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IN THE COMPETITION
APPEAL TRIBUNAL

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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

22nd June-31st July 2026

Before:

The Honourable Mr Justice Roth
Dinah Rose KC
Alasdair Smith

(Sitting as a Tribunal in England and Wales)

BETWEEN:

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

Claimants

- and -

GOOGLE LLC & OTHERS

Defendants

A P P E A R A N C E S

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

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

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

1 Wednesday, 1 July 2026
2 (9.45 am)
3 (Proceedings delayed)
4 (9.56 am)
5 MR MATTHEW CUTTS (continued)
6 THE CHAIRMAN: Yes, Mr McGurk, we will hear from you after
7 the witness has completed his evidence.
8 Cross-examination by MR WEST (continued)
9 MR WEST: Good morning, Mr Cutts.
10 A. Morning.
11 Q. Can we just briefly go back to one point arising out of
12 our discussion yesterday. I believe it will be possible
13 to do this in open session but if at any point you wish
14 to refer to anything confidential, please say so.
15 THE CHAIRMAN: I think, just to explain, of course you know
16 that there is a lot of confidential material here, you
17 are more on top of that, I am sure, than I am, and
18 you know that the yellow and blue highlighting indicates
19 confidential. Sometimes you can answer a question by
20 saying, "Well, the passage there", without reading it
21 out, and we have got it. Sometimes, if that is awkward,
22 you can say, "I would rather be in closed session".
23 A. Thank you.
24 THE CHAIRMAN: So we will be guided by you a bit and by
25 counsel.

1

1 MR WEST: You told us yesterday that Google's comparison
2 shopping service was run by a separate team within
3 Google; that is right, is it not?
4 A. Organisationally, I am sure at some level they reported
5 to the same people, but I didn't think of them as search
6 quality.
7 Q. You were not involved with that team?
8 A. I was not involved with the Google Shopping team.
9 Q. Where I refer to Google's comparison shopping service,
10 that is to avoid having to specify whether it was
11 Froogle or Google Product Search or Google Shopping, but
12 that is what I am talking about; do you understand that?
13 A. Could you repeat that one more time?
14 Q. I am just using the term "Google's comparison shopping
15 service" to refer to either Froogle and then Google
16 Product Search as it became then Google Shopping so we
17 do not need to distinguish between those.
18 A. I understand.
19 Q. Google's comparison shopping service was not crawled and
20 indexed and ranked in the organic results, in Google's
21 organic results, was it?
22 A. I think at times there were proposals to do that, but in
23 general we preferred not to have that within our web
24 search index.
25 Q. But if that had happened, whether Google's comparison

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1 shopping service would have triggered Algorithm A would
2 have depended upon its traffic patterns, would it not,
3 as we were discussing yesterday?
4 A. I'd feel more comfortable if we could talk about it in
5 camera, if that's okay, talk about quality signals and
6 those sorts of characteristics.
7 MR WEST: The witness has asked to go into camera.
8 THE CHAIRMAN: Yes, I understand that.
9 Have you got much more (inaudible) that you think
10 that will lead us into camera?
11 MR WEST: I think there is much — sorry, could you ...?
12 THE CHAIRMAN: I appreciate, Mr West, it is hard to
13 anticipate, it is just if you know there are a number of
14 questions which will require us to go into camera, to
15 the extent possible that we can group them together, it
16 is convenient, because otherwise we are going in and
17 out, in and out.
18 MR WEST: I understand.
19 THE CHAIRMAN: That is all.
20 MR WEST: (Overspeaking — inaudible).
21 THE CHAIRMAN: It may be difficult and I can understand if
22 it is difficult and it looks as though there are not
23 very many people we have to ask to leave but it is
24 disruptive with people going in and out.
25 So we are going into closed session, legal eyes

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1 only, LEO. If there is anyone not in the LEO ring,
2 please could you leave the court and the live stream be
3 turned off.
4 If you wait just a moment.
5 (In private)
6 (In public)
7 MR WEST: Can we go back in the chronology to 2008.
8 Froogle — I am sorry, Foundem pursued another
9 appeal. It submitted a number of reconsideration
10 requests, but as we know, those would not have been
11 considered; that is right, is it not?
12 A. That's correct.
13 Q. It then tried emailing Mr Amit Singhal, which we can see
14 at {J2B/1/21}:
15 "Dear Amit,
16 "I hope that you will not mind my writing to you for
17 help.
18 "I am CEO of Foundem, a UK-based vertical-search
19 technology company. Since mid-2006, our site ... has
20 been laboring under an automated Google penalty, which
21 is blocking all of Foundem's pages from Google's natural
22 search results.
23 "When a similar penalty decimated Foundem's AdWords
24 landing page quality scores last year, Google's
25 Fred Vallayes eventually intervened to have the penalty

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1 manually lifted, after our several earlier appeals had
 2 been inexplicably rejected.
 3 "We have been struggling for two years now to have
 4 our case heard by Google's Search Quality Team. I am
 5 confident that, if you can take the time to read
 6 the short summary of our predicament (attached) you will
 7 agree that Foundem has been penalised in error, as was
 8 found to be the case with its AdWords quality scores.
 9 "Foundem has developed genuinely innovative and
 10 unique technology, which allows us to compete
 11 successfully with our far larger and more established
 12 competitors, such as Kelkoo, Shopping.com, and
 13 Pricegrabber, all of which have already been
 14 'white-listed' by Google.
 15 "I would be extremely grateful for any help you can
 16 provide in solving this frustrating and costly problem."
 17 So Mr Raff is raising the same points you saw in
 18 the previous appeals; do you see that?
 19 A. I don't remember an allegation before that Google had
 20 whitelisted Shopping.com, Pricegrabber or Kelkoo, so
 21 that's certainly new.
 22 Q. Yes, but in any event, they were appearing in the index
 23 and Foundem was not?
 24 A. Foundem was in the index. Tens of thousands of pages
 25 were indexed.

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1 Q. Appearing in a visible part of the index?
 2 A. Foundem did not show up as much as Foundem wanted to
 3 show up, but it showed up.
 4 Q. I think we agreed yesterday, Mr Cutts, that when a site
 5 is labouring under an Algorithm A penalty, the result is
 6 that for any popular searches, it will receive
 7 effectively negligible traffic?
 8 A. I'm happy to concede that Foundem did not show up as
 9 much as Foundem wanted to show up.
 10 Q. That is not really the point, Mr Cutts —
 11 MS ROSE: Had Kelkoo and Pricegrabber and Shopping.com been
 12 whitelisted?
 13 A. I don't believe that's correct. That position,
 14 I believe, is wrong, to the best of my knowledge and
 15 recollection.
 16 MR WEST: I believe that Shopping.com had, but we will come
 17 back to that.
 18 There is then a paper over the next two pages,
 19 starting at 19 {J2B/1/22}, again summarising
 20 the predicament, the familiar predicament. You see
 21 under, "Who [Are We]" on the previous page:
 22 "Foundem is a UK-based technology company that has
 23 patented and developed the World's only general purpose
 24 vertical—search solution. The powerful technology can
 25 deliver vertical—search and price comparison

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1 services ..."
 2 Then under, "The Problem", the second paragraph
 3 under that:
 4 "Although most of Foundem's pages are included in
 5 Google's index ... they are being systematically
 6 excluded from Google's organic search results. Unless
 7 the keyword 'foundem' is included in a query, none of
 8 Foundem's pages can be found anywhere in Google's
 9 organic listings, even when the query is a quoted phrase
 10 that appears uniquely on the Foundem site."
 11 If we go over to the next page {J2B/1/23}, towards
 12 the bottom, "Some Examples of Foundem's Partnerships and
 13 Press", at Channel 5, Foundem powers its shopping
 14 section, and content—integrated intelli—widgets:
 15 "Bauer Media:
 16 " ...
 17 "Motorbike Gear Marketplace powered by Foundem's
 18 API.
 19 " ...
 20 "Golf Marketplace powered by Foundem's API.
 21 " ...
 22 "Foundem's content—integrated 'IntelliWidget'.
 23 "Future Publishing.
 24 " ...
 25 "IPC Media.

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1 " ...
 2 "The Times.
 3 " ...
 4 "Foundem included in the Top 50 Travel Sites of
 5 2007"
 6 So we see Foundem, there, setting out its various
 7 press coverage and partnerships.
 8 There was no response to that. So if we look at
 9 {J2B/1/16} next. Foundem sent the same message to
 10 Mr Udi Manber.
 11 Just to explain who these people were, so
 12 Mr Amit Singhal was the head of Web Search Ranking; is
 13 that right?
 14 A. It changed over time, but Amit eventually became
 15 the head of Search, but for a time Udi was the head of
 16 Search and Amit reported in to him. So I would have
 17 reported to Amit and Amit would have reported to Udi.
 18 Udi would have reported to the CEO.
 19 Q. So Mr Udi Manber, on page 16, so he was the head of
 20 engineering, is that right, at this time?
 21 A. Not head of engineering. Udi was the head of Search.
 22 Q. Head of Search. With the same two—page paper, as we see
 23 over the page {J2B/1/17}.
 24 If we see Mr Manber's internal response at
 25 {J2B/11/1}, in the middle of the page. This was sent to

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1 you, amongst others, as we will see in a second:
 2 "I'd love to know who in Google told them that we
 3 penalize based on 'business models'. Sigh."
 4 Well, I think we probably know the answer to that,
 5 it was Mr Vallayes, as we saw in connection with
 6 the AdWords penalty, but I will not go back over the LPQ
 7 material.
 8 Your response is then set out at the top. You start
 9 by talking about AdWords.
 10 Then on the Search side, in the second paragraph:
 11 " ... there are no domain—wide penalties on
 12 foundem.co.uk, but some subdirectories under the site,
 13 eg foundem.co.uk/search_UK/ are considered bad by our
 14 algorithms. I clicked around to find a random page ..."
 15 You give the link:
 16 " ... and picked a random fragment of text and
 17 searched for it: ['The v neck is edged with a satin trim
 18 and has a panel of lace between the cups'] and there are
 19 at least nine other URLs already in our index with that
 20 exact text.
 21 "Our algorithms tend to think that large chunks of
 22 foundem.co.uk are low—value—add, duplicate, and probably
 23 affiliate content that other people already provide.
 24 Since the algorithms are acting automatically and in
 25 a granular fashion, if foundem.co.uk did add

