21 158:3,6 159:24 182:23 184:7 english (1) 107:11 enhance (2) 161:12 162:24 enlarge (1) 141:16 enlarged (2) 86:23 137:7 enormous (4) 33:4 51:15 70:4 161:8 enormously (1) 176:16 enough (5) 25:10 37:20,22 86:11 184:13 enquiries (1) 102:21 enquiry (1) 65:11 ensure (1) 146:13 ensuring (1) 116:13 entertainment (1) 44:1 entire (3) 105:3 142:21,25 entirely (7) 14:9 18:25 27:8 61:23 104:14 146:18 176:13 entirety (1) 116:18 entrant (3) 76:9 86:6,21 entrants (6) 83:5,7,9 84:6,13 85:19 entries (2) 17:17 34:1 entry (5) 7:5 12:6 13:17 17:25 83:10 ephemeral (1) 78:2 epinions (4) 120:2,9,20,21 equivalent (4) 44:18 107:11 109:13 111:22 era (1) 95:18 erroneous (1) 103:8 errors (5) 4:18 104:15 167:9 178:2 179:1 escaped (2) 113:1 165:22 escaping (2) 159:11,13 essentially (7) 33:5 50:8 52:5 65:12 71:7 132:23 179:8 establish (2) 2:6 36:12 established (3) 76:7,8 117:11 establishment (1) 176:2 estimate (1) 187:22 etc (5) 11:9 23:15 101:18,18 149:11 european (3) 27:22 86:2 96:23 evaluate (1) 135:10 evaluating (1) 183:20 evaluation (3) 148:24 177:10 185:20 even (13) 36:3 77:2 86:23 88:6 104:25 129:15 131:20 146:13 151:16 171:14,18 186:18 187:13	evening (1) 188:16 event (3) 52:23 68:20 114:16 eventually (2) 151:22 169:4 ever (11) 9:1,5,6,16 43:5 67:12 70:17 114:16 130:8,10 153:24 every (7) 22:21 23:24 81:3 110:7 114:13 124:16 125:18 everybody (2) 23:24 125:21 everyone (2) 134:10 187:10 everyones (1) 75:8 everything (3) 25:9 57:16 77:19 evidence (45) 1:9,12 9:12 11:12,20,24 14:4,19 15:21,23 18:8 21:11,14 25:25 26:4,12 28:18 30:11 32:11 53:3 55:12,14 84:4 89:4 105:14 117:15 118:12 122:3 125:12 126:14 131:22 136:18 137:10 138:2,12 143:19 144:24 145:17 152:3 163:16 168:7 188:23,24 189:2,6 evolved (1) 151:20 ew (1) 129:19 exact (7) 33:1 56:3 99:13,19,22 171:7,13 exactly (17) 29:2 45:7 48:4,25 61:17 63:6 67:3 72:5 75:24 80:7,17 84:17 100:3 122:18 124:13 130:21 168:23 examinationinchief (4) 88:16 144:9 190:13,20 example (25) 52:14,20 58:4 65:23 70:11 79:7 110:18,19 111:6 112:1 113:17 123:13 124:3 126:23 133:18 134:21 138:13 149:9 150:10,15,21 166:15 171:2 172:1,7 examples (9) 7:7,17 63:20 109:2 123:21 129:7 132:5 149:15 156:3 excellent (1) 176:8 exception (3) 122:1 180:23 183:23 exchange (4) 4:21 30:15,24 119:24 exchanges (1) 37:15 excited (1) 51:6 exclusionary (1) 33:7 exclusive (1) 182:5 executives (1) 154:5 exercise (1) 165:17 exhausted (1) 177:24 exhaustive (1) 168:12 existed (2) 8:9 12:21 existence (2) 16:5 75:1 existing (3) 127:17 130:17 132:6 exists (1) 16:7 exit (2) 127:13,15 expand (1) 137:15 expect (2) 23:17 186:17 expectation (1) 166:12 expected (2) 22:17 31:22 expecting (2) 67:12 78:14 expedite (1) 17:21 experian (1) 129:25 experience (9) 37:21 97:19 123:18 124:9 135:10 159:18 160:15 172:16,17 experienced (1) 178:7 experiences (2) 112:12 124:8 experiencing (1) 178:4 expert (6) 33:10 84:4 121:7,9,10 172:11 expertise (4) 37:23 47:6 51:7 136:25 experts (2) 64:14 86:10 explain (13) 19:25 20:4 24:21,23,25 25:7,8 60:6 62:2 74:8 136:17 166:10	181:19 explained (2) 47:24 161:17 explaining (1) 63:2 explore (3) 100:11 125:24 126:9 expressed (3) 126:23 133:1 149:25 expressions (1) 136:14 expressly (1) 5:15 extensive (2) 7:25 183:5 extent (7) 12:11 24:9 26:6 125:10 142:7,20 143:13 external (3) 153:9 169:1 179:7 externally (2) 153:9 178:21 extracting (1) 84:5 extreme (2) 35:23,24 extremely (3) 155:5 156:1 162:9 eye (1) 128:9		
					F			