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1 high—value/unique/useful content, that content would
 2 probably do fine."
 3 So you justified this penalty here on the basis that
 4 Foundem's text — Foundem's site contained the same text
 5 as a number of other websites; that is right, is it not?
 6 A. That was part of my justification.
 7 Q. Where a merchant sets out the description of a product
 8 on its site, that same description is likely to appear,
 9 is it not, on any comparison shopping sites which
 10 feature that product?
 11 A. If affiliate feeds are involved. But if affiliate feeds
 12 are not involved, then that text would not necessarily
 13 appear on many other pages.
 14 Q. Surely if a comparison shopping site is displaying
 15 a product as parts of its comparison, it wants to give
 16 the same description of the product as the merchant
 17 does?
 18 A. My point to Udi was this site had a lot of duplicate
 19 content, it was not — search is a zero sum game, and so
 20 sites that are adding value, including with unique
 21 content, tend to be the sorts of sites that users want
 22 to see. Users tend not to want to see boilerplate
 23 cookie cutter sites. So just picking to a random page,
 24 taking a random piece of text and finding, in this case,
 25 nine other things that had the exact same content,

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1 the implicit question is: why should this site rank
 2 compared to the other nine sites?
 3 Q. The answer to that surely depends on the quality of its
 4 search functionality, the other matters which Ms Raff
 5 had specifically raised multiple times in her appeals
 6 and this was not addressed at all?
 7 A. I think your question is surely it depends on
 8 the quality of the search and I think that I disagree.
 9 It depends on the quality of the user experience. So
 10 things like reviews, things like newsletters, things
 11 like buying guides, things like, you know, unique
 12 content and, you know, with the lived experience of
 13 the reviewer. Those are the sorts of things, in my
 14 experience, that add value for users, that they
 15 appreciate, as opposed to seeing boilerplate content.
 16 Q. I do not want to go over that again or we will be here
 17 all day, Mr Cutts.
 18 This appears to be the extent of your review of this
 19 site. There is no mention here of textual errors, is
 20 there?
 21 A. No.
 22 Q. No.
 23 Could we just look at the fact that you refer
 24 to "domain—wide penalties" in this email?
 25 A. This is a reference to Algorithm A. This is not saying

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1 that there's multiple penalties of different kinds or
 2 nature.
 3 Q. You told us yesterday that within your team you did not
 4 use the word "penalties" to refer to algorithmic
 5 demotions.
 6 A. Yes —
 7 Q. I do not know why you are laughing.
 8 A. — sorry. On the Search side, there are no domain—wide
 9 demotions, that means there is no manual actions on this
 10 side. That's why I'm contrasting some parts of this
 11 site are considered bad by our algorithms. So in other
 12 words, Udi, my boss's boss, might be, "Did you take some
 13 sort of manual action on this site?", and the answer is,
 14 "No, our algorithms don't think that it's good".
 15 Q. Can we look at some documents on that, {M1/180/1}.
 16 Some of these, Mr Cutts, are partially marked as
 17 confidential, but I do not think it is necessary to read
 18 out any confidential parts.
 19 Could we go to {M1/180/2} of this.
 20 You see, at the bottom, this is marked confidential,
 21 but it is referring to Algorithm A; that is right, is it
 22 not? The yellow section?
 23 A. There's other information in there. The part that
 24 starts with "[redacted]". But much of that information
 25 is about Algorithm A. The first part primarily.

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1 The lines from "[redacted]" on is basically not about
 2 Algorithm A, it's just general infrastructure logistics .
 3 Q. If we then look at what Mr Kwok says in the middle of
 4 the page:
 5 "This page appears to be algorithmically judged to
 6 have hidden text.
 7 " ... could you check it out."
 8 Talking about an algorithmic penalty or
 9 an algorithmic demotion?
 10 A. We had algorithms to detect hidden text. So this is
 11 saying the algorithms say that there's hidden text, and
 12 then the reply is saying, yes, there's some white on
 13 white text at the bottom of the page, so there is hidden
 14 text and the algorithm to detect hidden text worked
 15 correctly .
 16 Q. Just above that Eisar Lipkovitz says:
 17 "What's the point of penalizing here?"
 18 So he's referring to penalising, do you see that?
 19 A. Eisar was not a member of the Search Quality Group, he
 20 was a member of the Qual group. Lots of people inside
 21 Google would use informal language that we would not
 22 necessarily use.
 23 I don't want to be a stickler about penalty versus
 24 demotion. I understand that this particular site in
 25 this instance was affected by an algorithm.

13

1 Q. Can we go to {M1/180/1} of this, just up from
 2 the middle. It says:
 3 "Penalties in twiddle are generally severe spams and
 4 we don't want to notify the webmaster. That is why the
 5 penalty is not user visible ."
 6 At the bottom he says:
 7 "The site has no user-visible spam penalty.
 8 "Even though the 'full' mode shows me that we're
 9 applying a penalty in the ... "
 10 That is Algorithm A:
 11 " ... for hidden text."
 12 So, again, this is referring to Algorithm A as
 13 a penalty, is it not?
 14 A. People are using that word in proximity.
 15 Q. Can we have a look at another example at {M1/155}.
 16 MS ROSE: Can I just ask, I was not aware that Algorithm A
 17 penalised for hidden text?
 18 A. Algorithm A did not penalise for hidden text, my guess
 19 — I haven't seen this document and I haven't taken
 20 a lot of time to review it, but all of these things
 21 would just get aggregated into one —
 22 MS ROSE: It was a different algorithm?
 23 A. Yes, that's correct. It was a different algorithm that
 24 flagged for hidden text, that's correct.
 25 MS ROSE: Also, in the document we were looking at a little

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1 while ago, there was the comment that there was no
 2 domain-wide penalty, but that some sub-domains were
 3 being affected by an algorithm.
 4 A. That's correct.
 5 MS ROSE: But we heard before that in fact the whole of
 6 Foundem's domain was in fact affected by Algorithm A.
 7 A. I don't know whether eventually, in general, Algorithm A
 8 tried to scope things to the most narrow, granular level
 9 that made sense. It could be that Foundem had
 10 "/search_UK" was where the vast majority of their
 11 traffic was, so they might have considered that
 12 a penalty on their entire — or, you know, a demotion,
 13 whatever you want to call it, on their entire domain.
 14 But Algorithm A was trying to be more like a scalpel and
 15 more granular and only affecting, you know, if there was
 16 some sub-part of a site, a sub-directory, we called it
 17 or a sub-domain, only affecting that part of the site
 18 that had the negative signals.
 19 MR WEST: {M1/155/2} of this document. One sees again it is
 20 referring to Algorithm A, just above the halfway point.
 21 I will not read out the name, but you see the name
 22 there?
 23 A. The three lines that start with "A", but then
 24 "[redacted]" and "[redacted]" are not referring to
 25 Algorithm A.

15

1 Q. Then we go back to {M1/155/1}, (inaudible):
 2 " ... got to get the false positive ratio down. Two
 3 in one day is too much."
 4 Mr Kwok replies at the top:
 5 "The demotion is deserved except for how deep we go
 6 down the subdirectory to apply the penalty."
 7 So he is again talking about this as a penalty?
 8 A. Mr Kwok is talking about how deeply that scalpel, that
 9 sub-part of the site should apply.
 10 Q. "Penalty".
 11 A. He's called it a penalty.
 12 Q. I do not want to take too much time on this, but one
 13 final example, {M1/157}.
 14 We can see at the bottom of this it is talking about
 15 a different penalty and the name of the penalty is
 16 marked confidential. We can see how it is described at
 17 the bottom right in yellow.
 18 At the top, you say:
 19 "You might ... want to consider adding a list of
 20 high-pagerank or high-indyrank sites that are considered
 21 reputable. Then if one of those sites triggers
 22 a penalty, you can investigate and see whether it's
 23 a false positive ... "
 24 You are talking again here about an algorithmic
 25 demotion?

16

1 A. Charles was a member of the Webspam team, he was trying
 2 to find sneaky JavaScript redirects that did spammy
 3 things, so I was using informal language talking to
 4 a member of my team.
 5 Q. That is you, is it not, that top email?
 6 A. Yes.
 7 Q. Now, no one responded to Ms Raff at this stage or to
 8 Foundem at this stage, but a bug was filed, which we can
 9 see at {M1/183}, by Mr Evan Tang, which appears to have
 10 arisen out of the same approach, as far as we can tell?
 11 A. Sorry, what was that?
 12 Q. So this bug appears to have arisen out of the —
 13 Foundem's contact with Google we were looking at, as far
 14 as we can tell. In any event, there is this bug report
 15 raised at around the same time, September 2008; do you
 16 see that?
 17 A. I do.
 18 Q. Mr Evan Tang says:
 19 "I'd like to report a possible error [relating to
 20 Algorithm A]."
 21 Then he lists Foundem's various domains:
 22 "The site may seem like a thin affiliate, but is
 23 actually a price comparison website with some useful
 24 filters for users."
 25 So that is the basis of the bug report; do you see

17

1 that?
 2 A. That's the substance of the bug report to (inaudible).
 3 Q. One sees then Mr Kwok's reply in the middle of the page,
 4 "ctkwok on September 24 ...":
 5 "We don't really care that much for random price
 6 comparison sites."
 7 A. I think there was some document filed that said
 8 Evan Tang was an engineer, but Evan was not an engineer,
 9 he was a spam rater, so he wouldn't have had access to
 10 the same sort of signals and information that a webspam
 11 engineer would.
 12 MS ROSE: So, do you mean he is one of the external
 13 contractors?
 14 A. That's a great question. He wasn't one of the 12,000,
 15 he was one of the 150 that were employed at five
 16 different locations, Dublin ... So he wasn't — he
 17 didn't directly report to me, but, laterally, he was in
 18 a group that I coached and — a great guy, but not sort
 19 of in the inner circle of webspam engineering.
 20 MR WEST: In any event, he has formed the view that the site
 21 has been wrongly penalised. Mr Kwok dismisses that in
 22 a sentence, and Mr Kwok wrote Algorithm A, did he not?
 23 A. Hm?
 24 Q. Mr Kwok wrote Algorithm A?
 25 A. Yes.