<p>few (13) 3:14 7:14 14:9 30:3 32:12 34:9 38:23 73:5 109:20 118:9 129:7 161:11 166:16</p> <p>fide (2) 141:7,21</p> <p>fields (3) 19:23 20:3 21:13</p> <p>field (1) 172:2</p> <p>fifth (1) 57:5</p> <p>figure (24) 57:7 60:3,4 62:8 83:19 84:8,10,11,14 85:5 87:5,5,6,9 88:10 93:1 95:22,23 96:8,10,11 110:5 141:25 167:17</p> <p>figures (6) 46:9 47:4 60:6 84:5 87:13 93:23</p> <p>file (3) 13:16 52:10 144:11</p> <p>filed (3) 17:2 55:21 175:22</p> <p>files (1) 142:17</p> <p>filing (1) 119:22</p> <p>fill (1) 74:18</p> <p>filter (1) 135:8</p> <p>filtering (2) 155:21 161:20</p> <p>filters (4) 97:22 98:5 134:25 135:6</p> <p>fin (3) 48:5,6 49:6</p> <p>final (8) 11:15 12:18 14:4 36:8 40:7 54:15 87:1 147:3</p> <p>finally (4) 35:1,2 43:18 177:23</p> <p>financial (3) 27:12 70:3,9</p> <p>find (24) 33:6 35:22 44:2 47:18 56:2 76:17,20 85:24 101:21 112:9,13 117:11,13,16,17 118:6 131:14 146:11 150:9 159:20 163:10 171:10 172:6 183:5</p> <p>finding (2) 164:6,16</p> <p>fine (2) 76:11 188:10</p> <p>finepix (3) 48:17 63:22,23</p> <p>finish (12) 3:8,14 23:10 42:16 68:17 95:4 108:1 114:15 125:9 133:11,15 186:9</p> <p>finished (8) 5:11 6:1,2,5 56:18 132:1 187:23 188:24</p> <p>firm (2) 28:16 65:1</p> <p>firms (2) 29:10 30:4</p> <p>first (47) 2:3 11:20 12:6 17:19 30:19 45:20 46:7,19 48:14,14 49:16 50:22 55:4,21 64:23 73:4 93:9 100:12,13,24 101:10 102:16 105:10,11,15,16 110:22 111:1,2 126:2,12,13,17 133:1 139:1 143:23 144:14 146:21 153:2,22 154:9 156:15 159:8 163:23 170:25 173:18 179:20</p> <p>fit (2) 65:7 172:14</p> <p>five (1) 35:4</p> <p>flagged (1) 164:18</p> <p>flashed (1) 27:21</p> <p>flashing (1) 2:21</p> <p>fledgling (1) 155:24</p> <p>flick (1) 34:3</p> <p>flight (9) 58:14,15,17,23 59:11,15 73:21 188:15,19</p> <p>flights (14) 57:12,15,18,22 58:4,9 59:20 73:10 74:11,14,16,18 75:14 172:8</p> <p>flowchart (1) 150:5</p> <p>fly (1) 163:17</p> <p>focus (8) 13:17 26:15,19 52:9,13 73:13 119:12 176:12</p> <p>focused (5) 25:19 30:13 58:12 84:13 120:22</p> <p>focuses (1) 57:24</p> <p>focusing (7) 25:13,15 29:22 42:4 43:23,25 75:9</p> <p>fold (1) 184:11</p> <p>folder (1) 43:4</p> <p>follow (1) 177:9</p>	<p>followed (2) 14:7 55:23</p> <p>following (17) 19:10 24:6 36:1 52:5 55:15 77:10 79:12 89:11,15 103:25 104:8 142:8 143:8 146:11 156:9 186:11 188:11</p> <p>followon (3) 21:3 77:6 126:3</p> <p>followup (1) 100:17</p> <p>foot (2) 46:1,13</p> <p>footnote (2) 83:20,24</p> <p>forget (1) 92:22</p> <p>forgive (2) 27:17 31:2</p> <p>forgotten (3) 12:20 15:1 32:19</p> <p>form (8) 55:22 58:4,4 74:18 102:19 103:14 116:23 162:21</p> <p>formal (2) 152:15,16</p> <p>format (1) 106:1</p> <p>formbased (1) 137:1</p> <p>formed (1) 28:1</p> <p>forms (2) 101:2 123:22</p> <p>forth (1) 52:12</p> <p>forthcoming (1) 83:3</p> <p>forum (5) 152:7,17,19 169:4,5</p> <p>forums (2) 117:8 153:10</p> <p>forward (1) 154:23</p> <p>found (16) 11:8 30:1 54:14,14 79:11,13,19 104:2,11 109:21 123:16 130:21 159:19 163:14 172:9 185:21</p> <p>founded (2) 10:16 81:6</p> <p>foundem (94) 6:24 7:2,14 12:13 13:6 16:14 17:2,20 31:16,18 35:22 39:13 41:7 50:23,23,24 52:8 53:25 55:2,4 56:12 59:2,20,24 61:15 63:9,19 69:22 71:20 76:21 77:3,4 81:6 86:11 92:20 93:24 94:19 96:1 97:1 99:18 100:2,12,24 102:16 103:7 104:13 105:10 107:25 108:10 109:13,14,15,23 110:17 112:22 114:21,24 116:8 117:8 118:18 120:12 123:3 124:1 127:4 137:12 142:11 153:17,20 154:7,11 156:14 158:15 159:20,20 162:24 163:21 166:6,14,14,18 167:11 169:10 172:23 174:10,18 175:8 178:16 179:13 182:16,21 185:13,24 186:2,14</p> <p>foundemcom (13) 91:12 92:18 111:13 161:1,13 172:1,7 176:1,14 179:22 180:4 185:17,20</p> <p>foundemcouk (4) 93:3 180:3 185:17,20</p> <p>foundems (35) 11:15,23 16:1 17:11 18:3 22:17 28:17 39:4 42:13 44:18 52:1 53:5,19 55:16,16 56:8 57:8 60:19 63:4 94:2,13 97:6 99:23 100:10 122:6,8 134:22 135:21 142:10 153:13,14 161:18 176:17 182:14 183:10</p> <p>founders (1) 158:11</p> <p>four (4) 8:10 12:15 47:10 138:22</p> <p>fred (1) 179:14</p> <p>frederick (1) 186:2</p> <p>free (4) 52:16 69:11,14 99:11 176:12</p> <p>freezer (1) 103:16</p> <p>fresh (2) 163:11,15</p> <p>freshness (1) 164:3</p> <p>freudian (1) 132:15</p> <p>fridge (1) 103:16</p> <p>fried (1) 81:21</p> <p>front (4) 137:7 144:11 154:18 179:20</p> <p>fronts (1) 156:10</p>	<p>froogle (1) 79:14</p> <p>fruit (1) 69:12</p> <p>ft (1) 27:16</p> <p>fuji (2) 63:22,22</p> <p>full (4) 38:25 39:3 48:9 55:20</p> <p>fully (5) 54:1 55:5 82:18 131:6 136:15</p> <p>fun (1) 155:23</p> <p>function (1) 108:25</p> <p>functionality (13) 38:6 41:4 48:23 97:16 100:14 101:1 102:11,18 107:17 113:17 149:10,18 171:24</p> <p>functioning (1) 68:14</p> <p>functions (1) 39:9</p> <p>funded (1) 27:8</p> <p>funding (3) 35:18 67:25 68:2</p> <p>funnel (3) 37:8,25 39:17</p> <p>furniture (1) 140:10</p> <p>further (21) 4:5 11:11 12:12 13:18,21 14:1,8 21:14 22:14 55:6 56:10,16 57:1 76:15 77:5 78:19 176:19,25 190:8,9,10</p> <p>furthermore (1) 172:6</p> <p>future (2) 1:16 176:7</p> <p>fuzzy (1) 88:6</p> <p>G</p> <p>gadget (26) 7:18 16:17 38:7,8,10,14,20 40:18 41:11 42:7,8,10 45:2 60:13 65:11 71:10 72:19 77:10 78:21 79:2,16 103:24 108:2,8 125:1,2</p> <p>gadgets (1) 125:5</p> <p>gain (1) 23:14</p> <p>gainsay (2) 160:20 167:12</p> <p>garner (1) 140:24</p> <p>gateway (1) 78:18</p> <p>gather (2) 56:17 138:8</p> <p>gathered (2) 139:8 140:10</p> <p>gathering (1) 21:11</p> <p>gave (6) 25:25 26:4,12 126:21 157:2 165:2</p> <p>general (12) 11:19 13:5 26:25 119:2,10,13 125:25 126:10 128:19 130:18 152:24 162:17</p> <p>generally (3) 102:10 137:16,17</p> <p>generate (3) 36:23,25 171:21</p> <p>generated (2) 47:25 77:11</p> <p>generating (2) 118:13 128:13</p> <p>generic (1) 69:14</p> <p>gently (2) 157:7 159:23</p> <p>genuine (1) 109:21</p> <p>genuinely (1) 11:9</p> <p>german (1) 107:4</p> <p>get (44) 2:16 8:16 48:5 57:25 64:25 65:8,19 68:10 69:10,13 70:10 72:13 77:2,25 81:4,7,16 86:11 88:10 90:11 92:25 95:20 106:5 107:14,16 114:20 118:23 122:16,20,21 124:5 129:12 130:15 131:19 138:25 140:19 141:15 154:18 156:9 161:16 166:24,25 187:10,11</p> <p>gets (2) 81:10,14</p> <p>getting (8) 63:12 65:2 67:6 138:22 88:6 94:4 123:4 141:6 167:7</p> <p>ginsberg (1) 187:12</p> <p>give (21) 3:15 5:20 7:23 47:5 52:7 63:21 65:9 66:8 82:25 89:4 96:15,18 109:12 123:13 136:19,20 144:24 145:17 156:3 165:25 167:14</p> <p>given (22) 1:17 10:15,15 15:22 44:5,11 52:19 85:21 96:23 98:1 100:20 104:9 122:4 125:11 131:5</p>	<p>140:3,5 144:2,12 163:1 168:9 178:18</p> <p>gives (3) 49:6 136:24 140:17</p> <p>giving (7) 5:17 38:24 45:4 65:5 96:3 98:14 136:18</p> <p>glance (1) 106:11</p> <p>goal (1) 112:21</p> <p>god (1) 20:7</p> <p>goes (4) 49:22 62:15 71:7 79:15</p> <p>going (55) 3:14 4:22 8:13 11:18 14:22 17:23 21:23 30:25 33:8 37:16 50:2 51:3,12 52:10 53:15 56:24 60:2 62:14 64:25 68:13 70:13 83:1 84:18 86:8 90:7,8 91:22 92:8,11 96:20 100:17 103:10 108:9 110:4 112:3,7 113:24 121:18 122:4 125:12 128:22 133:15 137:4 139:23 141:15 142:23 143:1 146:3 162:14 168:18 173:9,15 177:2 179:3 183:17</p> <p>golf (1) 41:12</p> <p>gomez (7) 110:6,13,13,16 111:8,21,22</p> <p>gone (4) 2:11 11:8,8 118:1</p> <p>good (27) 3:12 15:24 36:24 37:10 43:22 45:3 53:23 54:24 59:23 65:19 74:10 78:8 88:19 112:1 123:4 144:10 145:21 148:18,21 162:8 163:3 166:1 167:19 168:18 173:17 184:12 185:18</p> <p>goodwill (1) 177:24</p> <p>google (103) 4:19 6:15,23 8:7 9:9 11:15,23 15:4,9,22 17:2 18:20 27:21 31:5 33:7 35:19,25 37:7,11 51:4,13,21 53:4,19 55:16 56:9 58:3,6 60:22 62:18,24,24 63:9,11 65:12 66:24 68:25 71:4 73:16,17,19 74:4,7,20 75:10 76:4,8,21 78:14,17 79:25 80:2,11 89:21 99:24 101:13,16,19 102:8,9,11,20,22 123:24 109:22 117:25 118:15 128:19 130:12,21 140:24 142:1,4,5,17 146:11,18 148:8,13 149:16 150:11,12,14 151:2,4,5,16 152:14,21,23 153:24 154:11,13 166:17 167:16,18 169:2 170:10,11 173:20,23 175:5,11 179:18 180:13 184:1</p> <p>googler (1) 170:20</p> <p>googlers (2) 148:4 154:5</p> <p>googles (22) 5:14 16:14 17:12 69:14 87:11 94:17 98:13,13,25 101:23 102:12 109:22 117:25 118:15 128:2 140:25 142:9 143:23 146:13 147:18 150:16,18</p> <p>googshop (1) 83:25</p> <p>gosh (1) 50:1</p> <p>gotten (1) 177:23</p> <p>gr419bsca (1) 103:16</p> <p>gradually (1) 111:16</p> <p>graph (26) 76:17,17 77:9 79:18 82:25 83:6,24 84:2,11 85:7 86:5,7,22 87:25 88:11 105:24 106:4,7,19 107:10,20 108:4 141:13,17 142:8 143:8</p> <p>graphics (1) 90:17</p> <p>graphs (6) 52:14 56:8 78:3 83:1 105:11,17</p> <p>grateful (8) 22:6 29:5 33:21 43:17 45:13 156:1 176:16 188:13</p> <p>great (8) 121:25 135:12</p>	<p>140:25 148:15 164:12 165:25 167:5 185:23</p> <p>greater (2) 70:14 143:13</p> <p>green (2) 63:10 106:10</p> <p>grey (2) 43:25 182:24</p> <p>grid (3) 94:14,14 105:25</p> <p>grief (1) 127:23</p> <p>ground (1) 178:18</p> <p>group (2) 27:21,25</p> <p>groups (1) 152:18</p> <p>grow (1) 127:18</p> <p>growing (1) 112:21</p> <p>growth (2) 114:6 127:23</p> <p>guarantee (3) 114:14,19 115:17</p> <p>guarantees (2) 114:11,25</p> <p>guardian (2) 154:6 174:20</p> <p>guess (7) 15:19 27:4 81:5 115:14 139:20 150:4 178:3</p> <p>guessing (3) 115:11,13 161:3</p> <p>guidance (6) 39:10,21 147:18 148:4 157:2 165:25</p> <p>guide (2) 147:12,15</p> <p>guideline (1) 147:17</p> <p>guidelines (12) 146:8,11,16,21,25 147:23 149:20 150:6 156:19 166:13 183:22 185:10</p> <p>guy (1) 133:8</p> <p>H</p> <p>h2a2 (1) 88:20</p> <p>h2a2114 (2) 88:8 137:8</p> <p>h2a230 (1) 100:8</p> <p>h2a231 (3) 100:23 102:15 103:5</p> <p>h2a232 (1) 105:9</p> <p>h2a259 (1) 142:2</p> <p>h2a260 (2) 83:22 141:14</p> <p>h2a261 (1) 89:9</p> <p>h2a26163 (1) 87:4</p> <p>h2a262 (1) 89:16</p> <p>h2a263 (1) 89:20</p> <p>h2a265 (1) 88:3</p> <p>h2a291 (1) 93:22</p> <p>h2a292 (2) 95:22 98:11</p> <p>h2a295 (1) 88:23</p> <p>h2a31 (1) 57:6</p> <p>h2a311 (1) 126:16</p> <p>h2a315 (2) 57:7 73:8</p> <p>h2a330 (3) 60:3,12 61:10</p> <p>h2a331 (1) 60:4</p> <p>h2a336 (1) 28:15</p> <p>h2a338 (3) 5:23 6:7 10:14</p> <p>h2a339 (1) 6:4</p> <p>h2a340 (1) 11:13</p> <p>h2a341 (1) 14:20</p> <p>h2a344 (1) 14:21</p> <p>h2a347 (1) 62:5</p> <p>h3a101 (1) 145:2</p> <p>h3a1029 (1) 145:8</p> <p>h3a547 (1) 166:3</p> <p>h3a566 (1) 144:16</p> <p>hadnt (4) 11:17 14:3 23:13 170:7</p> <p>half (6) 22:12 23:18 36:3 97:9,18 187:15</p> <p>hallmark (1) 141:5</p> <p>hand (1) 83:1</p> <p>handed (1) 83:4</p> <p>hang (2) 25:22 29:14</p> <p>happen (3) 17:23 133:10 181:4</p> <p>happened (9) 21:9 57:15,17 133:7 143:12 148:22 153:13 182:18 186:19</p> <p>happening (1) 12:22</p> <p>happy (2) 5:16 186:22</p> <p>hard (7) 84:9 85:21 86:24 88:8 153:8 155:1,25</p> <p>hat (1) 106:15</p> <p>hausfeld (5) 25:24,24 82:25 83:14 87:17</p> <p>havent (8) 2:18 100:21 161:22 172:25 176:24 178:11 183:14 185:5</p>	<p>having (11) 12:1 14:18 41:1 50:22 51:16 52:4 72:7 95:16 103:21 118:16 166:21</p> <p>hawk (1) 130:23</p> <p>hdrhc3 (1) 123:16</p> <p>hdrs1 (1) 104:1</p> <p>head (3) 35:6 182:7,7</p> <p>headed (1) 7:10</p> <p>heading (2) 30:20 127:13</p> <p>health (5) 64:25 65:8,20 66:9 67:10</p> <p>healthy (1) 130:14</p> <p>hear (4) 3:20 74:25 152:12 177:7</p> <p>heard (6) 2:16 60:5 115:15 148:20 163:15 189:5</p> <p>hearing (1) 188:4</p> <p>hed (2) 42:22,22</p> <p>held (3) 27:11 28:5 175:7</p> <p>hello (2) 177:6 185:15</p> <p>help (10) 13:20 14:1 30:6 36:21 39:15 49:15 88:5 138:4 146:11 156:2</p> <p>helpful (6) 50:11 66:17 149:13 150:9 164:9 165:8</p> <p>helpfully (1) 22:8</p> <p>helps (1) 112:9</p> <p>here (51) 7:2 14:22 22:7 24:8,16 29:19 41:3 43:1 44:16 48:4 55:8 59:14 74:23 76:12 84:21 85:3 94:16,23 97:6 99:18 102:7 106:5 110:6,25 111:7 117:17 120:12 122:4 124:2 128:11 133:21 138:11,22 141:20,22,25 142:16 143:6,10 149:25 154:12 156:15 166:21 168:1,5 171:2 178:19 181:18 188:9,17,18</p> <p>hes (11) 12:9,10 32:4,18 47:12 63:3 162:20,22,23,23 180:10</p> <p>hi (2) 160:24 170:18</p> <p>hides (1) 107:7</p> <p>hierarchical (1) 137:1</p> <p>high (11) 52:15 106:8 116:14 118:3 127:20 131:22 140:13 149:19 155:13,14 163:7</p> <p>higher (2) 36:3 37:2</p> <p>highest (1) 125:16</p> <p>highlight (1) 61:7</p> <p>highlighting (1) 87:4</p> <p>highly (1) 131:1</p> <p>hindsight (3) 58:21 59:23 74:25</p> <p>hired (8) 28:16 30:2 32:8,10,15 51:10 167:21 169:4</p> <p>hiring (2) 51:6,10</p> <p>history (6) 32:5 52:14 79:18 105:11,17 108:3</p> <p>hit (16) 33:3 73:15,16 74:2,20 75:23 76:9 108:14 113:2 115:22 116:11 153:14 155:1 169:10,11,17</p> <p>hitachi (1) 171:4</p> <p>hits (3) 71:24 72:14 77:12</p> <p>hitting (1) 155:25</p> <p>hive (1) 59:17</p> <p>hived (1) 59:3</p> <p>hold (1) 88:9</p> <p>home (2) 44:1 57:8</p> <p>homepage (2) 40:22 73:6</p> <p>honest (2) 113:25 126:21</p> <p>hope (2) 3:19 154:22</p> <p>hoped (1) 67:11</p> <p>hopefully (2) 122:17 145:23</p> <p>hoping (2) 66:8 111:14</p> <p>hotel (2) 73:21 76:1</p> <p>hotels (5) 57:12,15,22 73:10 74:11</p> <p>hour (7) 18:1,2 38:16 148:12 187:15,15 188:17</p>	<p>house (3) 175:10 176:20 179:11</p> <p>housekeeping (8) 1:5 37:10 43:22 45:3 74:10 186:24 190:3,24</p> <p>houses (1) 177:20</p> <p>however (3) 125:13 135:7 161:3</p> <p>hows (1) 126:12</p> <p>huge (1) 118:19</p> <p>human (4) 53:1 147:12,14,16 148:1</p> <p>hundreds (6) 18:4,13 23:19 34:9 98:3 130:7</p> <p>hunkering (1) 127:25</p> <p>husband (3) 5:3 6:11 7:20</p> <p>hwxa3 (1) 96:15</p> <p>hyperlinks (1) 105:23</p> <p>I</p> <p>iceland (3) 31:4,9 51:5</p> <p>icomp (18) 25:17,20 26:19 27:5,25 28:11 29:13,23 32:24 33:4,11 34:16,22 35:2,3,10 36:3,5</p> <p>icoms (1) 33:6</p> <p>id (11) 15:1 35:6 70:8 1</p>
---	---	--	--	---	--	--

imposition (2) 19:17 153:6
impossible (1) 88:4
impressed (1) 103:20
impression (1) 165:2
impressively (1) 156:11
improve (4) 54:25 140:21
153:12 162:15
improved (1) 22:15
improvements (4) 4:5,10 5:1
54:18
inaccurate (2) 104:24 105:8
inadequate (1) 104:14
inaudible (18) 49:21 71:17
76:18 79:4 80:25 83:13,21
84:9,18,20 94:9
107:2,22,23 119:5 122:22
138:17 181:8
inbound (2) 23:15,19
inbox (3) 154:8 157:1,1
inc (1) 113:6
incentive (1) 108:17
incentives (1) 173:20
incessant (1) 101:13
include (2) 142:1 177:13
included (2) 49:11 146:13
includes (3) 6:9 59:15 171:11
including (7) 3:10 46:7 99:11
105:23 172:4 176:6,8
income (4) 34:5 35:9,11 36:3
inconsistent (1) 22:23
incorrect (5) 13:1 14:6 25:4
52:20 104:12
increase (4) 16:21 128:4
169:23 180:8
increased (4) 18:20 22:16
103:18 169:18
increasing (2) 127:23 142:7
increasingly (1) 142:6
incredibly (2) 73:1 74:16
incremental (1) 54:18
incumbents (1) 76:7
indefatigable (1) 42:20
independent (5) 65:21 104:2
111:8,21 136:25
independently (2) 37:18
58:18
index (6) 54:16 58:6
146:12,18 185:8 190:1
indexed (2) 162:20,20
indexing (1) 54:17
indicated (2) 55:14 77:11
indicates (2) 83:20 101:11
indicating (1) 106:1
indications (1) 187:22
indicator (1) 99:13
indicators (3) 173:14
174:7,16
indirectly (1) 35:17
individual (4) 34:6 139:12
170:15 172:22
individually (1) 55:15
industry (2) 28:1 127:22
infederation (2) 127:16,18
influencers (1) 120:16
info (1) 177:23
inform (2) 148:6,16
information (22) 13:21 14:1
44:3 51:20 56:12 98:15
101:12 104:12,18 105:7
120:25 123:1 135:17,20
160:9 171:13,14
178:1,21,24 179:7 188:22
informed (2) 11:14,22
ingredients (1) 162:13
inherent (1) 155:8
initial (6) 16:1 51:16 74:7
119:21,23 177:17
initiating (1) 175:23
inner (2) 134:8 146:2
innovation (2) 31:17,21
innovations (1) 100:11
inquiry (1) 160:25
inside (1) 150:1
insight (1) 112:24
insights (3) 112:14,17 161:5
insofar (1) 8:4