18

1 Q. His view is that it is correctly applied because, in his
 2 words, Foundem is a "random price comparison site"?
 3 A. I believe Mr Kwok is replying informally to someone on
 4 his team who's saying this site seems good, here are
 5 some URLs that are affected, and the person who reported
 6 it didn't have the same information that Cody did,
 7 didn't have the same signals.
 8 Q. Mr Kwok ought to know how Algorithm A is supposed to
 9 operate since he wrote it?
 10 A. Yes.
 11 Q. As far as he is concerned, from what we see here, it has
 12 properly demoted this site because it is a "random price
 13 comparison site"?
 14 A. No, it was demoted because it was affiliate spam in
 15 Mr Kwok's opinion is my best estimation.
 16 Q. Mr Kwok still works for Google, does he not?
 17 A. The last I heard, he does.
 18 Q. Mr Evan Tang then pushes back:
 19 "This is not something we would spam in [Search
 20 Quality Evaluation] because they offer additional value,
 21 like reviews and what they claim to be a new algorithm
 22 ... but it's not a great site.
 23 "It shouldn't show up before Amazon, but is that
 24 something that really needs a [redacted]? This seems
 25 like Google is giving priority to sites like Nextag,

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1 Ciao and Dealttime, and could be preventing new
 2 competitors from entry."
 3 So we see here that Mr Tang has appreciated that
 4 the existing players appear to be unaffected but Foundem
 5 is being penalised as a new entrant company. That is
 6 what he is saying here, is it not?
 7 A. Mr Tang is making a point that we should consider
 8 Foundem and see whether things are working as intended
 9 with Foundem, and I tried to create a culture where
 10 anyone within our group could push back and, you know,
 11 raise suggestions and say, "This is a false positive",
 12 or, "We didn't like this".
 13 Q. In any event —
 14 THE CHAIRMAN: An "SQE", is that search quality —
 15 A. Search quality evaluation. Later it became PQO, product
 16 quality operations, or something like that.
 17 MR WEST: We see the resolution at the top right:
 18 "Working as intended"?
 19 A. Mm—hm.
 20 Q. There had been other concerns within Google about
 21 Mr Kwok's approach to bug reports —
 22 THE CHAIRMAN: Just to — sorry, before you answer.
 23 Basically there is this point raised by Evan Tang,
 24 and Cody Kwok, this is his response, and he signs off on
 25 it; is that right?

20

1 A. Cody Kwok chimed in on the bug to say: based on what
 2 I see, I don't see a reason to revoke the algorithm or,
 3 you know, gainsay the algorithm.
 4 THE CHAIRMAN: Yes.
 5 Then that, as it were, deals with that, does it?
 6 That resolves that bug report?
 7 A. Yes.
 8 MR WEST: It does not quite. It does come back, as we will
 9 see, shortly.
 10 PROFESSOR SMITH: Before we leave this, can I ask a question
 11 about the — there are, whatever it is ... There are
 12 eight sub—domains of Foundem that are subject to
 13 demotion by Algorithm A. Under what circumstances would
 14 Algorithm A demote an entire domain if, here, it's
 15 demoting what looks like quite a high proportion of
 16 Foundem's site?
 17 A. That's a great question. So these are sub—directories,
 18 so these are the sub—directories that I believe were
 19 affected by Algorithm A. They tried to compute the data
 20 at a page level, aggregate it to a sub—directory,
 21 directory level or a host level, which is like
 22 reviews.forbes.com is a sub—domain, and only if the only
 23 thing that matched was the entire domain would you then
 24 aggregate that all the way up to the entire domain. So
 25 I believe what happened here is the data that was

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1 available within the toolbar, the only thing that
 2 Algorithm A was able to conclude or trigger on were
 3 these specific sub—directories, at least at that point
 4 in time.
 5 MR WEST: Can we look at {M3/276}, and go over to the next
 6 page {M3/276/2}.
 7 Right at the bottom, that is Matt Dougherty
 8 reporting a possible error. So this is not concerned
 9 with Foundem specifically, just to make that clear.
 10 Mr Dougherty raises this bug report, and one sees,
 11 about a third of the way down, Mr Kwok:
 12 "It's not a problem, please do not file bugs like
 13 this again."
 14 Mr Dougherty is not very happy with that response,
 15 we see at the top:
 16 "I'd say this response is inappropriate. You'd
 17 think he would want to know about pages that
 18 a [redacted] is applied to that don't exist."
 19 Go to the previous page {M3/276/1}, at the bottom:
 20 "I want to bring this to your attention. I feel
 21 the response that Cody gave us to what we have been
 22 trained to see as a valid bug, is not good at all."
 23 This is then forwarded on to you:
 24 "Cody's twiddles and his follow—up are less than
 25 ideal at times. Would it make sense to talk to him?"

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1 You say:
 2 "I can talk to him about this specific instance;
 3 I think I know where he's coming from as an engineer,
 4 but it comes across as rude."
 5 So there were concerns already within Google, were
 6 there not, that Mr Kwok was dismissing out of hand bug
 7 reports which might have substance to them?
 8 A. No, that's not correct. Concerns were raised, but this
 9 specific incident does not show that. You can see in
 10 the subject line the specific problem was
 11 "httpwww.experian.com". Someone in the Google toolbar
 12 typed that in and didn't do the two slashes. Experian
 13 was smart enough to do a redirect to the main page, so
 14 it looked like a sneaky redirect was happening of 100%
 15 out of a sample size of one or two times that it
 16 happened. A search quality evaluator said — you know,
 17 filed a bug — this is a high quality site, why are you,
 18 you know, saying it's bad? Cody's saying this is
 19 non—existent data, you're kind of gumming up my pipeline
 20 of — you know, you can report bugs but, like, this is
 21 — this is not a serious bug, it's not affecting users
 22 in any way. He was brusque, and I absolutely will say,
 23 you know, Cody was an action—oriented engineer and
 24 sometimes spoke as an engineer, so I think it's great
 25 that the search quality evaluators felt comfortable

23

1 pushing back on that and delivering, you know, messages
 2 to their managers to say, "Hey, you know, we want to be
 3 collaborative, we don't want people to — we want an
 4 environment where people can raise concerns without,
 5 you know, feeling criticised".
 6 THE CHAIRMAN: You are saying it is more the manner in which
 7 he responded rather than the substance?
 8 A. Yeah. Yes, I think that's right. In this specific
 9 incident. I'm not saying — I was thinking last night
 10 about — I'm not sure my beach metaphor was very clear,
 11 but before I left Google, they updated their how search
 12 works page with the fact that Google had seen
 13 130 trillion URLs. I don't know how to convey that
 14 scope, but if you round London up to 10 million people,
 15 that's 13 million Londons, and so trying to — trying to
 16 figure out an algorithm that would work on 13 million
 17 Londons, where each person is a URL and you're assessing
 18 the quality of each of those, is difficult to do without
 19 false positives. So I'm more than happy to admit there
 20 were occasional false positives, but they tried to make
 21 the algorithm work as well as they could.
 22 MS ROSE: Only 13 Elon Musks!
 23 A. Yes, madam.
 24 MR WEST: So Foundem received no response from Google to
 25 those two attempts and so it tried again, as we see at

24

1 {J2B/1/16}. A follow-up to Udi and Amit:
 2 "I am wondering if you have had a chance to consider
 3 the email I sent last week?
 4 "Frederick Vallayes, who I also contact, has kindly
 5 emailed and let me know that he has spoken to someone in
 6 your team to express his view that Foundem are
 7 a legitimate site ... "
 8 That garners no response.
 9 The next attempt is at {J2B/1/12}, to a longer
 10 distribution list. We are now in November 2008. Again,
 11 I will not read it out, the contents are now familiar
 12 to us.
 13 That was forwarded on to Adam Lasnik and
 14 a discussion ensued, which we can see at {M1/212/1}.
 15 Now, for some reason, this email string goes forward
 16 rather than backwards. If we look at page 3 {M1/212/3}.
 17 A. Actually, could we — is it okay to go to page 1 so
 18 I can get the context?
 19 THE CHAIRMAN: Can we go to page 1 {M1/212/1}.
 20 MR WEST: Adam Lasnik forwarding the note from Foundem.
 21 A. I just — I'd seen the phrase, "Their site [had] been
 22 twiddled, perceived as a thin-affiliate", but I didn't
 23 know if you were going to ask questions on that so I
 24 wanted to make sure ...
 25 Okay, what was your question?