instance (1) 45:20
instant (2) 127:17 133:20
instantaneous (1) 54:22
instantly (2) 98:7 135:8
instead (3) 35:14 173:9
184:17
instructions (2) 1:9 56:22
insurance (2) 70:12,12
integration (3) 36:22 38:21
42:2
intel (2) 30:5 32:9
intelliwidget (1) 45:8
intelliwidgets (3) 41:19,23
44:9
intended (3) 119:8 157:21,23
intending (2) 8:24 9:19
intense (1) 127:25
intensifies (1) 128:2
intent (3) 95:2,2 157:18
intention (2) 25:1 157:24
interactions (1) 167:20
interest (3) 17:4 126:24
133:1
interested (8) 49:10 66:23
99:4 114:23 130:24 132:2
133:3,13
interesting (3) 13:3 117:23
135:19
interestingly (1) 133:5
interface (4) 94:17,18
137:1,1
interim (1) 21:2
internal (9) 6:15 8:15
15:3,17 53:19 178:20
179:7,18 180:15
internally (1) 153:9
internet (5) 69:16 78:18
81:6 101:12 177:14
internetsavvy (1) 68:23
interplay (1) 161:7
interpreted (1) 54:23
intervene (1) 114:18
intervening (1) 175:25
intervention (1) 52:23
into (22) 47:24 53:1 57:5
80:5 86:8 93:22 94:24 95:7
99:23 111:17 115:25
117:19 129:6 132:14
133:15,24 137:22 146:3
148:13 156:8 168:17 170:3
intrepid (1) 109:20
introduce (4) 86:19 100:25
102:17 105:11
introduced (8) 22:3 42:25
48:23 66:5,22 101:16
102:11 130:12
introduction (1) 141:4
intuitive (1) 155:23
invasion (1) 10:6
inventory (3) 58:5 74:16,17
investable (1) 69:1
investigate (3) 9:24 152:10
156:25
investigated (1) 179:22
investing (2) 128:4 132:3
investment (13) 42:21 45:25
46:5,12 67:15,17,20,23
68:3,11,13,19,23
investor (2) 68:23 127:15
investors (1) 68:5
invisible (1) 178:24
invite (3) 5:24 81:2,7
inviting (1) 125:17
involved (4) 30:3,5 32:7
147:16
involvement (1) 179:15
ipc (1) 176:7
jowell (3) 187:2,7 188:5
ironic (1) 27:19
island (1) 72:6
isnt (7) 2:21 69:25 70:18
81:5 91:23 113:5 181:21
isolation (1) 124:3
issues (10) 4:23 33:11 65:23
151:6,12 156:9 159:11,13
164:24 165:14
issuing (1) 19:11

istends (1) 121:18
item (3) 104:8,11 171:12
items (2) 139:22 172:5
its (98) 2:21 12:12 13:3
14:12,25 15:16 16:3 17:23
19:11 20:11 23:22 24:23
25:6,11,19 27:23 28:10,10
29:4,7 32:6 33:19 37:4
39:8 41:7,8 54:25 55:22
58:5 62:17,17 65:16 70:8
75:19 81:11 85:21
90:18,18 92:20
94:13,15,16 95:16
97:2,20,21 98:3,24 99:12
101:1 102:18 104:19
105:2,8,8 109:24 112:24
114:24 115:4 117:15,23
118:21 119:18 121:24
122:2,8 127:4,8
129:13,15 130:12,16 134:1
135:19 139:11,17 142:22
143:1 147:11 149:7
150:12,14 156:15 157:5
158:7,21 161:19,19,20
162:4,15 163:9 169:18
178:4 182:2,15 185:13
186:16
itself (4) 27:11 28:5 48:23
169:24
ive (16) 4:16 6:2 12:8 42:1,1
50:14,17 143:7 153:8
154:2 169:13 170:23
177:11,22,24 185:20

J

j2a141 (1) 17:10
j2a1410 (1) 17:15
j2a18 (1) 153:18
j2a21 (1) 84:1
j2b12 (1) 40:7
j2b124 (1) 185:14
j2b126 (1) 40:11
j2b127 (2) 40:16 177:20
j2b131 (3) 38:4 176:22 177:5
j2b132 (1) 160:23
j2b135 (2) 38:18 154:10
j2b19 (2) 53:7 170:14
j2b192 (1) 173:3
j2b22 (1) 4:22
j2b23 (1) 175:9
j2b232 (1) 175:10
j2b41 (2) 54:13 179:17
j2b42 (1) 182:19
j2b421 (1) 184:22
j2b422 (1) 184:4
j2b423 (1) 182:19
j3m192 (1) 54:2
january (3) 28:24 78:10
123:15
jeeves (1) 128:20
jenifer (7) 154:13,13,16,22
156:7 166:5,6
job (5) 33:9 57:23 63:2
123:4 148:15
jog (1) 46:18
jogged (1) 139:4
john (1) 140:20
jones (10) 30:18,21,22
31:2,4 32:2,17 51:2,23
66:5
jongo (10) 40:9 42:18,24
43:7,11,16 44:23 45:5
60:5,16
jose (1) 172:8
journalists (2) 28:17 65:20
journey (3) 37:7,11 38:1
jowell (3) 187:2,7 188:5
judge (1) 175:5
judging (1) 160:7
judgment (2) 160:12,13
july (3) 104:6 106:7 189:11
jumped (1) 29:14
jumps (1) 89:18
june (23) 1:1 18:16 20:21
23:3,12,17 38:5 90:14,15
91:9 94:3,9,19 95:8,18

99:2 105:10 129:18
153:15,22 155:1 156:5
175:16

K

keen (2) 95:24 156:9
keeping (1) 128:8
keeps (1) 118:8
kelkoo (5) 37:8 60:21 176:4
182:7 183:3
kerry (3) 170:18 173:7 175:7
key (5) 29:7 51:20 66:21
69:8 81:13
keyword (3) 63:17 77:3,4
keywords (14) 18:4,14
63:6,7,8,10,12,16,18
138:10 155:13 156:4
170:25 185:22
kick (1) 18:2
kilsby (1) 46:21
kim (4) 187:13,16,20 188:1
kind (9) 44:25 48:15 56:15
63:17 73:18 125:8 148:12
150:5 166:24
kindly (1) 154:23
kinds (5) 70:20 122:25
147:20 158:8 165:14
kitty (4) 179:21 180:16
181:17 186:3
knew (14) 13:24 20:25
21:2,6 29:6 31:24 32:3
66:1,3 68:9 75:3,6 111:22
165:24
knocking (1) 108:15
know (83) 1:8,24 11:6
25:13,14 29:2 32:5,7,12
34:13 42:19 43:10 46:22
48:8 58:11,19,21
59:3,6,8,17 66:4 67:19
69:18 70:10,12 75:1,18
76:10 79:3 81:7,11
87:20,24 90:2 92:13 101:8
102:3 105:17 108:16
111:12 112:4 114:23
115:1,5,23 118:5,6 122:23
124:13 125:18 132:12
134:11 137:23,24,24
140:10 148:11,19 149:4
150:9,12 151:22,25
152:1,8 162:14 163:1,2,17
165:14 168:23 169:7
173:21 174:10 176:23
178:19 179:2,2 180:10
181:13 182:23 187:5
knowledge (9) 89:2,3 101:5
137:21 144:21 145:14
169:22 170:13 186:20
known (5) 58:18 75:16 76:23
105:19 118:10
knows (2) 59:10 68:23

L

labouring (1) 175:16
lack (3) 74:4,6 75:6
lacked (1) 75:22
lacks (1) 75:19
landed (1) 182:22
landing (6) 170:7 171:5,14
173:22 177:12 186:5
language (1) 7:8
large (1) 54:16
largely (1) 73:14
larger (4) 40:17 51:11 88:7
141:15
larry (1) 166:5
lasnik (16) 30:15 31:5,9
51:9,24 52:7 156:10 157:4
160:22 165:20,23,23
166:4,10 172:21 179:9
lasniks (1) 157:1
last (8) 17:25 31:12,13 33:8
112:16 115:11 175:16,22
late (2) 86:19 141:4
later (8) 37:7 107:12
129:16,22 158:10,12,24
167:8

launch (6) 68:12,18 95:1
108:14 118:7 148:22
launched (10) 46:24 58:20
68:6 69:15 75:17 76:11
95:9 111:19 120:12 151:23
launching (3) 59:15 68:11,20
lawyers (1) 143:21
lay (1) 161:19
layout (1) 94:13
lc46x12e (1) 104:9
lcd (1) 104:9
lead (3) 125:5 146:17 157:5
leading (8) 38:15 60:20,23
71:18,19 125:4 127:24
176:6
leaping (1) 80:14
learned (2) 73:17 160:25
learning (1) 27:22
learnt (1) 59:7
least (10) 1:18 95:24 113:25
116:12 135:18 137:11
142:5 146:21 166:19 188:1
leave (6) 44:15 53:13 82:8
134:9 146:4 186:22
leaving (2) 172:1 179:8
led (1) 155:6
left (14) 39:8 40:22 41:24
94:20 97:22 98:5 109:21
135:6 139:1,1,10,10 150:8
167:16
lefthand (7) 41:8 43:22
93:25 94:15 95:24 96:8
133:22
legal (4) 1:11,17 19:25 20:6
legitimate (3) 182:25
183:6,10
lengthy (1) 136:6
lens (1) 165:9
leo (8) 90:7,11 134:1,3,4,12
146:1,4
less (2) 14:14 151:3
let (27) 16:11 26:19 28:23
29:11 31:22 33:12
37:17,24 38:4 40:6,21
46:22 95:4 96:18,20
103:11,12 105:18 113:23
118:17 125:18 126:8
130:25 137:7 145:6 153:13
173:21
lets (1) 68:12
letter (3) 25:24 26:5 49:5
level (9) 19:23 20:2 21:13
22:16 24:5,6 134:2 153:2
169:18
levels (4) 18:14 23:2,15
55:19
lewis (1) 140:20
lg (1) 103:16
licence (4) 130:20,23 131:4
132:18
licensed (1) 131:19
license (1) 132:18
licensees (1) 127:3
licensing (5) 125:24 126:9
132:3,10,24
lie (1) 31:22
life (1) 129:10
lifestyle (1) 43:21
lift (5) 11:15,23 51:13 66:25
173:21
lifting (1) 55:20
light (3) 3:5 15:21 83:8
like (74) 20:12 21:23 36:16
37:9 39:15 43:13 44:8
46:18 52:12 59:21 66:3
73:4,19 74:5,9 77:20 78:4
79:5 81:14 84:21 85:3
90:15,16,18 91:17,23 92:7
95:8 98:25 111:25
115:8,11,19 116:20,21
117:8,22 123:2 126:13
136:1,25 137:8 138:5,6
139:11 140:16,20 145:22
146:19 148:17,21 150:8
152:11 154:7 158:7,10
159:10,11,12,14,17 162:16

164:3 165:22 168:17,21
169:6 172:18 173:6
174:1,19 178:8 180:22
182:9
liked (1) 173:12
likely (2) 97:12 127:15
likes (2) 74:6 176:4
limit (1) 110:1
line (7) 14:9 63:8,10
89:17,21 106:8 170:11
lines (3) 84:10 91:5 158:8
link (8) 41:21 48:7 103:17
106:2 109:9 149:14 171:6
182:11
linked (1) 71:9
linking (2) 104:10 121:14
links (12) 23:15,19 27:5
30:8,11 92:9 117:19 118:9
122:10 149:8 150:22,24
list (6) 109:23 128:16 150:16
180:23 182:24 185:22
listed (4) 104:1 110:15 178:2
179:1
listen (1) 95:5
listing (2) 104:3 171:9
listings (1) 171:7
lists (1) 133:18
lite (2) 97:5 99:21
little (15) 3:5 40:17 56:5
70:22 73:8 85:21 113:20
147:7 149:20 150:4,7,8
178:5,10,17
live (4) 74:15 75:14 134:7
146:5
livery (4) 91:2 92:3,13 95:15
load (1) 167:22
loath (1) 162:13
lobbying (4) 27:11,20 28:3,5
log (12) 6:9,12,15 7:25 10:16
12:5,19,24 13:6,8,23 14:11
logging (1) 133:21
london (1) 102:5
long (8) 26:17 74:1 82:5
115:11 130:3 139:7 140:19
168:10
longer (2) 19:16 22:18
longestablished (1) 128:2
longwinded (1) 143:14
look (49) 5:23 12:5,9,13
16:11 33:12 37:24 38:4
40:6 43:13 45:1,2 46:10
48:2 50:4 54:12 55:6 65:22
74:7 83:24 85:6 93:23
96:13 122:5 123:13
135:1,24 139:11 146:8
147:12,24 149:2 151:5
152:10 153:13 154:9
160:22 163:18,23,24
164:2,5 166:2 168:16,18
170:14 172:25 179:19
185:21
looked (25) 40:12,18
50:18,22 53:1 70:25 80:21
90:15,16,18 91:17,23 92:7
94:25 95:8 98:25 99:1
153:8 160:4,16,16 164:1
172:22 177:25 186:19
looking (23) 16:20 37:5,9,12
47:19,22 48:8,11 64:2
70:11 77:13 79:7 84:15
87:3 88:11 112:10 124:24
135:9 156:8 163:21 164:17
168:4 175:4
looks (9) 14:13 44:8 79:5
115:8 133:23 140:16
147:25 149:5 173:6
lookup (1) 80:5
lot (22) 15:9 22:7 29:10 41:5
49:13 59:7,10 64:11 68:14
74:5 91:6 107:19 108:15
111:4 117:14 126:23
135:20 140:9 158:1 159:9
163:16 167:20
lots (14) 11:6 62:1 63:25
64:1 69:3,5 77:23,23 80:12
95:21 108:6 118:20 119:17

137:20
love (2) 47:2 72:6
loved (1) 116:24
low (12) 50:24 81:13 106:10
118:14 140:23 153:2
158:1,17,21,25 172:14
176:15
lower (1) 166:22
lowest (4) 105:12 109:10
139:22 159:7
lowhanging (1) 69:12
loyalty (1) 112:21
lpq (8) 170:23 179:22
182:12,25 185:13,25
186:9,11
ltd (1) 154:25
ltds (1) 127:16
luck (2) 15:24 189:6
lunch (1) 82:19
lyrics (1) 149:11

M

m1183 (2) 53:12,17
m137 (1) 157:3
m2 (1) 113:13
m21162 (1) 50:8
m211621 (1) 30:20
m211622 (1) 30:23
m211623 (2) 30:10 31:2
m21179 (1) 33:13
m21181 (1) 127:5
m2118155 (1) 127:9
m2118156 (1) 133:16
m212221 (1) 101:9
m21234 (1) 146:9
m212342 (1) 146:24
m212344 (1) 146:23
m2127 (1) 107:12
m21291 (2) 112:2,6
m2133 (1) 90:12
m21338 (1) 47:13
m2133823 (1) 47:23
m2133827 (1) 47:16
m2165 (1) 103:13
m2173 (1) 123:13
m2201 (1) 105:19
m2217 (1) 121:4
m2221 (1) 106:5
m22324 (1) 124:18
m2273 (1) 122:7
m2285 (1) 104:6
m2324 (1) 124:21
m2326 (1) 103:21
m239 (1) 46:2
m241 (1) 46:6
m255 (1) 46:19
m256 (1) 46:25
m2635 (1) 96:21
m263563 (1) 96:25
m263564 (1) 99:16
m264 (1) 46:8
m26938 (1) 110:2
m2701 (1) 107:3
m341 (1) 147:13
m34154 (1) 147:13
m3491 (2) 48:2 78:20
m34917 (1) 79:8
m34918 (1) 79:17
m3493 (1) 48:2
m34932 (1) 49:4
m34933 (1) 49:7
m34967 (1) 135:1
m349814 (1) 135:24
m3547 (1) 49:17
m3548 (1) 50:3
m35481 (2) 50:11,19
m35482 (2) 50:10,15
m4178 (1) 91:14
m4180 (1) 93:3
m4181 (1) 119:20
m41819 (1) 119:25
m4221 (1) 129:9
m4227 (3) 6:8 12:5 14:22
m4229 (3) 16:12 70:24 76:18
m429 (1) 109:3
m464 (1) 117:16

m4691 (1) 114:9	134:3,5 144:3,4,9,10	53:8,11,18 63:7 154:22	much (34) 7:24 12:25 13:7	note (12) 4:21 13:12 46:6	onwards (3) 79:6 98:25	147:5 155:2,3,3,7,9,12
m4911 (1) 27:15	187:22 188:13,21	161:22 172:16 174:8	14:14 16:23 17:23 27:23	91:2,11,21 108:7 128:18	142:5	161:2 162:19 166:5
machine (7) 90:14,17 91:16	190:5,9,14,20	minimal (1) 151:1	37:13 51:11 63:3 67:17	143:25,25 161:2 188:14	open (6) 45:17 87:3 134:17	172:2,4
93:8 95:12,20 107:6	mcgurks (2) 66:2 79:10	minimum (3) 169:19,23	68:15 72:10 75:12 79:13	notes (1) 162:19	144:14 145:24 184:8	paid (6) 35:17 64:15 111:9
machines (1) 57:8	mean (26) 12:21 13:14 15:16	180:8	82:4 85:24 120:19 121:2	noteworthy (1) 181:20	operate (2) 116:8 151:9	120:18,19 148:11
madam (3) 69:12 85:14	23:23 29:1 36:16 69:16	minolta (1) 105:22	123:16 126:3,22 135:19	nothing (12) 12:16 14:15	operated (4) 59:7 111:22	painful (1) 105:4
120:21	70:19 79:9 85:20 87:2	minor (2) 4:23 142:23	136:9 137:19 140:25	44:17 52:25 77:18 84:4	116:20 151:4	panasonic (3) 96:2,3,15
mag (1) 41:12	90:23 94:4 113:24 118:13	minute (5) 15:7 38:23 42:18	150:20 155:5 157:7 158:17	85:3 110:17 117:22 124:2	operating (1) 158:2	panda (8) 19:17 33:2,3 35:23
magazine (5) 43:21 44:9	120:19 122:12 128:22	45:24 161:23	161:5 165:3,11 171:15	138:14 171:20	operation (1) 83:10	141:4,4 142:5,9
72:19,24,25	131:8 158:18 164:16	minutes (3) 14:9 73:5 98:4	multifactorial (1) 69:22	noticed (1) 185:18	opinion (2) 27:17 157:13	paragraph (32) 6:1
main (3) 101:23 103:1 131:9	172:14 178:25 181:6	miraculously (2) 48:20 103:2	multiple (5) 34:1 98:18	noticing (1) 121:12	opinions (1) 112:11	10:7,14,24 11:13,20
maintained (1) 57:20	187:2,8	mislead (1) 19:3	130:5 135:13 181:5	notsoveiled (1) 27:20	opportunities (1) 23:13	21:17,21,24 22:1,2,13
major (4) 127:25 180:1	meaning (1) 180:24	misleading (5) 23:23 25:2	multivertical (3) 57:21 59:2	notwithstanding (4) 10:25	opportunity (2) 52:7 121:21	30:16 31:13 55:8 57:7
182:6 184:7	means (10) 87:7 111:15	94:24 95:7 141:22	69:23	16:22 20:13 131:21	opposed (1) 114:2	89:10 92:24 100:7,15
majority (5) 58:1 125:13	150:21 152:4 159:13	missing (15) 47:17,19	murky (1) 117:13	november (14) 4:7 14:7	optimisation (1) 64:15	101:10 102:15 103:5
155:2 165:9 185:22	162:20 178:5,17 181:3	90:18,19,20,21 91:19,24	music (1) 57:13	26:23 33:19,19,19,20 35:3	optimise (1) 65:2	104:20 112:16 114:10
makemodel (1) 155:13	184:12	95:21 96:19 97:20,21	must (8) 7:21 12:20 26:16	84:23,24 85:2,3 96:24	opting (1) 36:12	127:21 142:2,2 166:3,3
makes (3) 163:7 183:6	meant (3) 26:5 118:22	135:6 147:5 181:18	51:5 54:8 158:20 166:8	103:14	option (1) 59:21	183:19
188:14	150:23	misspoke (1) 124:23	188:19	nuanced (3) 13:7 149:22	options (1) 155:20	paragraphs (4) 14:20 31:1
making (13) 8:24 74:5 94:16	mechanism (3) 152:15 153:5	mistake (1) 96:12	mutually (2) 5:16 8:21	150:7	orange (2) 98:9,10	112:8 161:11
100:1 118:16 140:8 156:14	169:3	mixed (1) 167:7	myself (1) 10:22	number (21) 4:2 9:9 26:20	order (13) 24:25 32:24 52:15	parent (1) 171:22
158:22 160:12 172:24	mechanisms (1) 181:5	mmhm (3) 109:6 145:9	mysimon (2) 109:4 116:20	30:22 36:14 62:23 63:9,13	117:24 118:8 121:23,25	part (10) 26:11 38:19 43:19
174:12 182:17 183:23	media (2) 17:4 30:7	163:25		85:1 98:8 100:2 101:3	159:7	44:23 66:3,10 110:12
malware (1) 157:20	meetings (6) 26:20,22,24	mobile (3) 98:1,2 134:22		107:24 110:1 118:19 120:4	ordinary (1) 119:22	148:24 168:25 176:2
managed (1) 51:13	27:1 28:24 29:2	model (7) 48:9 61:10 98:1,2		131:9 156:14 160:7 161:8	organic (7) 16:14 69:14 71:4	particular (14) 37:12 41:10
management (1) 47:8	meets (1) 39:3	116:9,20 171:7	name (8) 70:23 71:23 72:13	169:1	85:19 114:6 155:25 175:20	48:8 63:24 76:18 78:15,17
manager (1) 179:13	member (1) 51:24	models (6) 48:6,10,17,21	109:10 129:13 137:25	numbers (1) 22:1	organisation (5) 25:17	93:24 97:5 115:20 128:10
managing (1) 47:6	members (4) 25:20 51:4	49:6,9	140:18 179:14		26:20,22 27:5 35:10	138:7 155:10 173:18
manifestly (1) 95:9	120:2,9	moment (22) 2:22 3:18 5:24	named (2) 71:20 72:20		original (26) 41:5 55:22	particularly (4) 74:14 98:1
manner (1) 153:12	memorable (1) 5:13	16:10,11 25:13 29:23	names (2) 99:15 102:3	objecting (1) 160:1	74:4,6,9 75:7,8,13,19,22	104:22 176:11
mantoman (1) 51:8	memory (15) 5:10 12:21,22	33:16 37:13 40:9 49:23,23	narrow (2) 98:8,10	objection (3) 84:3 128:22	116:22,24 117:25	particulars (9) 18:12 20:1
manual (7) 53:4 151:12	14:6 15:8,10,17,19 46:18	50:4 60:9 61:6 63:13 86:3	narrowed (2) 41:9 108:3	178:9	140:14,15 147:7,9 156:23	21:14 22:21 23:1,25 55:6
154:2 170:16 175:23	49:1,5 152:3 54:10 56:13	94:25 102:7 110:10 176:16	narrows (1) 49:5	objections (2) 19:11 20:20	161:20 168:19 176:21	56:10,16
181:7,12	139:4	186:8	national (1) 71:23	observation (1) 118:18	177:11 178:5,10,18 179:10	parties (1) 46:6
manually (1) 181:6	mention (3) 1:18 29:22	moments (1) 32:12	natural (1) 121:24	observations (1) 4:12	others (8) 73:17 75:14 85:23	partly (1) 137:13
many (17) 10:22 13:14 29:2	77:25	monetise (2) 36:21 39:21	naturally (3) 139:21	obtain (3) 150:17 151:1	108:5 110:3 123:8 124:17	partner (8) 39:9,14,19 40:13
63:6 120:10 124:19	mentioned (12) 29:17 34:15	140:23 171:15	155:12,14	161:15	141:11	43:4,7 121:13,17
128:5,18 135:7 154:7	36:10 40:8 42:16,19 53:3	money (5) 47:8 114:15,20	nature (1) 155:8	obviously (8) 49:8 111:18	otherwise (1) 111:18	partnered (3) 36:14 43:11
155:17 157:19 164:7	78:3 162:22 166:15 168:4	140:23 171:15	navigational (2) 76:23,25	112:4 121:21 142:23 179:6	ought (1) 1:18	44:11
167:17 168:17 176:6	171:8	monetised (1) 74:12	near (1) 16:10	180:18 188:21	ounis (1) 136:20	partners (1) 39:9
184:16	mentioning (1) 167:13	moniesupermarket (1) 70:3	necessarily (3) 27:2 70:19	occasion (2) 72:16 168:3	ours (1) 99:1	partnership (4) 36:23,25
march (3) 17:1 30:24 131:4	mentoring (2) 47:9,12	monitoring (6) 63:3 106:15	147:9	occasionally (1) 42:21	ourself (1) 35:22	37:1 39:5
market (12) 58:17,23	menu (1) 92:9	128:15,24,24 129:3	necessary (4) 18:18 187:2,4	oclock (1) 3:8	outcome (1) 186:4	partnerships (5) 23:18 40:14
59:16,19 70:2,18 83:7,10	merchant (15) 97:25	71:21 84:25,25	188:11	o	outline (1) 146:16	128:3 176:5 180:1
128:2,5,9,17	99:10,14 100:22 104:23	monthly (1) 85:18	need (15) 2:13 20:5 26:17	october (14) 5:5,12,20 7:24	outfdate (1) 103:8	partyway (1) 86:10
marketing (2) 47:8 140:18	106:3 108:12,21 110:7,13	months (2) 55:1 175:25	53:10 56:20 69:20 73:7	11:12,22 12:6 13:9 14:5	outset (1) 146:10	part (7) 36:14 40:1,3
marketleading (2) 40:4 48:13	114:16 135:17 139:19	more (51) 2:2 7:24 12:11,25	82:21 92:25 102:4 125:9	26:23 92:21 93:7 127:7	outside (7) 147:22	121:11,12 179:25 185:10
marketplaces (1) 28:2	149:8 182:10	13:6,7,18 14:13 20:12 32:3	132:14 176:25 187:11	168:3	outside (7) 147:22	pass (1) 154:16
markets (1) 76:9	merchants (16) 34:6	44:2 49:5 54:18,25 68:19	188:6	odd (1) 124:2	148:10,11,15 149:25	passage (1) 146:25
marking (1) 128:1	61:1,2,5,7,12,15 69:3,10	73:8 84:21 96:20 102:10	needed (4) 9:20 33:6	oe (1) 104:1	150:13 167:17	passing (1) 157:3
marry (1) 121:21	98:16 109:23 110:1 112:24	124:17 125:10 127:3	39:14,19	offender (1) 104:23	outstripping (1) 35:11	past (2) 12:20 41:17
massive (1) 125:6	120:8 138:6,15	129:7,15 136:23 149:20,21	needling (1) 9:20	offer (12) 97:25 98:3 99:11	outturn (1) 31:8	patented (4) 154:25 161:19
massively (2) 70:14 72:14	message (3) 27:21 55:2	150:5,6,7,8 159:17 161:3	needs (4) 69:2,5,7 110:7	112:23 113:10 114:21	over (30) 6:4 9:9 10:22	166:16 175:14
match (3) 48:6 122:9 138:11	72:23	164:22 165:6,13,24 166:1	negative (11) 80:2,8,12,22	117:8 138:14 149:12 161:6	12:8,23 15:9 17:7 35:9	patently (1) 131:16
material (2) 90:11 150:18	messaging (2) 33:5 127:17	167:22 168:16 169:13	81:4,8,13,16 125:15,20	171:15 184:7	50:15 55:18 65:22 79:17	patience (1) 36:9
materially (1) 142:25	messenger (1) 133:20	170:22 171:1,25 176:23	137:14	offered (4) 13:19 67:17	80:1 83:8 85:8 105:13	pause (10) 50:13,16,20
mat (8) 7:12,14 12:8 20:11	met (1) 133:22	181:19 182:8,8 183:4,5,21	neither (2) 132:13 151:19	114:12 152:17	112:19 117:25 142:7,13	56:23 86:4 110:10 161:25
51:25 144:5 154:21 156:10	method (1) 162:21	morning (3) 3:12,13 49:16	net (2) 180:25 181:4	offering (7) 13:25 47:5	143:12 151:20 153:21	173:4 178:13 184:25
matter (8) 2:1 25:3,6	metrics (1) 133:22	50:12,18 66:2,23 71:1	network (2) 98:4,10	119:21,23 121:10,16	161:2 167:18 170:3,7	pausing (3) 12:17 24:12
81:11,15 82:21 168:4	mic (1) 2:21	81:22 83:2 188:17 189:6,7	networker (1) 42:20	161:15	171:24 172:4,4	112:22
181:23	michael (1) 110:3	most (22) 8:25 9:5 10:10,21	networks (4) 34:4,9,9 69:5	offers (4) 138:6,11 149:7,9	overall (3) 106:11 123:9,19	pay (3) 51:12 146:15 153:10
matters (4) 1:13,18 4:22	microphone (13) 3:18 45:24	11:1 57:25 61:1,2,3,4,7	never (5) 66:4 101:24 115:15	official (3) 152:4 162:21	overcome (1) 156:2	paying (1) 30:2
90:7	49:21 79:7 81:24 83:13,21	66:23 78:16,16 116:16	173:17 174:8	173:9	overlap (1) 85:14	payment (1) 51:11
matthew (4) 88:15 144:7	84:9 86:1 111:25 120:16	123:5 127:15 152:16 155:9	nevertheless (1) 17:7	officially (1) 46:24	overnight (5) 1:6,8,12 3:4	payments (3) 29:13 32:23
190:12,19	138:17 158:15	167:5 176:9 181:20	newly (1) 83:9	often (4) 133:10 165:10	81:22	120:10
maximise (1) 38:22	microsoft (1) 27:6,8,12,21	move (5) 38:25 91:14 118:17	news (3) 40:24 44:1 185:18	177:15 184:6	overoptimization (1) 155:7	peak (1) 17:1
maximum (1) 34:10	28:4,6 29:7,10 30:9,12	122:5 132:14	newsletter (1) 117:3	oh (17) 7:7 13:9 20:7 50:1	oversimplifying (1) 24:25	penal (1) 10:7
maybe (12) 30:19 63:22	31:23 32:5,7,8,14 35:18	moved (3) 35:21 100:18	newsletters (2) 116:23,25	53:13,23 56:1,7,7 57:19	overspeaking (7) 64:6 71:17	penalised (6) 150:15,20
65:5,18 80:1 97:25	66:4	180:22	next (14) 13:3 17:23 46:25	79:9 85:8,10 100:19	84:20 94:8 107:22 119:5	151:14 181:1,2,6
129:16,17 139:21 150:10	microsoftbacked (1) 35:10	moving (5) 25:12 47:13	49:3,7 50:10,15 55:18	116:4,24 148:21	181:8	penalized (1) 179:23
165:13 181:18	microsoftfied (1) 27:20	53:3,24 95:22	89:15 100:21 172:25 173:2	okay (22) 24:14 26:11 30:10	overture (1) 128:20	penalties (22) 15:25 24:19
mcgurk (84) 2:20	middecemberearly (1) 78:23	ms (68) 3:1 9:17 38:14 45:16	182:18,18	52:3 53:16 56:1,19 92:2	own (14) 27:23 42:13 87:18	55:20 58:11,21 59:6 75:2
3:2,3,11,19 6:23 9:23	middle (7) 43:25 44:4 62:14	47:10 67:15,17,20,23	nextag (1) 107:19	113:5 122:24 126:15 145:7	104:2 118:21 119:18	76:5,8 113:2,3
20:13 21:25 22:2,6,11 25:3	72:1 90:23 97:21 180:16	68:2,6 69:2,10,13,18,24	nice (2) 108:4 122:2			