25

1 Q. Well, we will look at {M1/212/2}, if you like.
 2 A. Sure, I'd love to ...
 3 Q. So that is the email from Foundem.
 4 {M1/212/3}. This is from Matt Dougherty:
 5 "We got this through the sales side a few months ago
 6 and filed a bug on that twiddle, which was rejected."
 7 That is the bug we just looked at, yes?
 8 A. Mm—hm. My best guess, yes.
 9 Q. "Ultimately they are pushing because they worked with
 10 someone last year ... who helped them get 'Landing Page
 11 Quality whitelisted' and are under the impression that
 12 these are connected."
 13 That is presumably a reference to Mr Vallayes?
 14 A. That's my best estimate.
 15 Q. If we go on to {M1/212/4}.
 16 This is Adam Lasnik at the bottom of the page.
 17 Well, if we start at the top of the page, from Matt
 18 Dougherty to Adam Lasnik — sorry, right at the top of
 19 the page, I do apologise:
 20 "... you'd recommend No Action then?"
 21 And Mr Dougherty replies:
 22 "Unless you want to repeat the same messaging, just
 23 to drive it home."
 24 Then he says:
 25 "Honestly, I'd like to know from Cody why exactly

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1 this and other sites need such aggressive demotions, so
 2 we can craft better responses. For this one it was that
 3 'we don't like comparison sites'."
 4 That is probably again a reference to the bug
 5 report?
 6 A. My best guess as well.
 7 Q. Mr Dougherty's view, in any event, was that these
 8 demotions are too aggressive?
 9 A. Mr Lasnik says:
 10 "... these comparison sites are, [in my humble
 11 opinion], kind of the scourge of the web."
 12 Q. Indeed he does. Was that Mr Lasnik's view that
 13 comparison sites were the scourge of the web?
 14 A. I can't speak to it, but it seems as though he was not
 15 impressed with them.
 16 Q. But it is not true, is it, that Google banned all
 17 comparison sites from its index or from its results?
 18 A. I don't think I ever said that we banned all comparison
 19 sites from our index, I said that we removed search
 20 results from search results. In fact, I think your
 21 declaration had CompareStorePrices.co.uk and asked why
 22 wasn't it affected by Algorithm A.
 23 Q. Well, it was not Google's official view that all
 24 comparison sites are "the scourge of the web"?
 25 A. No, this is Adam Lasnik's experience based on working

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1 with a bunch of sites.
 2 Q. He does not seem to have investigated Foundem's claims
 3 as set out in detail in its appeal as to why it was
 4 a higher quality site?
 5 A. I can't speak to what Mr Lasnik did or didn't do.
 6 I haven't seen these documents before.
 7 Q. If we go over the page — sorry, if we go back to
 8 the last page again, sorry, I do have one
 9 further question on that.
 10 He says:
 11 "In terms of messaging ... I don't have any easy
 12 answers other than something like, 'We aim to show a
 13 diverse set of results that offer original, compelling,
 14 and relevant information to people using our search
 15 engine. We're constantly evaluating and adjusting our
 16 algorithms to better serve our users ... your best bet
 17 is to maximize the loyalty ... and quality of experience
 18 for your users."
 19 Then he says:
 20 "Relying primarily on any one source for customer
 21 acquisition — whether a search engine or otherwise —
 22 is inadvisable."
 23 So he seems to be saying your solution is to go and
 24 get traffic from someone other than Google. Is that how
 25 you would read that?

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1 A. That's not how I would characterise it. I think it's
 2 a — he's got a nice sentence about Google tries to show
 3 diverse sets of search results — of compelling and
 4 relevant information, we're always updating our
 5 algorithms, I think it's more of a reminder of, like,
 6 relying primarily on one source for customer acquisition
 7 is subject to risk.
 8 Q. Could we just briefly look at what the Commission said
 9 about this. That is {BA/2/178}, recital 539:
 10 "The Commission concludes that the traffic diverted
 11 by the Conduct, ie generic search traffic from Google's
 12 general search results pages, accounts for a large
 13 proportion of traffic to competing [CSSs] ... and cannot
 14 be effectively replaced by other sources of traffic
 15 currently available to comparison shopping services ..."
 16 So the Commission has held that in view of Google's
 17 dominance there were no replacement sources of traffic
 18 to compensate for traffic lost by Google's conduct; do
 19 you see that?
 20 A. I'm happy to accept the Commission's findings.
 21 Q. If we go back then to {M1/212/5}. This is now, you have
 22 been looped in I think on this. Yes.
 23 You say:
 24 "I sent this on to Cody and he's looking at it,
 25 but ..."

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1 MR MCGURK: I am so sorry to interrupt. I understand from
 2 the transcribers that they are struggling to pick up
 3 some of Mr Cutts' words, he needs to either move forward
 4 or have the mic turned up or both. I am so sorry to
 5 interrupt.
 6 A. Should both be green or one or ...?
 7 THE CHAIRMAN: No, I think that is all right.
 8 A. Okay. I am going to ... sorry.
 9 THE CHAIRMAN: Maybe if you just speak up a little bit.
 10 A. Absolutely.
 11 MR WEST: You say in an email toward the top:
 12 "I sent this on to Cody and he's looking at it, but
 13 there doesn't seem to be much value—add there. Let's
 14 hold off contacting them unless they do another email
 15 blast, and if they do, then we'll gently break the news
 16 to them that our algorithms don't think much of their
 17 site."
 18 Again, it does not look like you have actually
 19 looked at the site yourself here?
 20 A. I do think I would have looked at the site. Normally
 21 whenever someone emails 13 Google executives and there's
 22 a lot of people saying, "Why am I getting this email?",
 23 like, I would have looked at the site, and the fact that
 24 I say "there doesn't seem to be much value—add there" to
 25 me implies that I at least briefly evaluated or assessed

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1 the site.
 2 Q. You clearly have not looked at the two—page document
 3 that Foundem sent through with their various credentials
 4 setting out their case?
 5 A. You're asking whether I'd looked at the credentials that
 6 Foundem sent?
 7 Q. The two—page document that Foundem sent as part of its
 8 email to Google?
 9 A. I don't remember whether I looked at that.
 10 Q. We see that you say you sent it on to Cody. We can see
 11 that at {J3M/10}. Yes, your email to Cody:
 12 "One to consider."
 13 Do you see that, at the top?
 14 A. I do.
 15 Q. We see the timing for that, 12.27 am, presumably that is
 16 due to a time difference but ...
 17 A. Not necessarily.
 18 Q. Not necessarily, but in any case, Mr Kwok responds:
 19 "It looks like another thin price—comparison [site]
 20 with little original content ... I read thru their
 21 letter and I didn't find any concrete example to
 22 strengthen their case."
 23 We see the timing of that at the top right — I am
 24 afraid it is not appearing on this document because it
 25 is hidden by the non—confidential label?

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1 MS ROSE: 12.36.
 2 MR WEST: Ah, it was 12.36 am, so it was all of six minutes
 3 later, Mr Cutts; do you see that?
 4 A. It was a very email—forward place and people responded
 5 quickly to emails.
 6 MS ROSE: Nine minutes.
 7 A. Mm—hm.
 8 MR WEST: Sorry, nine minutes later. Mr Kwok cannot have
 9 given much detailed consideration to Foundem's appeal in
 10 nine minutes, can he?
 11 A. It is unclear to me, because they sent the letter to
 12 Adam Kovacevich, Amit Singhal, David Krane, Jeff Dean,
 13 Jeff Huber, Udi Manber, their best guess at my email
 14 address. It's entirely possible that all of that
 15 rumbling made it to Cody before I officially asked him
 16 "Hey, one to consider".
 17 Q. His rather out—of—hand response is in similar terms to
 18 his response to the bug report, is it not?:
 19 "... don't care much for random price comparison
 20 sites."
 21 A. No, I take his — I take his reply a little bit
 22 differently. When he was replying to Evan Tang, he was
 23 saying, very informally, "We don't care much for random
 24 price comparison engines". His reply to me implies he
 25 looked at it, he looked through the letter, or read

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1 through it or at least skimmed it, didn't find examples,
 2 was looking for examples to gainsay the algorithm, and
 3 also, you know, didn't seem to have much original
 4 content. So, to me, that's a slightly more in—depth
 5 reply than, "We don't care for random price comparison
 6 search engines".
 7 Q. We have seen that Foundem's letter set out in detail,
 8 for example, its various commercial partnerships, press
 9 coverage, success in head to heads against other CSSs.
 10 How can Mr Cody [sic] have concluded on that basis that
 11 there are no concrete examples to strengthen its case?
 12 A. I believe Mr Kwok would have been looking for specific
 13 queries to look at, getting a testimonial from
 14 The Gadget Show or something like that would not
 15 necessarily have swayed his opinion about whether
 16 the algorithm was working correctly.
 17 PROFESSOR SMITH: Before we leave this, can we go back to
 18 {M1/212} and Mr Lasnik's email on {M1/212/4}, where he
 19 identifies the thin affiliate problem is specifically
 20 associated with the fact that they had — a proportion
 21 of the traffic to the site was going to Amazon, and that
 22 is running up against the policy that —
 23 MR MCGURK: We may be at risk of straying into confidential
 24 territory, Professor. I am so sorry.
 25 (Pause)

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1 PROFESSOR SMITH: What seems to be happening here is that
 2 a lot of search users who go to Foundem, get the answer
 3 from Foundem, go to Amazon. Is that a redundant and
 4 useless piece of information or is it good advice to
 5 users?
 6 A. At some point if, you know, 90% of your traffic is going
 7 to one site, I think it's a valid question to ask how
 8 much additional value is that intermediary site offering
 9 if you compared it to just going on to, you know,
 10 the site that they eventually want to get to.
 11 PROFESSOR SMITH: But the users who went to the Foundem site
 12 did not know what the advice would be.
 13 A. True. True. The most interesting context in my mind
 14 is, in 2006, for example, when Adam's talking about
 15 the scourge of — that these comparison sites are kind
 16 of the "scourge of the web", there was actually a site
 17 that launched called "give me back my Google" by someone
 18 in Bristol, and literally all it did was it tried to
 19 remove the top 15 or 16 of these, you know, Bizrate,
 20 Nextag, Dealtime kind of sites, because people were
 21 saying — the complaints that we heard overwhelmingly
 22 from users were, "I keep getting places where I'm,
 23 you know, getting sold things as opposed to the ability
 24 to do research and find out more information", that sort
 25 of thing.

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1 PROFESSOR SMITH: I can understand that some kinds of users,
 2 perhaps more sophisticated users, would get annoyed by
 3 what we are calling redundant searches, but I am more
 4 thinking of a naive user doing a genuine product search
 5 and lots of them are getting told — the advice from
 6 Foundem is go to Amazon, and perhaps, after several
 7 experiences of that, they will learn.
 8 A. Yeah, I think, in general, Google tried to gear more
 9 towards advanced users and we give those sorts of
 10 advanced users more — more weight when we got feedback
 11 from them. But I do think a naive user would often do
 12 a search, land on a page, they might end up at Amazon,
 13 eventually over time; they might just say, "Maybe I'll
 14 just go to Amazon and search for whatever my product
 15 is", absolutely.
 16 MR WEST: No one responded, again, to Foundem at this time,
 17 and indeed you'd said in your email hold off contacting
 18 them unless they do another email blast.
 19 In December 2008, Foundem was named the best UK CSS
 20 via The Gadget Show, which — I do not know — was one
 21 of the or the leading UK technology TV programs at the
 22 time. I do not know if you are aware of that?
 23 A. I've read to that effect.
 24 THE CHAIRMAN: Would you have known that at the time?
 25 A. I wouldn't really have known that at the time. Like, if

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1 someone had said BBC, I would have said, okay, that
 2 makes sense to me, but I didn't know about The Gadget
 3 Show at the time.
 4 MR WEST: Foundem followed that up with another email to
 5 Google at {J2B/1/11}:
 6 "I thought you should see the following item that
 7 aired last Monday on Channel 5 television's The Gadget
 8 Show (the UK's leading technology program). Their
 9 review of the UK's leading price comparison sites
 10 concluded unequivocally that Foundem is 'the best'.
 11 There is then a link to the video:
 12 "This is not a fluke: every independent competitive
 13 analysis conducted in the last 18 months that we are
 14 aware of (and there are several) has reached the same
 15 conclusion.
 16 "What does it say about Google that the UK's best
 17 price comparison site cannot be found using Google for
 18 any combination of keywords other than 'foundem'?
 19 Foundem's pages do not appear anywhere in Google's
 20 search results for any or keywords, including: 'price
 21 comparison, 'uk price comparison', 'compare prices',
 22 'compare Sony, KDL ..."
 23 Etc:
 24 "... or any other [version] of '... [make]
 25 [model] ... '.

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1 "I do not know what misconception about Foundem has
2 so far prevented Google from taking appropriate remedial
3 action, but surely this independent, authoritative, and
4 unequivocal endorsement ought to be enough to finally
5 correct this misconception?

6 "That Google's blanket censorship of Foundem is
7 doing a disservice to Google's users is irrefutable.
8 And Google's ongoing refusal to address this issue,
9 despite a long trail of progressively escalating
10 correspondence, is becoming increasingly indefensible.

11 "Surely it would be preferable to resolve this now,
12 before we are forced to embark on a public campaign to
13 have this inexplicable site—wide penalty lifted?"

14 You, of course, had said if they do another email
15 blast, then Google would reply saying that your
16 algorithms do not like their site, and we can see
17 Mr Lasnik's answer at page {J2B/1/9}:

18 "A colleague forwarded on your note detailing your
19 concerns about your company's presence in Google.

20 "As the Search Evangelist for the company, largely
21 responsible for our company's webmaster outreach
22 programs, I can assure you that we take such issues
23 quite seriously. We strongly endeavor to maintain a
24 stellar index which enables businesses and individuals
25 to both have and find high quality pages in our

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1 search engine.

2 "Given the many billions of pages on the web and in
3 the interest of fairness, however, we aren't able to
4 offer private support regarding search issues. Instead,
5 we offer a free public venue ..."

6 You refer there — or Mr Lasnik refers to Webmaster
7 Central. He says he:

8 "... noticed that no one in your organization [has]
9 posted any inquiry on this Webmaster Help Google
10 Forum ..."

11 He says:

12 "I hope and expect you will find our Webmaster
13 Central resources helpful."

14 So I would suggest that is a boilerplate answer?

15 A. It's absolutely not a boilerplate answer. It's
16 customised to the circumstances of Foundem and I believe
17 when they contacted the assistant to the CEO in 2006,
18 Adam pointed them to our official support resources
19 the Google webmaster support forum. There was an
20 official support process. Adam is reminding them
21 that — or reiterating that Foundem appeared not to use
22 that support process, and the email is saying: surely —
23 surely we shouldn't have to be forced to embark on
24 a public campaign. In fact, since that forum was
25 public, Adam was inviting them in 2006 for Foundem to

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1 post their issues in a public forum where they could
2 receive support not only from Google employees, but from
3 other people.

4 Q. But no one other than a Google employee would be able to
5 have whitelisted Foundem's site, would they?

6 A. If they had taken advantage of our public support
7 channels that we recommended in 2006, they could have
8 received constructive feedback which might have changed
9 their approach.

10 Q. I do not want to go over ground we have been over, but
11 Ms Raff said in her email, at {J2B/1/11}, that she was
12 trying to resolve this before being forced to embark on
13 a public campaign, so she was trying to resolve it
14 privately with Google; that is right, is it not?

15 Everything they have done so far was private between
16 Google and Foundem?

17 A. All of the emails that Foundem did were private emails.

18 Q. We see Ms Raff's response at {J2B/1/5}:

19 "Dear Adam,

20 "Thank you very much for your email.

21 "It appears that you may not have seen the brief
22 document (attached) that summarises Foundem's case.

23 "As you can see, I am not asking for Google's
24 private support for a search issue. Foundem is being
25 systematically excluded from Google's search results by

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1 a site—wide 'grey business model' penalty and I am
2 therefore asking Google for the manual
3 intervention/whitelisting that is the only remedy; just
4 as whitelisting was the only remedy when an equivalent
5 penalty struck Foundem's AdWords listings in 2006.

6 "As a company with a brand, reputation and
7 partnerships to protect, we have been understandably
8 reluctant to air this issue in Google's public forums.
9 We have, however, filed several reconsideration requests
10 over the last two years.

11 "Google's continuing blanket exclusion of Foundem
12 (the UK's 'best' price comparison site) is not in
13 anyone's interest, and I remain hopeful that we can
14 solve this issue without recourse to a public campaign."

15 Mr Lasnik responds on the previous page {J2B/1/4}:

16 "... I have seen the document, but I must
17 respectfully yet firmly note that my earlier guidance
18 still stands.

19 "... do not continue to cc other Google employees;
20 many are not in Search Quality and have no affiliation
21 with this issue. Those in Search Quality are also not
22 able to provide any information that I have not already
23 offered you."

24 So he is saying to Foundem in effect: go away and do
25 not darken our door again?

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1 A. I think you didn't read the word "please".
 2 Q. "Please", I am sorry:
 3 "Please do not continue ..."
 4 A. I think Adam is trying to give an answer. He is saying
 5 there exist support mechanisms. When you are dealing at
 6 the scale of 13 million Londons or 13 Elon Musks, you
 7 need processes that are scalable. So Adam invited,
 8 from — starting in 2006, continuing to 2008, and we
 9 were not really able to offer individual, personalised
 10 guidance, even though we wrote several customised
 11 responses in this case.
 12 THE CHAIRMAN: I think he is saying we have got as far as we
 13 can, there is no point sending emails —
 14 A. Yeah, I wouldn't characterise it as "please don't darken
 15 our door again", but, yes, this is as much as we can
 16 give you at this time.
 17 THE CHAIRMAN: Yes, please do not continue to write
 18 emails —
 19 A. Well —
 20 THE CHAIRMAN: (Off microphone — inaudible).
 21 A. — it's a bit awkward to cc random other Google people
 22 who aren't in Search Quality. You know, it was an
 23 effective technique. It certainly got a response from
 24 Google.
 25 PROFESSOR SMITH: Someone who has filed on a number of

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1 occasions reconsideration requests for reconsideration
 2 of a demotion reconsiderations did not apply to, you
 3 might have expected to get a gentle piece of advice
 4 that, "You are asking the wrong thing".
 5 A. Yeah, and if they had taken advantage of our official
 6 support mechanisms, they could have said, "We have done
 7 reconsideration requests", and then people would have
 8 been able to tell them that doesn't necessarily work if
 9 you have something that's algorithmic ranking. So not
 10 taking advantage of the support that we offered, I think
 11 Foundem laboured under misperceptions longer than they
 12 needed to.
 13 MR WEST: But, Mr Cutts, Foundem cannot be criticised,
 14 can it, for the way it sought to resolve these matters
 15 directly with Google before taking its case public?
 16 A. I don't want to begrudge any site trying to advocate for
 17 themselves, possibly in the strongest terms. It's
 18 unconventional. It caused, you know, some jostling,
 19 but — but I don't begrudge Foundem trying to, you know,
 20 make sure that their case was heard as widely as
 21 possible within Google.
 22 MR WEST: That brings us to the end of 2008. Would that be
 23 an appropriate moment?
 24 THE CHAIRMAN: We will take our usual break and come back at
 25 11.30.