153:6,14,23 169:11,11,18 170:3,15 175:12,17,19 176:18 177:17,25 178:15 180:8 181:7,9,12 185:14,25 186:12,16,18 penaltyfree (1) 59:4 penaltyserver (3) 160:3 164:15 168:15 penetration (1) 130:15 penultimately (1) 35:1 people (39) 22:1 36:16 59:19 65:9 67:10 69:18,21 72:6 77:15 78:11,12 94:19 120:20 121:19,20 123:21 126:4,22 130:24 132:6 147:18,23 148:4,5,20 150:9 151:24 152:11,13 165:10 167:17 169:6,7,9 170:11 173:7 174:19 179:6 186:1 per (7) 70:4,7 71:8 84:25 97:10,13 156:19 perceived (1) 155:7 percentage (2) 63:8,10 percentages (3) 62:24 81:12,15 perfect (1) 168:12 performance (3) 56:9 60:25 88:12 perhaps (8) 24:24 66:3 96:20 122:19 131:22 137:13,16 157:24 perimeter (1) 107:9 period (21) 17:8 19:18 21:2,4,6,8,11 25:12,14 26:15 33:16 34:5 35:14 62:17 77:3 83:8 84:22 106:6,9,10 127:24 permission (2) 144:5 145:23 permissions (1) 179:5 perpetuate (1) 72:23 person (8) 64:4 133:7 173:6,10,23,25 174:9 persuade (3) 51:13 66:25 130:17 persuaded (1) 12:10 peter (11) 7:14,15 12:8 13:19 17:20,22 19:22 20:8,10,14 53:25 philips (1) 155:11 phone (7) 6:9 18:1 42:22 97:6 98:2 135:5 158:10 phoned (1) 17:22 phones (1) 98:1 photo (1) 105:24 physically (1) 84:2 pick (2) 40:10,11 picked (2) 30:4,7 pickford (1) 187:25 picking (2) 61:20 123:20 picture (1) 99:4 piece (3) 28:3 102:11 166:1 pieces (1) 51:20 pills (1) 157:19 pink (1) 99:21 pioneer (1) 101:24 pioneered (1) 102:2 pitch (8) 38:19 43:8,14,19 44:23 60:13,16,17 pitches (1) 60:11 pitching (1) 39:18 pivoting (1) 46:23 place (5) 24:17 32:4 173:18 176:10 186:12 placed (1) 56:15 plan (6) 125:23 127:1,7,10 128:13 133:17 plans (1) 127:18 platform (2) 109:24 112:18 play (2) 14:23 86:14 played (2) 37:17,24 players (3) 41:17 76:8 127:25 playing (4) 14:23 19:23 20:2 21:13 plead (1) 20:18 pleading (4) 18:16,21 25:5	55:21 pleadings (1) 19:7 please (35) 5:23 17:10 34:21 38:19 43:24 53:17 55:18 107:10,20 108:3 109:10 111:9 115:20 116:2,13,21 124:5 137:24 138:12,16 139:11,20,22 149:9,12 155:10 157:5 158:2 159:8 171:9,9 172:6 182:22,23 183:2 pricgrabber (7) 60:21 115:19 123:17 130:1 176:5 182:7 183:4 pricerunner (3) 60:21 61:12 121:9 pricerunners (1) 121:5 prices (20) 41:20,21,22 44:3 63:22 99:8 103:8 104:24 106:15 116:2,4 121:20 123:5 135:16 138:8,9 159:7 172:10 182:8 183:5 pricscan (4) 105:20 106:8,11,20 pricing (2) 98:15 103:25 primarily (3) 120:7 131:8,14 primary (3) 91:11 92:17,20 prior (2) 19:16 98:19 privacy (1) 10:6 private (8) 8:24 9:18 134:13 145:23 146:1,6 190:15,22 probably (18) 34:3 43:6 49:1 64:1,5 75:21 76:10 78:10 86:23 90:25 116:6 129:20 143:3 158:12 159:2 162:20 186:21 189:1 problem (9) 15:12 19:14 73:20 94:23 97:1,15 156:2 165:21 168:25 problems (5) 4:6 122:5 162:22 175:25 178:4 procedure (1) 151:10 proceed (1) 45:19 proceedings (6) 1:3 20:23 54:21 89:5 144:13 145:18 process (13) 13:20 14:1,10,22 52:15 53:1 54:17 101:15 128:24 136:18 151:4 169:14 186:4 133:9 processes (1) 104:14 produce (2) 73:19 83:23 produced (7) 6:11 10:18 64:18 84:2 150:12 160:14 162:7 product (40) 37:3,5,12 39:2 60:22 63:7,18,24 96:3,4 97:17 98:14,17 99:4,7,19,20,22,25 100:4,4 103:8 105:24,24 108:24,25 109:4,5,10,10,11 113:10 115:20,25 118:19 120:22 137:24 149:10 181:22 185:8 production (1) 38:11 products (19) 39:5 42:5,9 60:18,20 61:6 97:3 105:13 112:10 113:15 117:9 120:8 123:9 136:4 139:12 155:11,15 171:25 177:14 produkt (1) 107:9 presented (5) 78:15 135:7,11 164:9 165:7 press (4) 54:24 77:25 78:4 176:8 prestigious (2) 176:5,10 presumably (4) 87:10,25 91:25 108:4 prettiest (1) 183:7 pretty (3) 86:17 88:6 140:23 prevent (1) 65:23 previous (11) 100:16,20 108:1 133:19 142:1 170:24 184:3,22,23 185:2,16 previously (2) 8:20 32:2 price (56) 37:5 39:2,20 52:14 61:1,4,8,12,16 63:7,18 64:3 79:18 103:18	104:3,11 105:1,11,12,17,24 106:2,4,9,10,11,19 107:10,20 108:3 109:10 111:9 115:20 116:2,13,21 124:5 137:24 138:12,16 139:11,20,22 149:9,12 155:10 157:5 158:2 159:8 171:9,9 172:6 182:22,23 183:2 pricgrabber (7) 60:21 115:19 123:17 130:1 176:5 182:7 183:4 pricerunner (3) 60:21 61:12 121:9 pricerunners (1) 121:5 prices (20) 41:20,21,22 44:3 63:22 99:8 103:8 104:24 106:15 116:2,4 121:20 123:5 135:16 138:8,9 159:7 172:10 182:8 183:5 pricscan (4) 105:20 106:8,11,20 pricing (2) 98:15 103:25 primarily (3) 120:7 131:8,14 primary (3) 91:11 92:17,20 prior (2) 19:16 98:19 privacy (1) 10:6 private (8) 8:24 9:18 134:13 145:23 146:1,6 190:15,22 probably (18) 34:3 43:6 49:1 64:1,5 75:21 76:10 78:10 86:23 90:25 116:6 129:20 143:3 158:12 159:2 162:20 186:21 189:1 problem (9) 15:12 19:14 73:20 94:23 97:1,15 156:2 165:21 168:25 problems (5) 4:6 122:5 162:22 175:25 178:4 procedure (1) 151:10 proceed (1) 45:19 proceedings (6) 1:3 20:23 54:21 89:5 144:13 145:18 process (13) 13:20 14:1,10,22 52:15 53:1 54:17 101:15 128:24 136:18 151:4 169:14 186:4 133:9 processes (1) 104:14 produce (2) 73:19 83:23 produced (7) 6:11 10:18 64:18 84:2 150:12 160:14 162:7 product (40) 37:3,5,12 39:2 60:22 63:7,18,24 96:3,4 97:17 98:14,17 99:4,7,19,20,22,25 100:4,4 103:8 105:24,24 108:24,25 109:4,5,10,10,11 113:10 115:20,25 118:19 120:22 137:24 149:10 181:22 185:8 production (1) 38:11 products (19) 39:5 42:5,9 60:18,20 61:6 97:3 105:13 112:10 113:15 117:9 120:8 123:9 136:4 139:12 155:11,15 171:25 177:14 produkt (1) 107:9 professional (1) 2:1 professor (17) 73:3,4,24,25 74:20 75:3,17,21,25 76:4,13 80:19,20,21 136:20 148:13 160:6 proffered (2) 10:25 11:1 profile (1) 69:21 profitable (1) 184:13 programme (4) 38:16 71:18 72:7 125:5 programs (1) 147:7 progressed (1) 95:13 progressing (1) 187:5 progression (1) 138:25 project (1) 32:7 promise (4) 69:16 114:17,22 115:11	promised (1) 131:10 promises (1) 114:19 promising (1) 128:6 promotion (2) 171:18,19 promotional (1) 171:14 pronouncing (1) 28:20 proof (6) 24:18,19,20 95:14 131:11 133:2 proper (1) 141:7 property (2) 52:8 143:3 property (1) 57:23 propose (1) 79:20 proposing (1) 38:6 proposition (1) 130:17 prose (1) 118:3 protect (1) 185:12 protege (1) 42:23 proof (1) 176:11 prove (1) 16:5 provide (23) 14:1 38:6 39:6,10,15,20 106:8 112:11,14 114:24 115:16 120:3 122:10 136:7 152:13,24 155:21 156:23 161:13 162:25 169:2 170:10 182:3 provided (9) 34:16 36:20 41:4,14 42:6 55:9 142:4,17 169:4 provider (2) 127:18 130:18 providers (2) 44:20 128:4 provides (1) 135:19 providing (7) 13:20 41:5 44:20 98:15 112:19,23 117:19 proving (1) 156:11 provision (1) 155:18 public (12) 17:2 65:14 69:21 74:5 119:21,23 134:18 146:7 152:19,25 190:16,23 publicity (3) 71:15 72:4 77:15 publicly (1) 156:13 publisher (4) 36:10,20 40:14 43:7 publishers (5) 39:19 44:19 60:11 121:24 176:6 publishing (2) 36:15 176:7 pulls (3) 83:7 153:19 154:10 punctuation (1) 159:15 purchase (9) 37:8,11 38:1,25 104:11 114:13,17 132:22 172:19 purchased (1) 132:21 purchasers (1) 133:18 purchasing (2) 37:13 129:5 purdah (1) 1:8 purple (1) 93:12 purpose (10) 36:12,19 118:14 126:6,8,17,20 132:18 156:22 171:21 purposes (1) 128:13 pursuant (2) 55:9 97:3 pursue (1) 73:10 pursuing (2) 35:24 133:2 pursuit (1) 128:7 pushing (2) 132:20 186:2 putting (3) 102:10 118:9 162:6 puzzled (1) 106:13	27:1,5,8,11,15 28:8,13,20,23 29:3,5,9,11,17,20,22,25 30:10,15,18 31:8,12,18 32:11,16,21 33:12,21,25 34:7,14,18,21,24 35:1,8,14 36:1,8,12,17,19,22 37:2,15,20,22,24 38:2,9,13 39:8,13,23,25 40:3,6,16,21 42:4,9,12,16 43:12,23 44:11,14,21 46:5,12,16,25 47:3,10,13,16 48:23 49:3,7,13 50:8,15,18,22 51:2 52:1,23 53:3,10,15,17,21,24 54:6,12 55:2,4,12,25 56:2,8,12,18,20 76:23 77:1,14,18 78:5,7,24 79:4,7,10,15 88:23 89:1,4 90:7,21 91:2,4,7,11,14,20 92:1,3,6,10,14,16,20,24 93:12,15,18,22 94:2,6,9,19,22 95:4,22 96:8,15,18,20 97:12,15 98:11,22 99:16 100:7,18,23 101:4,9 102:6 103:5 105:9,18 106:17 107:16,22,24 108:8,18,21,24 109:3,7,9,15,18,23 110:2,19,22 111:1,4,12 112:6 113:4,7,13,21 114:24 115:3,13,16,19,24 116:2,5,8,20 117:1,3,8,11,16 118:4,11,16,24 119:20 121:2,9,15 122:3,15,22,24 123:3,10,13,22 125:1,9,22 124:12 24:2 25:13 28:14 126:5,8,14,16,20 127:1,9 128:15 129:4,13,17,21,25 130:5,25 131:3,12,21 132:1,8,14 134:25 135:10,21 144:19,21,24 145:2,6,8,10,12,14,17 146:23 147:3,12,18 149:23 150:15,25 151:4,9,14,19 152:3,15,19,21 153:2,13,17 154:9,16,21 156:18,21 157:3,15 161:24 162:2,6,10 169:10,15,17,23 170:2,9,14 173:2,13 177:2,4,20 178:15,25 179:8,13,17 180:7,12,16 182:18 183:13,16 184:3,24 185:2 186:6,14 qualification (1) 158:22 qualified (1) 30:6 qualify (2) 20:15 101:22 qualifying (1) 101:7 qualities (1) 174:7 quality (52) 51:4,25 52:15 81:14 98:6 109:24 116:14 118:3,14 140:13,16,23 146:16,25 147:10 148:6,16,25 149:19 153:4,11 158:1,17,21,25 160:14 163:7 166:13,22 169:10 170:4,5,7,9 172:15 173:14,22 174:8,16 175:5,21,23 176:15 177:11,13 182:23 185:12,17,19,22 186:5,15 quarter (1) 129:23 queries (3) 102:22 122:9 169:1 query (3) 76:25 78:17 161:10 querying (1) 103:2 question (62) 6:20 8:11 9:24 12:2 25:6 27:25 38:23 45:16 49:25 50:5,22 55:5 56:15,18 62:5 66:6 73:3,9 75:22 76:16,20 77:6 79:10 81:17,19,20,23 94:6 95:4,5 103:12 113:12,14 114:1 115:3,4 117:3 118:24,25	119:12,15 120:21 121:1,15 123:12,20 131:17 132:1 148:15 157:23 158:14,24 160:12 163:4 167:9 174:3,5,14,25 178:14 183:12 188:2 questioning (3) 89:8 102:14 145:24 questions (24) 49:13 57:2,3,4 64:11 67:14 76:14,16 79:22 92:10 119:11 121:2 136:10,11,12 137:4 143:16 144:1 169:7 150:23 176:23 187:3 190:7,11,18 quick (2) 104:1 166:25 quickly (6) 77:16 107:18 108:11 159:19 169:17 183:17 quite (31) 2:5 26:16 35:11 48:12,22 51:6 54:9,14 59:10,11 64:11 71:12 74:5 81:20 85:11 88:3 100:6 101:7,21 102:24 105:4 111:17 113:1 114:22 117:1 120:25 136:22 143:14 163:16 174:2 187:10 quoted (1) 170:24 quotes (2) 18:7 19:2	<div>R</div> <div>rachel (2) 183:18 186:3</div> <div>raff (89) 1:8,20 2:10,11,13,15 3:1,4,7,12,20 4:23 5:24 6:12,20,23 8:3 9:13,24 10:19 13:13 15:7 20:25 22:4,12 24:2 25:13 28:14 29:6,20 33:21 35:8 36:8 42:16 44:16 45:13,23 57:4 77:9 79:21 82:4 83:19 84:6 88:13,14,15,17,19 89:8 90:5 93:8 94:19,23 95:5 96:13,22 98:23 100:9 102:14 103:10 104:13 106:5 107:18 108:18 112:4 113:8,23 115:14 118:21 119:4,16 121:3 122:4,15 123:23 124:4 125:9 129:11 130:5 131:12,21 132:9 134:20 137:6 143:17 154:12 161:17 190:4,12 raffs (4) 2:9 82:22 136:14 175:13 raise (7) 1:25 14:7 19:22 45:18 69:21 82:21 152:23 raised (8) 32:18 55:4 73:5 144:1 158:4 160:12 167:9,10 raising (2) 32:4 72:11 ran (2) 116:19 152:8 random (2) 98:20 123:21 range (3) 38:2 39:3,5 ranging (1) 172:10 rank (4) 58:6 100:2 146:12 162:18 ranking (13) 62:22 151:6,12 156:8 161:4 162:18 163:2 166:7 178:4,7 181:11 182:3 185:9 rankingquality (2) 175:17 176:18 rankings (15) 16:1,9 18:3,12 19:23 22:15 50:25 54:25 55:16 63:4 156:4 161:7 162:15 175:18,20 rapid (2) 77:24 127:23 rare (1) 170:4 rate (2) 147:23 150:10 150:6,8 raters (15) 147:12,15,16,20,21,24 148:2,8,10,15,17 149:21,22 150:1,21 rates (1) 37:2</div>	rather (14) 2:2 14:19 22:8 56:25 80:14 119:12 136:16,17,23 139:24 148:5 165:14 180:8 181:2 rating (16) 42:9,10 106:2 108:12,25 109:5,11,11,16,24 110:6,16 136:7,7 147:18 148:5 ratings (11) 108:21,24 109:14 110:6,25 111:3,9 112:18 135:22 148:25 150:23 ray (2) 41:16 174:20 reach (2) 20:14 169:9 reached (6) 19:21 20:8 65:12 121:23 157:1 167:11 reaching (1) 46:22 react (2) 55:2 168:2 reaction (1) 167:14 reactively (2) 184:21 185:6 read (19) 13:23 15:9 50:14,17 53:13 84:9 85:21 86:25 88:4,8 103:11,21 112:7 118:4,17 121:7 126:8 141:13 162:23 reading (6) 6:1 15:12,20 67:8 86:17 184:23 real (1) 171:23 realised (3) 53:5 73:16 81:22 really (22) 6:25 29:14 48:24 49:8 51:7,17 63:1 64:4 67:8 71:22 72:24 73:13 88:5 106:14 111:10 117:14 125:17,19 137:5 165:6 172:14 173:11 realm (1) 101:12 reason (19) 23:23 30:2,4 51:14 64:24 66:21 68:8 77:21,24 85:15 132:12 135:18 141:5 160:5,19 167:12 169:2 174:13 182:11 reasonable (1) 115:5 reasonably (2) 108:11 183:16 reasons (2) 75:10 131:9 recall (17) 4:7 26:23 28:18 31:3,6 47:14 55:21 73:12 100:9 106:18 117:11 129:20 164:6 165:18 166:14 169:12,25 receipt (2) 151:19,22 receipts (6) 33:15,22,25 34:8 35:4 36:2 receive (4) 34:22 115:21 120:10 177:8 received (9) 20:20 32:23 34:10 36:4 54:12 123:3 143:24 176:8,21 receiving (6) 3:24 29:12 34:4,18 55:2 104:15 recent (3) 48:18 150:6 155:5 recently (5) 80:11 144:19 145:12 176:9 182:21 receptional (18) 3:25 4:11 23:20 32:1,3 49:2,13 50:23,24 51:6,13,16 52:4,10 64:10,25 73:17 74:1 receptionals (3) 31:4 52:2,23 recipes (1) 149:10 recognise (2) 122:12 147:14 recognises (1) 182:14 recollection (3) 91:10 126:21 159:9 recommendation (4) 16:17 79:12 125:4 149:1 recommendations (3) 4:1,2 52:2 recommended (1) 32:1 reconsideration (12) 52:6,9,25 151:9,11,16,21 153:17,20 154:5 186:14,17 reconstructed (1) 21:15 record (8) 5:17 6:10 8:13,16,21,25 14:18 136:6
---	--	--	--	---	--	---	--