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1 (11.22 am)
 2 (A short break)
 3 (11.40 am)
 4 MR WEST: Mr Cutts, at paragraph 129 of your first
 5 statement, you refer to Foundem as being, in your view,
 6 a bottom quartile CSS in terms of quality; that is
 7 right, is it not?
 8 A. I don't have that that in front of me, but I believe
 9 I remember that, yes.
 10 Q. But at no stage did Google actually carry out any
 11 comparison of whether Foundem's site was better or worse
 12 than rival CSSs, did it?
 13 A. The way that I would express it is, whenever I reached
 14 — correspondence reached me from Foundem, I evaluated
 15 it and tried to assess it, and in my head I had
 16 a working model of many different sites, so it was less
 17 comparison vis-à-vis directly a site and more slotting
 18 into my existing experience with sites.
 19 Q. Can we go to {K1/15}. If we look at the first page we
 20 can see what this is. Google's response to a request
 21 for information from the Commission.
 22 If we go on to {K1/15/12}, we see the Commission
 23 asking:
 24 "Please explain in detail for each of the web sites
 25 mentioned in the previous question which specific

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1 elements distinguish it from Foundem's service in terms
 2 of quality and in particular in terms of original
 3 content."
 4 Google answers:
 5 "Google has no internal documents reviewing
 6 the merits of Foundem relative to other comparison
 7 shopping sites."
 8 That is right, is it not?
 9 THE CHAIRMAN: You are on K?
 10 A. Which paragraph are we?
 11 MR WEST: Sorry {K1/15/12}.
 12 THE CHAIRMAN: Sorry. Excuse me, it's still not working.
 13 I am sorry about this.
 14 (Pause)
 15 Sorry, Mr Cutts, but something is not working
 16 properly here.
 17 A. Computers!
 18 (Pause)
 19 THE CHAIRMAN: I hope we are now on track.
 20 Sorry, Mr West, but we cannot see the documents.
 21 MR WEST: The answer that "Google has no internal documents
 22 reviewing the merits of Foundem relative to other
 23 comparison shopping sites", and that is right, is it
 24 not, Mr Cutts? We have seen your responses to Foundem's
 25 appeals and at no stage did anyone from Google go away

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1 and prepare an analysis saying, well, this is what
 2 Foundem can do compared to Kelkoo or compared to
 3 Shopping.com, and compare them in that way?
 4 A. I believe my previous answer still stands.
 5 Q. So you are agreeing that you did not prepare any such
 6 document?
 7 A. This is asking for — I am not a lawyer, it looks like
 8 documents responsive in terms of formal evaluations and
 9 I believe Google didn't have those, but every time that
 10 a communication from Foundem reached me, I believe I did
 11 an assessment of the site, Cody often did as well.
 12 Whenever it slotted into how things fit in a relative
 13 scale, it was less vis-à-vis this direct site or this
 14 direct site and more where does it rank on this spectrum
 15 in terms of value-add for users.
 16 Q. If we look at {N/257}, question 75, this is another RFI
 17 from the Commission:
 18 "In point 29, fourth indent, of your comments on
 19 Foundem's complaint, you state that certain types of
 20 editorial issues 'were pervasive throughout the rest of
 21 Foundem's site'.
 22 "Please provide a more quantitative estimate of
 23 the occurrences of those editorial issues in Foundem's
 24 site. Did Google perform an assessment, qualitative or
 25 quantitative, of the frequency of such errors in

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1 Foundem's site? If so, how did Foundem's site compare
 2 with Google's own product search service and sites such
 3 as Amazon or eBay, with respect to each editorial issue?
 4 Please provide supporting documents."
 5 The answer is:
 6 "The editorial issues described in Google's response
 7 to Foundem's complaint were noted by the Head of
 8 Google's Webspam Team, Matt Cutts, when he reviewed
 9 the site following Foundem's mass emails to Google
 10 employees in September 2008 ... Mr Cutts conducted
 11 a qualitative, not a quantitative, analysis of Foundem's
 12 site to verify whether Google's [Algorithm A] had
 13 properly classified that site as a thin affiliate."
 14 If we can go over the page {N/257/2} just to see how
 15 the answer continues:
 16 "Foundem's site was demoted by [Algorithm A] based
 17 on the signals described in response to Question 26
 18 above ..."
 19 So that is talking about Algorithm A.
 20 Then:
 21 "The editorial issues ... such as garbled text and
 22 cut-off text, represented one factor that served to
 23 confirm to Mr Cutts that Foundem's site was properly
 24 classified as a thin affiliate. In Google's experience,
 25 a lack of minimal editorial care is a strong indicator

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1 that ..."
 2 Then there is some confidential text:
 3 "As noted in Google's response to Foundem's
 4 complaint, it is not excluded that other sites at times
 5 may exhibit some formatting or editing errors. However,
 6 in Foundem's case these problems were pervasive
 7 throughout the site. That said, as noted, this was just
 8 one of several factors that Mr Cutts considered.
 9 Ultimately, the most decisive factor for Mr Cutts'
 10 confirmation that [Algorithm A] had properly classified
 11 the site was Foundem's lack of original content."
 12 But if we go back to the question on the previous
 13 page {N/257/1}, asking how Foundem's site compared with
 14 Google's own service or other sites, and the answer was
 15 in fact that Google had undertaken no such comparison,
 16 had it?
 17 A. I believe my evaluations naturally incorporated
 18 the impressions of how many errors were on the site and
 19 there were many more errors on Foundem's site than on
 20 comparative other sites.
 21 Q. There are no documents recording that?
 22 A. Just my recollection, I'm sorry.
 23 Q. There was no comparison undertaken with Google's site,
 24 was there?
 25 A. I seem to recall that one of the responses to my

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1 pointing out the errors on the site was: well, other
 2 sites also have errors. But in my experience, Froogle
 3 and other shopping sites must have put more care or
 4 somehow were able to clean up the data more than
 5 Foundem.
 6 Q. Again, there is no document recording that?
 7 A. I think there might have — like, I'm sure we'll see
 8 communication between me and Foundem about how pervasive
 9 the errors were.
 10 Q. You were not an expert on comparison shopping services,
 11 were you?
 12 A. I certainly didn't build them, I didn't participate in
 13 them, I wasn't someone who helped in their creation, but
 14 as an end user, I was relatively savvy and had a lot of
 15 exposure to them.
 16 Q. If we look at {M3/498} and in particular {M3/498/9}.
 17 So this is a press article from April 2008, Search
 18 Engine Land, are you familiar with that publication?
 19 A. I am familiar with Search Engine Land.
 20 Q. One sees, in the second substantive paragraph:
 21 "In the past, Google Product Search just showed you
 22 results but did not group stores offering to sell
 23 the same product with reviews and technical
 24 specifications. Now, for some searches, Google groups
 25 store results, shows reviews on Google, and also shows

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1 product specifications."

2 So were you aware that prior to April 2008, Google's

3 CSS did not even group results?

4 A. I was not aware of that feature of — or the timeline.

5 Q. If we go on to the next page {M3/398/10}.

6 We see here a screenshot of Google's CSS. It shows

7 the results were not by default sorted by price. Were

8 you aware of that?

9 A. I see that there's a highlight that says "sort by

10 relevance".

11 Q. On the next page —

12 MS ROSE: Could you click on that box and change the filter?

13 A. I believe so.

14 MS ROSE: Would that include price as an option?

15 A. It looks like this page has a price, low to high. So

16 Google's philosophy cared more about relevance. It

17 sounds like Foundem cared more about price.

18 MR WEST: One sees on the next page, {M3/498/11}, that when

19 the results were sorted by price, one finds often

20 the cheapest listed item is not the product itself but

21 an accessory. Is that a problem you are aware of with

22 Google's CSS?

23 A. Well, I don't know that that's necessarily a problem.

24 If someone's searching for an accessory to find cases,

25 then those sorts of things for that phone could be

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1 useful.

2 Q. Just from the red box at the top, it says they are

3 searching for — this is supposed to be a mobile phones.

4 A. I understand someone's searching for that, but if

5 they're clicking to sort price low to high, they might

6 be looking for accessories for that phone.

7 Q. On to the next page {M3/498/12}.

8 This is another example of the same thing. So it is

9 showing a TV which is apparently costing £11. That does

10 not look right, does it?

11 A. I don't know whether it was, like, an accessory or

12 something else.

13 Q. Could we go on to {M3/498/13}, an example a camera

14 search. Items which are not cameras are the cheapest

15 items?

16 A. I'm noticing that people are clicking to sort by price

17 low to high. Typically Google would say things that

18 match the words that the user typed and then you're

19 sorting by price. So that could be why Google was

20 sorting by relevance first, showing what it thought was

21 best.

22 Q. Go on to {M3/498/15} in this.

23 These are the reviews being displayed on Google's

24 CSS prior to August. So this screenshot is August 2010.

25 These reviews are all copied across from Amazon, are

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1 they not?

2 A. That appears to be what the screenshot shows. Again,

3 I'm not — I didn't participate in Google Product Search

4 or Froogle development, so ...

5 Q. {M3/498/16}, again showing the reviews being lifted from

6 Amazon?

7 A. It's interesting, Foundem did feature user reviews,

8 because I don't recollect seeing that many user reviews

9 on Foundem.

10 THE CHAIRMAN: This is not Foundem, is it?

11 A. Right, I'm just reading the third bullet point.

12 THE CHAIRMAN: (Overspeaking — inaudible).

13 A. I certainly never found any of those user reviews

14 whenever I was evaluating the site.

15 MR WEST: But the overall point is that, Mr Cutts, when you

16 were making these decisions about whether Foundem's CSS

17 met your requirements, at no stage did you ask yourself

18 whether those same requirements would have been met if

19 applied to Google's CSS?

20 A. I was asking myself: does this site add sufficient value

21 for users or would users be happy or would users be

22 annoyed if they found this site?

23 Q. I think your answer to my question is yes?

24 A. I was not concerned about what Google's shopping results

25 were doing, I was concerned about whether the web search

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1 results were adding value for users, in my opinion.

2 Q. The example you give of a high quality CSS, in

3 paragraph 129, is a site called MySimon; do you recall

4 that?

5 A. I do.

6 Q. Could we look at {M1/92}.

7 At the bottom, from Adam Lasnik to Evan Martin:

8 " ... the drop overall is the result of an

9 algorithmic, not [a] manual adjustment ...

10 " ... I keep a pretty close eye on these sort of

11 things and — while you're right that Cody as [redacted]

12 can sometimes be overly aggressive on specific

13 domains — I don't believe this particular instance

14 indicates a bug ... I'll often ... check for 'original

15 and compelling content' ... grab some snippets of

16 text ...

17 "In the case of MySimon, not one of the ... snippets

18 was original. The exact same product descriptions are

19 on Cnet ... Amazon.com, Shopzilla, Nextag, etc."

20 So in fact, the same issues you say arose on

21 Foundem.com were also found on MySimon were they not?

22 A. The Algorithm A could have also triggered on MySimon for

23 some parts of MySimon. I don't know — I don't have any

24 data to say one way or the other. My statement was that

25 I believed MySimon was a higher quality site than

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1 Foundem.
 2 Q. It had the same problems that you complain about, did it
 3 not?
 4 A. I don't know the degree to which Algorithm A affected
 5 MySimon, what the multiplier —
 6 Q. You do not know the degree to which Algorithm A affected
 7 the site which you say was a good comparator whereas
 8 Foundem was a poor one?
 9 A. I do not know the degree to which Algorithm A affected
 10 MySimon.
 11 Q. Foundem, as we have seen, had many important commercial
 12 partnerships with publishers like Bauer, IPC Media,
 13 Channel 5. Those were major publishers in the UK, are
 14 they not?
 15 A. I believe so. Could you give me the list again?
 16 Q. Bauer or IPC Media or Channel 5.
 17 A. Was Bauer the motorcycle parts place?
 18 Q. Amongst others, I believe.
 19 A. Okay, so I don't know if that's UK-specific or not, but
 20 certainly some of the other ones are.
 21 Q. Foundem was supplying these partners with
 22 comparison shopping functionality on their websites,
 23 that is what it was doing. Were you aware of that?
 24 A. I believe that was in the correspondence that Foundem
 25 sent.

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1 Q. We have seen many other testimonials and prizes Foundem
 2 had obtained and press coverage, as I say, Sunday Times
 3 website of the week or the best CSS in the UK by The
 4 Gadget Show. That is important objective evidence, is
 5 it not, of the quality of Foundem's site?
 6 A. I think it's important to always take the source into
 7 account. So I think I mentioned sites like BBC, and
 8 then it's always on a relative spectrum.
 9 Q. Sunday Times?
 10 A. Some of the sites that were mentioned earlier, for
 11 example, were partners, I believe, so if there was
 12 a business relationship with, say, Bauer, it wouldn't
 13 mean as much to me if the company was then also powering
 14 search for Bauer.
 15 Q. Google has added into the bundle for this trial
 16 significant quantities of negative feedback on Foundem,
 17 but in fact Foundem's site also received significant
 18 positive feedback. Can we just look at one or two
 19 examples {M3/491}. For example, number 48. Go through
 20 to 48 {M3/491/3}:
 21 "Thanks so much your filtering and price comparing
 22 services are brilliant !! Thank you, you have really
 23 helped."
 24 77 {M3/491/5}:
 25 "Very clear information, just what is needed. Good

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1 graphical presentation."
 2 Down on the same page, 83:
 3 "Used your site for the first time today, I spent
 4 [£]260 on 3 items that all together would have cost me
 5 [£]300 on the high street. First rate site. Thanks
 6 a lot."
 7 103 {M3/491/6}:
 8 "... well laid out site that give you facts on what
 9 im searching for to get the best price. so much easier
 10 to use then other comparison sights."
 11 106, another example {M3/491/7}:
 12 "Just seen your site come top of the comparison
 13 sites on Channel 5's Gadget Show, I thought I would give
 14 you a go ...
 15 "Only one thing to say ...
 16 "I wont be using any other site again !! your's is
 17 brilliant , please keep up the great work."
 18 The point is that no spam site would generate
 19 feedback of that kind, would it?
 20 A. Could you go back to page 1? {M3/491/1}. So I haven't
 21 seen this document, I don't know what this data is,
 22 I don't know whether it's every single comment that was
 23 received —
 24 Q. It is positive feedback. It is a collection of positive
 25 feedback.

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1 A. I don't know if it's all the feedback or only
 2 the positive —
 3 THE CHAIRMAN: No, it is not all the feedback. What has
 4 happened is, for what it is worth, Google has compiled
 5 from all the feedback that Foundem got, as I understand
 6 it, a schedule of some of the negative feedback —
 7 A. Okay.
 8 THE CHAIRMAN: — and then Foundem has prepared a schedule
 9 of positive feedback.
 10 A. I see.
 11 THE CHAIRMAN: So it is certainly not the totality or
 12 indeed —
 13 A. A representative sample.
 14 THE CHAIRMAN: — necessarily a representative sample, I do
 15 not think.
 16 A. The other thing I'm just noticing —
 17 THE CHAIRMAN: It is examples.
 18 A. The other thing I'm just noticing is the dates. So on
 19 page 1, 2006 to 2006, supposedly January 5, or maybe
 20 May 1. So this is about 12 pieces of positive feedback
 21 for all of 2006, which is pretty sparse. So I don't
 22 know how much — how much data was — was making its way
 23 in this way.
 24 MR WEST: Well, Foundem was, of course, penalised from
 25 June 2006.

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1 A. So I'm just saying if you're trying to show all
 2 the positive comments, it's important to also not just
 3 get a representative sample, so you know the positive
 4 and the negative, but also the rate at which you're
 5 getting positive — if you only get 12 compliments over
 6 six months or even a year, then I would, you know, take
 7 that into account.

8 MS ROSE: Was Foundem up and running in January 2006?
 9 A. I thought they said they'd launched some pages in 2025
 10 [sic].

11 MR WEST: (Overspeaking — inaudible) stages beginning in
 12 late '05.

13 A. Because it looks like the first entry is day and
 14 the second is month. So for the year of 2006, they're
 15 — they're saying there are 12 positive comments.

16 Q. Again, Google has not carried out any sort of
 17 statistical analysis of feedback to different CSSs to
 18 see if Foundem was better or worse?

19 A. Just — just to reiterate, Algorithm A, the whole idea
 20 was to assess whether a site was good or not and then
 21 every time feedback came to our email box, we were
 22 evaluating to see whether we thought the algorithm was
 23 working as intended.

24 Q. In fact, all of Google's criticisms of Foundem's site
 25 are just anecdotal, are they not, Mr Cutts?

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1 A. Sorry, can you go to {M3/491/2} of this? Oh no, this
 2 goes to 2007. Okay, so 12 positive comments through all
 3 of 2006. I mean, to me, that seems anecdotal as well.
 4 I think if you get enough data from enough users about
 5 how they behave, you can start to reach a consensus on
 6 whether a site is good or not.

7 Q. The point is Google is saying that Foundem was worse
 8 than others, but you have produced no evidence about
 9 that, all you have is criticisms of Foundem, but no
 10 comparison of whether other sites were better or worse?

11 A. I think I've answered that question before, which is to
 12 say, when I was evaluating the site, I was slotting it
 13 into my mental model of hundreds of sites. Like, I used
 14 to go to 40 different search conferences and people
 15 would pay hundreds of dollars to do these site review
 16 panels and they'd put the site in front of you and I'd
 17 give feedback live so that people could see what was
 18 good or bad about their site. So not majority, but
 19 a substantial fraction of my job was evaluating sites,
 20 and so I would argue that when I was evaluating Foundem,
 21 it wasn't strictly anecdotal, it was fitting in
 22 the experience that I'd had since 2000 of evaluating
 23 sites.

24 Q. It was limited to your impressions as someone who is not
 25 an expert on comparison shopping?

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1 A. Ultimately, it was the algorithm and then myself and
 2 Cody Kwok deciding whether to gainsay the algorithm.
 3 Other people, of course, as you've seen, had feedback
 4 and we listened to that feedback and took it into
 5 account, but it was ultimately our decision.

6 Q. In fact, the things you told us yesterday make a good
 7 CSS, the quality of its algorithms, the presentation of
 8 its results, none of that featured in your reviews that
 9 you have been discussing?

10 A. Could you repeat the question?

11 Q. The things that you told us make a good quality CSS,
 12 like the power of its algorithms, its ability to get
 13 the user results it wishes to see, those did not feature
 14 in your reviews of Foundem's site?

15 A. I think I was implicitly taking into account all
 16 the different factors as I was looking at it. My
 17 assessment was fundamentally: is this good for users or
 18 will users be annoyed if they get this site in their
 19 search results.

20 Q. In your statement you refer to a screenshot of a mobile
 21 phone results page, at paragraph 132(m). That
 22 screenshot was then used by Google in a presentation to
 23 regulators and journalists and Mr Raff was asked
 24 about it. Could we look at {M3/496}. 496, I am being
 25 told. Yes.

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1 So if you look over the page {M3/496/2}, we see this
 2 is a presentation given by — on behalf of Google to
 3 regulators and journalists, and it refers to a mobile
 4 phone screenshot at {M3/496/5}.

5 It is headed again:
 6 "Downgrading Bad Sites."
 7 "Foundem."
 8 "Duplicate content: the description of this one
 9 phone is repeated 15 times on this one page and 130
 10 times total in the search results."

11 So this was again given as another example of
 12 Foundem's alleged poor quality.

13 But if one looks closely at page 5 {M3/496/5} —
 14 I do not know if one can zoom in — one sees that these
 15 offers are not in fact the same. The first one we see
 16 is "Samsung Silver Tocco Lite" on T—Mobile, with texts
 17 300 and an 18—month contract.

18 The next one is "Samsung Silver Tocco Lite" on
 19 T—Mobile, texts 180, I think that says, with an 18—month
 20 contract.

21 The next one is "Samsung Silver Tocco Lite" on
 22 Vodafone, "Your Plan", 300 mobile internet with
 23 a 24—month contract.