recorded (6) 7:2 9:13,16 10:9 11:3 14:10 recording (7) 8:5,7,24 9:18,25 10:4,19 records (2) 8:15 56:3 rectangle (1) 90:23 rectangular (1) 96:2 red (3) 2:21 106:8 107:9 redacted (1) 160:8 redesignated (1) 87:19 redesignation (1) 87:14 redesignations (1) 87:18 reduced (1) 22:18 reexamination (14) 1:22 3:10 45:14,19,22 56:25 76:15 78:19 82:19 134:19 190:6,8,10,17 refer (6) 48:1,3 53:24 90:10 103:5 137:9 reference (11) 6:8 10:18 47:17,19 56:6 83:25 84:7 105:22 110:5 125:11 129:25 references (1) 96:15 referred (6) 14:8 29:18 55:6 56:25 135:23 180:11 referring (7) 28:21 31:24 54:3 81:19 96:2 135:2,25 refers (2) 112:16 180:7 reflect (2) 104:25 153:5 refresh (2) 49:15 155:2 refreshed (1) 54:10 regard (1) 97:1 regarding (3) 114:17 160:25 177:9 regards (2) 132:24 185:16 registered (1) 32:19 regretting (1) 100:16 regular (1) 122:8 regularly (1) 104:23 reinclusion (1) 175:22 reiterate (1) 44:19 reject (1) 181:25 rejected (1) 181:20 related (7) 28:2 33:10 147:11 148:3 152:1 174:17 186:18 relating (2) 1:13 96:3 relation (10) 35:15 37:2 47:3 83:5 97:2,4 99:20 119:23 176:21 177:21 relationship (1) 46:21 relationships (2) 69:4 74:13 relatively (1) 163:3 relativity (1) 15:12 relaunch (1) 93:2 relay (1) 166:13 relentless (1) 128:7 relevance (3) 22:17 122:13 161:9 relevant (15) 41:10 48:16 63:12,19 78:16,17 82:22 120:25 131:1 139:22 154:11 165:6 171:2,19 172:22 rely (1) 26:4 relying (2) 26:12 186:15 remain (2) 144:21 145:14 remained (1) 186:12 remaining (1) 185:5 remains (1) 91:21 remember (30) 5:17 8:23 9:2 11:3,10,25 13:4 14:12 18:22 22:1 33:1 36:6 43:2 46:3 54:9 55:3 63:6,19 64:0 67:18 79:1 97:11 98:9 117:14 129:23,24 134:23 159:9 168:8 179:14 remembered (5) 8:9 11:5,7 14:3 170:7 remembering (1) 13:18 remind (3) 5:25 38:14 90:10 reminded (2) 26:17 66:23 reminds (1) 52:22 remove (1) 120:3 removed (1) 146:18	remuneration (1) 32:22 render (1) 25:4 rental (5) 57:12,22 73:11,21 74:12 rentals (1) 76:2 repeat (5) 78:11 98:13 104:22 119:15 138:12 repeated (1) 97:8 repeating (2) 75:21 119:12 replied (1) 30:22 replies (2) 176:25 177:2 reply (5) 17:12 50:19 92:24 157:2 177:20 report (14) 3:25 4:11 23:20 47:20 49:14 53:19 64:8,10,24 67:6,8,12 125:19 178:21 reported (1) 162:22 reporter (1) 152:9 reporting (4) 31:8 51:23 54:6 179:6 reports (6) 64:18 81:12 86:10 112:19 153:9 166:24 representation (2) 83:17 94:12 represented (1) 131:22 represents (1) 171:9 request (16) 5:14 52:6,9,25 54:12 151:10,11,16,19,21 153:17 156:25 183:1,10 186:14,17 requested (1) 82:24 requests (6) 151:21,24,25 153:20 154:2 175:23 require (2) 109:15,23 required (1) 110:15 requires (1) 12:11 requiring (2) 55:12 68:11 reread (2) 144:19 145:12 reservations (1) 186:3 reserve (1) 181:11 resources (1) 162:23 respond (4) 154:1,4 166:12 173:21 responded (1) 153:24 responds (1) 181:24 response (24) 4:6,11,11 5:14 17:11 20:16 52:21 54:12,14 77:10 119:13 136:20,22 154:20 162:3,5 163:3 166:9 167:8 170:14,24 179:16 183:18 184:3 responses (1) 52:19 rest (2) 145:24 187:13 restored (10) 16:2,9 18:5,14 19:23 20:12 21:13 23:2 55:5,19 resubmit (1) 170:21 result (10) 61:7 77:14 104:9 133:12 150:16 155:12 173:11 178:15 185:24 186:2 results (34) 47:25 52:17 60:19 61:2 69:7,13 97:10,13 98:13 99:6 116:14 122:9,10,13 134:22 135:4,5,7 146:13 147:19,25 150:17,18 153:11 155:8,10 172:2,9 180:2 182:3 183:5 184:6,10 185:9 retailer (2) 97:24 98:2 retailers (4) 112:12,13,20,20 retained (2) 8:4 50:23 retrospect (1) 9:22 return (5) 61:2 139:18 157:9 159:25 177:22 returned (5) 77:2,4 97:3,6 99:24 returning (1) 172:9 reuse (1) 184:6 reusing (1) 179:25 reveal (2) 162:13 163:2 revenue (3) 70:4,7 171:22 revenues (5) 33:12 35:16	36:25 120:5 127:18 reverse (1) 160:20 review (20) 9:3,21 37:6 39:10 44:5 110:13 118:19,21 119:18 120:23 121:9,10,19 136:4,5,6 170:16 175:24 176:16 177:11 reviewed (2) 161:22 169:13 reviewers (1) 53:4 reviewing (4) 110:14 147:19 170:8 178:11 reviews (22) 37:9 39:15,21 41:16 42:6 44:1 105:24 109:14,21 118:20 119:17 120:3,7,18,19 121:7,17,20 122:1 135:22 136:8 149:10 revise (1) 100:20 revisit (2) 45:15 126:22 richard (4) 27:16,17 46:21 174:20 rigueur (1) 111:15 righthand (5) 41:15 43:23,24 79:1 107:8 rightly (1) 73:13 ring (2) 134:8 146:4 rise (4) 17:7 187:3,20,24 risen (1) 54:8 rises (1) 68:14 risks (2) 94:23 95:7 roadmap (1) 115:25 rogue (3) 159:16 164:21,22 role (2) 33:10 39:4 rolling (1) 13:11 rose (63) 9:17 38:14 67:15,17,20,23 68:2,6 69:2,10,13,18,24 70:1,19,24 71:3,6,9,12,14,17 72:2,4,11,16 77:11 79:23 80:6,16 81:20 83:21 84:9,20 85:12 111:25 120:16,18 138:17 158:15,18,20,22 159:1,3,6,12,16 163:4,20,22 164:1,8,13,17,24 165:5,17,19 181:1,3,8,15 182:1 roses (2) 45:16 76:16 rote (2) 149:21 150:5 roth (1) 55:9 roughly (3) 23:4 35:7 71:8 round (6) 39:24 116:17 119:7 130:23,23 133:1 rounded (2) 90:23,24 route (1) 118:1 row (6) 33:23 34:14,21,24 35:1,2 rubbish (1) 63:1 rules (1) 68:22 run (3) 54:24 132:8 184:11 running (2) 73:21 111:12	<div>S</div> safe (2) 114:11 159:5 sales (1) 112:21 salient (1) 156:14 same (51) 24:7 40:11 43:19 50:8,9 77:9 80:7 83:23 84:6,7,17,18 85:2,19 86:7 87:9 89:23 91:4,21 96:3,4,16 97:7,8 117 98:16 99:2,13,14,25 100:4 117:12 130:22 137:21 141:16 147:8 161:16 164:7 173:13 174:5,15 175:19 179:8 180:20,24,25 181:3,4 182:3,13 184:6 sample (2) 105:3,5 samsung (1) 97:5 san (1) 172:8 sarcastic (1) 117:1 sat (1) 10:24 satisfaction (1) 114:14 satisfied (1) 134:10	satisfy (3) 86:12 117:25 118:2 saturday (2) 82:24 83:15 sauce (1) 162:14 save (3) 90:8 171:17 172:19 saviness (1) 183:20 saw (17) 4:1 20:21 64:19 76:8,9 77:20 94:14,21 95:19 99:21 118:18 123:7 127:2 165:10 173:17 174:18 178:23 saying (41) 16:9 24:7,16 48:17 52:12 54:23 62:14 65:7 72:8 75:10 79:19 87:12 94:8,11 98:25 104:20 105:15 108:16 124:1 138:10 139:14 140:1,11 142:12,15 150:20 160:10,10 162:24 164:19 168:1 173:8,10,12,23,25 174:9,12 178:19 179:11 188:20 scenes (2) 15:3 143:7 schedule (1) 5:8 score (5) 54:7 143:4 173:22 185:23 186:5 scored (2) 23:5,22 scores (2) 22:17 175:21 scorethoughts (1) 22:11 scoring (1) 24:5 scrabbled (1) 21:7 scraped (1) 109:22 screen (3) 86:24 107:4 145:5 screenshot (16) 44:8 45:8 48:1,18 73:6 74:23 88:6 94:12 107:14 112:25 115:1 117:16 134:25 135:23,25 137:9 screenshots (10) 43:19 48:19 49:12 93:24 95:12,17,18 109:1 136:2 138:23 scripps (1) 129:19 scroll (1) 47:18 scrolled (1) 34:13 search (137) 18:15 23:3,14,16 33:7,10 38:6,21 41:3 47:18,24 48:15,20 51:3,4,25 52:21 57:21,23,23 58:4,4,15,17,20,23 59:3 60:23 64:14 69:7,13,14,14,22,23 74:18,19 75:7,11,12,12,19 76:10,23 78:14 91:8 93:15,18,18,19 97:3,5,16,19 101:1,15,19,23 102:12,18,20 103:1 104:1,2 118:15 122:10,12 126:1,10 127:17,24 128:3,6,10,10,15,17,17,19,20 129:5 130:6,9,14,18,19,22 131:23 133:8,20 134:21 135:7 139:19 147:19,25 148:6,16,25 150:18 151:24 152:6 153:11 154:25 155:8,11,21 156:15 157:6,8,12,16 158:3 159:24 160:2 161:10,19 164:6 166:16 167:16 169:10 170:2,4,9 171:3 172:1,3,7,7 175:11 177:21 178:4,9,15,17 179:10 186:11,15 searchable (1) 171:25 searched (2) 104:8 171:8 searches (4) 74:15 101:13 165:3 186:6 searching (3) 75:13 78:16 138:5 sec (2) 29:14 180:17 second (22) 2:2 7:4 22:12 50:11 56:22 68:16 125:24 126:2,6,8,20,22,24 127:21 129:23 131:14 132:17 145:2,4,12 157:4 183:18	secondly (1) 156:22 secret (5) 75:2 162:8,12,13 163:2 secretariat (1) 34:16 section (3) 40:23,24 147:5 sector (1) 70:5 secure (1) 176:5 securities (1) 119:24 see (145) 7:2,5,6,10,25 13:21 14:12 15:19 17:7,11,13,15 18:6 21:14 22:4,12 23:1 30:20 33:14,18,22 68:11,12,15,18,21 69:23 70:15 72:9,25 73:10,21,21,22 74:11,22 75:5,7,11,18,20 76:11 78:13 81:10 98:7 100:10,22 111:9,9 112:14,23 113:1 116:13,14,19 118:1,7 120:4,4,6 125:7 130:11,12,15 135:12,17 156:22 178:5,9,17 179:10 services (18) 59:11 70:16 71:20 76:1 81:2,4,6,7 104:18 120:8 126:1,10 128:19,20 130:14 133:21 157:16 177:14 serving (2) 97:16 98:17 session (5) 90:10 133:25 134:12,17 145:23 set (19) 4:16,24 13:20 21:14 30:23 42:1 55:12 56:9,16 89:11 91:8 125:25 126:9 136:19 139:12 147:25 168:10 174:6 175:12 sets (1) 78:24 setting (2) 174:11,14 several (5) 3:25 83:7 100:10 115:23 175:22 seeing (7) 41:3 61:19 96:17 126:3 137:18 138:22 164:15 seek (5) 67:25 68:2,3,22 152:5 seeking (6) 43:7 83:2,6 131:4,6 180:12 seeks (1) 98:12 seem (5) 29:10 59:11 89:22 155:9 173:24 seems (6) 57:16 158:7 168:18 173:8 182:16 183:7 seen (19) 2:18 6:14,17,21 7:18,21,22 14:18 25:16 106:25 126:4,23 133:8 142:8 172:25 176:24 178:11,23 183:14 sees (5) 79:16 146:10 147:3 183:9,25 segue (2) 117:19,23 select (2) 113:14 140:1 selected (1) 180:2 selection (4) 79:24 80:2,3 98:21 sell (4) 130:8,10,15 131:6 seller (1) 109:25 sellers (2) 61:6,21 selling (4) 97:24 98:2 138:7 150:22 send (8) 7:7,16 47:4 116:22 117:3 148:23 151:21 177:7 senior (1) 133:8 sense (3) 91:6 121:14 122:18 sensible (1) 186:8 sensitive (1) 165:13 sensitivity (1) 1:17 sent (9) 1:11 2:9 7:14 46:9 83:14 160:22 167:18 175:10 176:19 sentence (2) 11:20 54:15 seo (5) 51:7 65:1,19,22 66:1 separate (5) 38:10,10 76:11 120:22 141:23 separately (5) 58:20,25 59:4,17 84:1 sept (2) 172:8,9	september (2) 62:13 74:19 series (1) 105:23 serious (2) 159:17,17 serp (2) 16:14 100:3 serps (1) 155:3 serve (1) 98:12 served (1) 97:10 serves (1) 171:3 service (65) 41:11,13 48:20 57:21,23,23 58:14,17,20,24 59:3,15 61:3 64:16 65:3 68:11,12,15,18,21 69:23 70:15 72:9,25 73:10,21,21,22 74:11,22 75:5,7,11,18,20 76:11 78:13 81:10 98:7 100:10,22 111:9,9 112:14,23 113:1 116:13,14,19 118:1,7 120:4,4,6 125:7 130:11,12,15 135:12,17 156:22 178:5,9,17 179:10 services (18) 59:11 70:16 71:20 76:1 81:2,4,6,7 104:18 120:8 126:1,10 128:19,20 130:14 133:21 157:16 177:14 serving (2) 97:16 98:17 session (5) 90:10 133:25 134:12,17 145:23 set (19) 4:16,24 13:20 21:14 30:23 42:1 55:12 56:9,16 89:11 91:8 125:25 126:9 136:19 139:12 147:25 168:10 174:6 175:12 sets (1) 78:24 setting (2) 174:11,14 several (5) 3:25 83:7 100:10 115:23 175:22 severe (1) 155:24 severity (4) 142:7,19 143:4,13 shadows (1) 176:1 shall (3) 26:19 30:19 188:12 share (3) 128:2,4 178:3 shared (1) 136:21 shares (1) 119:22 sharp (1) 104:8 sheer (1) 168:25 sheet (1) 34:2 shied (1) 12:23 shipping (3) 171:11,12,13 shivaun (6) 3:1 154:12 160:24 177:6 185:15 190:4 shoddy (1) 168:24 shoes (1) 172:1 shop (1) 171:10 shopcom (4) 114:10,11,13,18 shoppercom (2) 110:5,15 shoppercomparison (1) 176:2 shoppers (4) 112:9,11,15 115:19 shopping (70) 39:10,21 40:25 41:1,2,9,13,24 48:16 52:16 57:17,24 58:3,7,12,22 61:3 64:3 69:19,25 70:4,9,15,16 71:19 72:9,10,20 73:14 74:22 75:5,9,15 78:12,13 89:21 100:22 102:9,21,21 104:17 113:1 114:11 118:7 130:11 142:1 149:13,17 155:22 157:20,21 158:6 165:15 171:23 172:3,5,12 179:24 181:19,21,22,25 182:5,9 184:5,7,9,12,20 185:6 shoppingcom (10) 60:22 118:20,22 119:17,22 120:23 129:21 176:4 182:7 183:4 shops (1) 85:22 shopzilla (1) 129:13	short (6) 26:10 82:10,15 102:23 134:15 167:19 shorter (1) 3:5 shortlived (1) 71:13 shortly (1) 169:10 should (18) 2:15 9:21,22 72:8 84:2,17 85:2 100:2 113:25 134:8 143:23 144:11 146:4 149:3 160:19 171:17 179:23 188:23 shouldnt (2) 49:8 178:22 shout (1) 140:15 show (56) 7:18 16:17 18:16 21:18,24 27:15 29:3 32:14 37:25 38:14,20 41:11 42:7,10,17 45:2 46:18 49:3,14 50:2 60:13 65:11 67:10,12 71:10 72:16,19 77:10 78:21 79:2,16 84:17 95:3 99:6,7,9 103:10,24 104:5,13 105:18 107:11 108:2,8 112:3 119:20 125:1,2 129:6 135:16,17 141:20 142:4,18 177:2 182:18 showed (7) 25:23 94:21 95:13 109:1 123:7 152:1 154:7 showing (27) 41:7,8 44:25 60:7 62:15 72:11 73:6 46:5,8 47:13 49:16 50:6,12 53:6 78:20 88:19 99:17 110:8 132:6 135:3 141:25 shows (13) 38:7,8,10 40:18 42:8 46:12 61:2 62:21 63:8 71:6 84:18 103:16 153:4 shut (1) 48:19 sic (2) 95:22,23 side (17) 41:15 43:22,23,24 79:1 85:23 93:25 94:15 95:24 96:8 173:7,16,16,20 184:2 186:1,9 sidebyside (2) 113:10 148:23 sidebysides (1) 147:24 sign (1) 147:9 signals (2) 163:3 170:6 signature (3) 88:24 144:17 145:10 significant (3) 2:3 71:12 120:6 significantly (3) 22:15,16 55:1 signs (4) 140:13 166:14 167:3,4 signup (2) 116:9,20 silver (1) 97:5 similar (10) 60:4 62:5 78:2 99:3 110:17 114:21 121:16 155:15 175:4 178:7 similarly (2) 87:5 177:20 simple (4) 6:20 2:23 44:15 105:25 simultaneous (1) 80:25 since (8) 10:11 59:7 94:2,9 99:2 175:16,22,25 single (4) 82:25 97:24 125:16 138:14 sir (34) 3:3 7:22 20:7 21:25 22:6 33:17 43:2,17 44:23 50:7 57:10 60:8,10 62:4 63:1 64:17 12:2 65:4 67:13 77:6 82:7,12,20 85:5 87:21 89:24 102:20 110:11 119:14 132:14,20 133:24 144:4 188:14 sit (3) 82:17 88:17 144:8 site (148) 14:8 16:24 25:14,20,23 26:6,8 35:14 38:7 41:5 42:8,13 46:23 48:15,20 52:21 53:5 57:17
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157:19 183:22
typical (3) 166:15 167:3
 171:2
typically (5) 155:3 168:13
 178:20 181:5,10
typing (2) 49:8 102:4
typographical (3) 4:18,23
 167:9
typos (2) 159:16,17

U

uk (17) 5:10 60:21
 85:6,17,19,23,25 100:24
 102:16 111:16,18,23
 117:12 141:9 180:1
 182:6,22
ukbased (1) 154:24
uks (3) 38:15 125:4 176:6
ultimate (1) 186:3
ultimately (2) 127:4 182:9
unclear (1) 100:19
underlying (2) 103:3 143:11
underneath (1) 42:9
understand (21) 2:8 13:11
 45:10 60:9 61:9,18,22 71:3
 92:12 106:23 113:7,12,14
 126:19 136:15 137:3
 142:18 169:19,21 181:25
 188:15
understanding (3) 54:19
 74:24 98:6
understood (5) 38:2 44:22
 149:16 157:15 172:23
unequivocally (1) 71:20
unfortunately (2) 93:6
 104:19
unique (16) 40:4 51:22 52:13
 155:18 161:13,18 162:25
 165:3,6 173:8,24 175:14
 176:3 182:1,14 183:7
unless (5) 16:8 57:1 82:2
 131:18 174:12
unlike (5) 114:24 115:16
 155:17 170:9 172:21
unlikely (3) 114:15 140:21
 150:17
unpenalised (1) 59:18
unsatisfactory (2) 162:2,4
unscathed (1) 113:2
unsurprisingly (1) 125:6
until (7) 16:21 63:13 82:17
 90:11 101:23 111:13
 189:10
unusual (2) 108:6,7
updated (1) 143:24
upheld (1) 175:8
url (1) 93:9
used (13) 23:2 37:25 38:15
 83:18,23 95:19 102:20
 117:23 168:23
 180:13,18,20 184:1
useful (13) 79:13,19 102:2
 114:5 155:5 159:6 160:8
 164:16 171:20 172:16
 173:11 177:14 183:8
user (37) 47:24 70:14 74:18
 77:24 79:13,16,25 80:1
 97:17,18 103:14,15 104:7
 106:10 108:6,24,24
 109:12,14,21 111:2 120:14
 122:1,9 124:7 135:8,10,21
 136:3,5 160:14 163:1,9
 164:10 172:15 173:9,25
userfacing (1) 100:10
users (29) 38:24 39:15 41:6
 76:20 79:11 99:10 101:15
 102:21 109:20,20
 116:10,24 117:5,9,20
 118:23 122:15,20
 123:14,18 124:19
 125:14,18 159:10 160:8
 161:15 164:16 172:17
 177:15
using (14) 61:21 63:16
 69:11,14 73:14,22 113:19

120:4 153:12 162:8,12
 181:23 184:9 185:10
usp (1) 59:2
usual (3) 34:4 173:2 179:20
usually (1) 181:11
V
vaguely (1) 131:20
valid (1) 122:19
vallaes (9) 179:21 180:7
 181:24 182:14,20 183:9,13
 184:3 185:3
vallayes (1) 179:14
valuation (1) 68:14
value (16) 53:5 70:13,15
 74:11 75:11 112:9 127:20
 149:7 155:17 161:14,18
 162:25 166:1 171:23
 172:15 182:14
valueadd (5) 163:1,9,19
 173:8,25
valuing (1) 117:25
varied (1) 97:11
varieties (1) 97:25
variety (1) 152:12
various (15) 44:1,5 57:11
 64:18 75:9 90:25 94:15
 95:15 119:6 141:3
 142:3,18 155:16 174:11,14
vast (3) 58:1,1 165:9
vaunted (1) 140:25
vehicle (3) 27:11 28:4,6
vendor (2) 106:1,2
version (8) 13:7 85:18 88:7
 94:22 127:6,10 146:22
 165:1
versions (1) 97:7
versus (3) 30:5 32:9 137:1
vertical (22) 57:21 59:2
 69:22,23 75:7,11,11,12
 91:5 126:1,10 128:10
 130:9,14,18 154:25
 155:8,11 156:15,22 157:16
 166:16
verticals (2) 94:15 127:2
via (2) 161:7 181:4
viable (3) 70:18 130:8 132:8
video (1) 40:25
videos (1) 155:6
views (1) 141:6
vigorously (1) 142:10
violated (1) 10:5
visible (1) 45:9
visit (2) 31:3,4
visited (1) 161:3
visitor (3) 70:5,7,15
visitors (2) 71:7 161:14
visits (2) 73:1 78:11
vital (1) 98:6
vp (1) 133:8

W

w (1) 53:9
wag (18) 28:22,23,23,24
 29:6,14 30:1,2,2,4,8,11
 31:24 32:1,3,6,13 49:20
waggener (1) 28:20
wait (1) 50:4
wanting (1) 96:17
wants (4) 12:13 15:21 82:3
 173:19
warm (1) 46:20
warp (1) 15:10
warrant (1) 183:23
wasnt (11) 9:15 21:15 30:13
 49:18 58:17 95:2 102:25
 125:7 158:5 173:15 184:23
watching (1) 72:7
waters (2) 27:16,17
way (22) 14:23 16:6 33:7
 39:24 73:15 74:7 78:11
 80:7 84:6 86:10 98:12
 116:25 136:24 146:12
 157:25 158:2 161:5

164:9,23 165:7 173:2
 179:20
wayback (8) 57:8 90:14,17
 91:16 93:8 95:12,20 107:6
ways (3) 161:13 162:25
 168:13
web (8) 18:13 72:25
 147:20,21 148:2,8 149:22
 150:21
webmaster (10) 146:8
 151:15,23 152:7,17 153:10
 156:19 169:4 177:23 178:1
webmasters (4) 151:5
 152:4,22 167:21
websentient (2) 154:24
 155:20
website (23) 4:10 23:12
 38:8,12 40:19 43:20 69:19
 74:10 90:13,15 93:2 94:25
 95:8 97:21 103:16 105:1
 153:14 159:3,4 166:19
 171:12,21 176:9
websites (5) 68:24 155:17
 172:3,5 176:11
wed (5) 42:21 52:12 65:12
 122:17,18
wednesday (1) 189:10
week (8) 12:8 17:24 19:21
 20:9 38:16 54:5 71:25
 176:9
weeks (6) 4:5 8:8,10 12:15
 55:1,24
weight (1) 161:9
wellknown (1) 149:15
went (12) 17:2 53:1 65:8
 90:2 104:23 126:24 130:22
 131:3,8,13 132:25 152:6
werent (5) 9:19 25:19 74:13
 124:14 130:24
west (53) 1:6,8 2:4,8,13
 15:21 45:17,19,22,23,25
 47:21,23 49:25 50:2,6
 76:15,16 78:19,20 79:20
 82:2 88:14,16,19 89:7
 125:12 134:19,20 136:9
 145:20,21 146:8 149:2
 150:11 159:22 160:22
 165:20 167:7 168:25 175:7
 181:17 186:9,11,22 187:6
 188:10
 190:6,8,10,13,17,21
weve (6) 9:16 48:4 49:11
 66:22 156:8 181:20
whatever (7) 59:20 78:15
 98:8 104:20 150:13 166:23
 173:22
whats (4) 13:15,15 101:24
 168:18
wheatley (7) 42:20,24
 46:7,9,21 47:2,4
whenever (4) 123:7 163:21
 166:24 185:7
whereas (8) 15:2 37:11 85:6
 97:24 99:1 113:2 124:1
 138:9
whereby (2) 151:4 152:21
whichever (1) 48:10
white (2) 93:16 99:21
whitelist (6) 14:5 180:3,23
 184:9,16 185:6
whitelisted (7) 16:8,20 51:18
 54:1,5 185:13 186:16
whitelisting (36) 3:23 4:6,15
 5:3 9:7 11:18 12:3 13:6
 16:2,6 17:18 18:2 19:21
 20:9 24:6,21,22 52:8
 54:20,22 55:16 56:14 62:9
 71:6 153:3 170:23 180:12
 181:20 183:1,10,25 184:20
 185:9,24 186:4,11
whole (5) 11:8 49:22 137:17
 143:1 161:12
wholly (1) 22:23
whom (2) 34:4 120:10
whos (2) 51:24 173:25
whose (1) 171:25

widget (2) 37:5 41:18
wife (3) 124:12 128:25
 143:21
wifes (2) 118:18 126:14
williams (2) 170:16,20
windows (1) 34:8
wiped (3) 33:3 76:4,7
wish (4) 76:12 89:4 144:24
 145:17
wished (2) 48:3 109:23
wishes (1) 57:1
withdraw (1) 113:9
withdrew (2) 82:13 143:22
withering (1) 120:17
witness (30) 4:16 5:21 10:13
 11:7,13 12:25 14:21 42:2
 48:25 82:5,6,8,13 83:19
 86:14 88:21 95:11,23
 100:7 104:21 115:14 141:2
 143:20,22,24 144:12,14
 145:3 167:15 188:4
witnesses (1) 1:16
won (1) 182:9
wonder (1) 46:17
wording (1) 99:20
work (6) 12:11,14 148:13
 167:23 169:15 170:4
worked (5) 32:2,6 116:6
 154:13 169:20
working (4) 25:16 35:17
 160:18,19
works (5) 12:23 48:21 54:20
 69:25 78:12
world (4) 100:25 101:6
 102:17 110:23
worldwide (2) 101:16 112:20
worries (1) 116:12
worry (1) 17:22
worse (2) 124:1 147:25
worth (1) 167:13
worthwhile (1) 166:19
worthy (1) 12:12
wouldnt (9) 58:5 128:12
 148:1 150:22 159:10
 172:12 178:20 181:12
wrap (1) 186:7
write (4) 11:2 118:8 136:6
 167:5
writes (1) 162:19
writing (6) 11:6 19:25
 136:19 147:16 174:8 177:9
written (4) 7:19 15:1 41:16
 154:6
wrong (11) 6:7 14:5 27:1
 39:18 66:19 97:13 113:8
 122:21 125:19 130:20
 140:21
wrongly (1) 165:21
wrote (3) 15:11 146:21 152:9
wwwfoundemcom (3) 155:1
 170:22 172:16

X

x (1) 138:15
Y
yahoo (6) 56:9 126:23
 128:19 131:10 132:25
 133:6
yeah (15) 6:5 13:10 32:15
 43:10 60:12 61:11 71:25
 79:5 90:24 91:22 128:22
 159:2 165:23 174:22 179:2
year (13) 32:23 33:12 34:11
 35:9 36:1,4 68:7 70:13
 148:23 159:21 175:16,22
 179:9
yearbyyear (1) 89:12
years (11) 9:10 10:22 12:22
 15:16 23:18 33:8 89:22,23
 101:23 120:12 153:21
yellow (2) 121:6 124:14
yesno (1) 150:5

yesterday (22) 3:6,23 16:23
 23:20 25:23
 26:1,4,13,16,18 36:10
 41:19 42:19 45:16
 52:11,17 73:13 81:18,21
 87:15 109:2 127:2
yet (4) 10:11 11:17 12:18
 13:25
yields (2) 172:2,4
york (2) 74:18 172:8
youd (6) 101:21 107:14
 126:7 148:19,23,24
youll (6) 71:23 78:9 101:21
 114:20 146:13 176:23
youre (33) 33:1
 37:4,9,10,11,12 48:8 49:10
 54:24 61:2,19 64:2 67:13
 70:11 72:9 91:22 94:4 99:4
 111:7,11 116:11 123:20
 125:17 130:19,19
 132:10,10 150:20
 159:13,13 161:3 162:4
 168:19
yourself (3) 5:25 7:19 161:14
youve (6) 29:14 37:12 49:9
 125:3 132:6 139:4

Z

zealand (1) 188:4
zero (2) 71:7 130:13
zhao (2) 179:21 181:17
zhaos (1) 180:16
zoom (1) 96:6
zoomed (1) 96:9
zooming (1) 86:24

0

04 (1) 84:23
08 (1) 78:21
09 (2) 85:2,3

1

1 (15) 3:8 17:18 22:9 55:8
 57:7 62:24 63:9,13 100:2
 110:5 155:3 172:8 185:2
 189:11 190:3
10 (5) 20:12,12,12 82:10
 109:16
100 (3) 171:24 176:11
 181:13
10000 (3) 18:21,23 172:5
101 (1) 34:14
1045 (1) 3:7
107 (1) 34:21
108 (2) 79:7,9
108000 (3) 34:18,24 35:3
11 (2) 5:10 41:22
1139 (1) 30:25
1142 (1) 82:14
115 (2) 79:16 82:17
1153 (1) 82:16
117 (1) 79:15
12 (4) 71:19 82:11 103:23
 175:25
12000 (1) 149:21
120909 (1) 104:12
124 (1) 142:2
126 (1) 134:14
12th (1) 79:6
13 (4) 15:16 85:9,10 154:5
130 (3) 97:7,17 98:17
132 (1) 166:3
132a (1) 166:3
134 (3) 190:15,16,17
136 (1) 190:18
13th (2) 79:6,6
140000 (1) 67:18
144 (2) 190:19,20
145 (2) 142:2 190:21
146 (2) 190:22,23
147 (2) 89:10,10
15 (6) 5:5,20 7:24 97:10,13
 98:17
150 (1) 172:20

151009 (1) 7:5
158 (1) 34:24
16 (2) 61:12 106:7
16th (1) 5:12
17 (2) 12:22 104:6
178 (1) 172:2
182 (1) 35:1
186 (1) 190:24
195 (1) 163:5

2

2 (8) 18:23 31:1 55:13 60:3
 81:22 84:22 95:22 155:3
20 (4) 14:7 21:20 85:3 113:5
200 (1) 18:24
2001 (4) 106:7,14,16 110:4
2003 (2) 130:7 131:21
2004 (9) 101:16 102:23
 105:20 106:7,12 119:21
 127:7 129:13,14
2005 (14) 46:1,14 57:9 73:6
 107:5 127:1 129:6,8,18,23
 130:1,8 131:4,21
20052010 (1) 83:8
2006 (31) 18:16 23:3,12,17
 74:3,8 75:1,24 76:6 86:6
 89:17,25 90:14,15 91:9
 94:3,9,14,19 95:8,18 99:2
 103:14 107:12 111:15
 121:22 153:15,22 166:4
 167:10 168:5
2007 (17) 38:5 40:10 60:22
 89:17,25 91:16,18 92:21
 103:7 109:2 111:13
 115:7,10 121:5 123:15
 149:3,16
2008 (10) 16:15,16 71:10
 76:19 77:10 78:25 103:23
 104:6 105:10 124:25
20089 (1) 89:18
2009 (15) 5:5 16:20 17:18
 19:15 25:17 26:21
 28:16,25 65:11 74:2 115:7
 158:10 167:8 168:3,10
2010 (17) 16:15,22 17:1,13
 18:9 20:15 22:24 24:17
 25:4,12,20,21 33:19 48:24
 84:24 89:25 136:3
20102011 (3) 26:15 33:17
 89:18
2011 (12) 19:17 25:12
 29:9,12 32:21 33:20 34:19
 35:3 89:25 96:24 97:7
 142:5
20112012 (1) 36:1
2012 (3) 98:19,25 150:7
2012131415 (1) 89:19
2015 (5) 19:10 20:21 21:16
 55:10,23
2016 (1) 55:25
2017 (1) 48:20
2025 (5) 21:18,21 22:3,9,13
2026 (5) 1:1 112:25 113:4,5
 189:11
 21 (1) 62:13
 212 (2) 35:2 134:16
 22 (2) 61:15 62:13
 22000 (1) 35:1
 23 (1) 172:5
2300 (1) 7:5
23pf5321 (1) 155:11
24 (1) 30:24
247 (1) 172:10
24hour (2) 62:9,10
25 (1) 115:7
2500 (1) 71:7
 27 (2) 153:15 156:5
27th (1) 155:1
28 (3) 83:20,24 92:21
 29 (2) 17:13 153:22
2999 (1) 103:17

3

3 (7) 57:6 60:4 62:24 114:10
 172:9 190:4,5
30 (17) 1:1 4:7 11:12,22
 12:6 13:9 14:5 35:3 60:3
 83:19 84:8,10,11,14,21
 85:5 141:25
300 (1) 63:7
31 (3) 87:5,13 93:7
315 (2) 187:20,24
32

8000 (1) 34:11						
80s (1) 117:20						
81 (3) 10:14,24,25						
83 (2) 11:13,20						
85 (1) 14:20						
87 (2) 100:7 102:15						
87a (2) 100:23 101:4						
87d (1) 103:5						
87f (1) 105:9						
88 (2) 190:12,13						
<hr/>						
9						
<hr/>						
9 (2) 124:25 171:7						
90 (2) 62:22 190:14						
90s (1) 117:20						
930 (4) 186:25 187:4 188:3,6						
945 (6) 1:2 188:7,12,20						
189:8,10						
95 (1) 14:20						
952 (1) 1:4						
97 (1) 14:20						
98005 (1) 104:9						