24 The next one is "Samsung Silver Tocco Lite" on
 25 Vodafone, "Your Plan", 120, it looks like, texts, plus

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1 mobile internet with a 24-month contract.
 2 This is not in fact duplicate content, is it,
 3 Mr Cutts?
 4 A. It's quite a lot of duplicate content. If you look at
 5 the description, it says — I can't read it when it's
 6 this small, but the part that's duplicate is the vast
 7 majority of the text, "The Samsung Tocco Lite is a touch
 8 screen phone with a focus on fun ...", blah blah blah.
 9 That entire paragraph is duplicate, and — I hope it's
 10 okay to watch the live stream, right? I was watching
 11 whenever compare prices, CompareStorePrices.co.uk was
 12 put to Mr Raff, I assume I'm allowed to watch that part?
 13 THE CHAIRMAN: Yes.
 14 A. It was interesting to see the different intuitions,
 15 because it sounded like Mr Raff said, "Oh, you only see
 16 the description once, that's so annoying", where, in my
 17 experience, users really respond negatively to seeing
 18 the same large paragraph of text repeated over and over
 19 and over and over again. So it was fascinating to me to
 20 see the screenshot being showed of
 21 CompareStorePrices.co.uk and I saw icons for RSS feeds
 22 and other things that looked like they were adding value
 23 for me, and yet Mr Raff seemed to be saying: no,
 24 the right way to do this is to show this content over
 25 and over and over and over again.

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1 Now, I do not dispute that the number of minutes
 2 might vary from 300 to 100, but the paragraph of,
 3 "The Samsung Tocco Lite is a touch screen phone with
 4 a focus on fun, the 3.0 inch display offers a great user
 5 experience with added features, such as handwriting
 6 recognition, an accelerometer to rotate the screen,
 7 the phone spec number has a great 3.15 megapixel camera
 8 with face detection and video capture, save your snaps
 9 on the phone or use a memory card thanks to expandable
 10 memory and listen."
 11 That exact same text appears over and over, and it's
 12 not just 15 times that it's on one page, eventually
 13 the page gets truncated, so it's 130 copies of that
 14 paragraph of text, and in my experience, users don't
 15 want to see that much duplication.
 16 PROFESSOR SMITH: Is this not this, the striking thing about
 17 this page is that it is answering what to a typical user
 18 is an uninteresting question, because what is being
 19 advertised here are mobile phone contracts which come
 20 with a free phone?
 21 A. Right.
 22 PROFESSOR SMITH: If I were searching for that, I would not
 23 care about the duplicate content, I would care about the
 24 fact that the relevant information is partially
 25 unreadable, I mean, in the sense that it does not tell

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1 you what these 18-month contracts cost, and the relevant
 2 information of the price, well, I know these are — I am
 3 comparing zero price contracts. So it seemed to me an
 4 odd criticism of Foundem, when there is a much stronger
 5 one here, to be focusing on —
 6 A. If I recall correctly — and it was 17 or however
 7 many years ago — I believe the presentation that I did
 8 for the European Commission, which might be in
 9 the documents, started with a search for just a phone.
 10 So my mental model was, okay, you search for this phone,
 11 and now you're seeing all of the different contracts.
 12 But 90% of the actual words you're seeing are the same
 13 things repeated over and over and over again. That's
 14 why we call it "cookie cutter" or "duplicate content".
 15 MS ROSE: If you were searching for contracts, what you
 16 would really want would be able to say number of months,
 17 number of minutes —
 18 A. Yeah, phone plan.
 19 MS ROSE: — number of texts, and then get a series of
 20 offers.
 21 A. Right, exactly.
 22 MS ROSE: But this does not do that either.
 23 A. No, not that I saw. So in my experience just searching
 24 for the phone got you, you know, trivial differences,
 25 pink versus — or, no, these are all silver, all of

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1 these are silver, so ...
 2 To me, the interesting thing is I think that was one
 3 of the reasons we would invite Foundem to have used
 4 the public support mechanism, our official support
 5 mechanism, because they could get that kind of feedback
 6 and I'm sure we'll cover it, but whenever The Guardian
 7 writes about Foundem and you get to see in the court of
 8 public opinion what users have to say in the comments,
 9 I think, for me, that was where I started to square
 10 between Foundem's opinion of Foundem and our assessment
 11 of Foundem.
 12 MR WEST: What I suggest to you with mobile phones is that
 13 because there are so many different packages available,
 14 that is why there are so many different options to
 15 choose from.
 16 A. Going back to earlier, it seemed as though Foundem's
 17 philosophy was show as much information as possible. We
 18 have, you know, 130 possible results, show them all. In
 19 my experience, that's — users seeing that sort of thing
 20 over and over and over and over and over again, 130
 21 times, is not what users were looking for.
 22 Q. Could we go to the next slide {M3/496/6}.
 23 This shows a problem with mobile phone examples
 24 simply because there are so many different options to
 25 choose from.

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1 If we then go forward to {M3/496/8}, we can see what
 2 was omitted from what Google showed the Commission,
 3 which is all of the filters down the left-hand side, for
 4 example, by reference to the seller or the mobile
 5 network, and indeed —
 6 MS ROSE: Can we see these filters in a way that is legible?
 7 THE CHAIRMAN: Legible.
 8 MR WEST: So this precisely enables the user to select by
 9 reference to the number of texts included, the number
 10 of minutes, the network, the colour. That will
 11 automatically narrow this down to precisely what
 12 the users are looking for, and you omitted to show that
 13 in the text — the screenshot that you presented, as
 14 I showed earlier.
 15 A. I don't remember why I chose the cell phone example, but
 16 if you saw in the 2008 rebuttal to Udi, I clicked around
 17 and I think probably used some text that belonged to
 18 abra. I was on a phone call with Foundem in 2009, and
 19 they were saying I think I started with iPod, because
 20 that was a popular accessory, and they said, "Okay,
 21 well, let's — where we're really good is motorcycle
 22 helmets and parts", and I said, "Okay, let's look at
 23 motorcycle parts" and so there were 4,000 plus results
 24 for a particular phrase.
 25 So, again, for me, search is a zero sum situation.

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1 You know, if Foundem is to rank higher, then somebody
 2 else must rank lower, and so my assessment was why
 3 should this site rank higher than the other 4,000 sites
 4 for that particular phrase. So, in my experience,
 5 Foundem, in many cases, were saying, "We are really good
 6 at motorcycle parts", and so that was one of — one of
 7 the examples that might show up later.
 8 Q. Mr Cutts, it is not simply a question of whether Foundem
 9 should rank higher or lower than some other site, it is
 10 whether Foundem should be excluded from the part of
 11 the results that users look at.
 12 A. I think, for me, it turns into the same question. It's
 13 fundamentally: what are the sites that are best to show
 14 users? We have to make that decision, or Google had to
 15 make that decision billions of times a day, and we were
 16 looking for signals of value-add, and confidentially,
 17 Algorithm A was looking for signals of —
 18 THE CHAIRMAN: Well, if it is confidential ... we know —
 19 A. Yes.
 20 THE CHAIRMAN: I think we get the point you are making.
 21 A. Yes, proxies for quality.
 22 THE CHAIRMAN: Proxies for value basically is what you mean.
 23 MR WEST: If we go on in this document to the next page.
 24 Sorry, keep going. {M3/496/11}.
 25 This is a shopping results page for a search of

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1 the Samsung Tocco Lite silver. One sees, does one not
 2 precisely the point you are (inaudible)?
 3 A. I completely disagree. You see four things that are
 4 the same, but you see diversity of results as opposed to
 5 130 identical paragraphs describing the phone.
 6 Q. The same paragraph about the Tocco Lite?
 7 A. The paragraph — so one thing that Google did was we
 8 computed snippets dynamically for web search results,
 9 which means you take the user's query and you try to
 10 highlight the part of the document that is most relevant
 11 to what these are typed. It's a lot of extra work but
 12 it actually makes things much more useful for the user
 13 because it highlights the part of the document that
 14 includes what they were searching for. So in this case,
 15 Google is computing snippets. Rather than repeating an
 16 entire four-line paragraph, Google has, you know, cut it
 17 off after a time such that it doesn't flow duplicate,
 18 duplicate, duplicate, with an entire paragraph, and in
 19 fact, I don't know the exact provenance of this, but you
 20 see it says 3 megapixel as opposed to 3.15 megapixel.
 21 So those kinds of snippets and snippet quality do
 22 matter. You don't want to just regurgitate raw text,
 23 because that's not as helpful for users.
 24 Q. The same raw text does appear in the red boxes, does it
 25 not?

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1 A. For those four results, but there's other text and more
 2 diversity on the other parts of the page.
 3 Q. I suggest to you, Mr Cutts, that you are applying rather
 4 different standards to Foundem than you are to your own
 5 service.
 6 A. I'm just noting my observations about the examples that
 7 you've selected.
 8 Q. Can we go back to the chronology.
 9 After Mr Lasnik's email, Foundem discussed its case
 10 with a number of news organisations including
 11 The Guardian newspaper, which approached Google with
 12 a number of enquiries. We can see that at {J2A/2}.
 13 The enquiries start at {J2A/2/2}.
 14 This is an enquiry from Mr Wray and it covered both
 15 AdWords and search. One sees the questions towards
 16 the bottom of page 2:
 17 "Has Google developed an algorithm that detects
 18 vertical search services which would lead to their being
 19 penalised by AdWords? If so, why?
 20 "If your answer is no, why did Fred Vallayes inform
 21 Foundem representatives that Google has developed such
 22 technology, and Foundem would need to have their domain
 23 manually added to a configuration file in order to
 24 render them immune from the penalty?
 25 "Does a white list for AdWords exist? If it does,

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1 why does Google think vertical search companies should
 2 not be allowed to advertise through its service, or have
 3 their cost per click set so high that effectively they
 4 are priced out ... "
 5 {J2A/2/3}:
 6 "What was the change made in ... 2006 to Google's
 7 natural search technology that saw a host of websites
 8 vanish from search listings ... "
 9 "5. Did Google introduce filtering technology
 10 designed to spot and exclude vertical search services
 11 around this time?
 12 "If your ... answer is no, why did Adam Lasnik tell
 13 a Foundem representative (over, I believe, a beer)
 14 earlier this year what Google does, in fact, have
 15 vertical search—targeted penalties in search results and
 16 once you have been penalised you will need manual
 17 intervention to escape the 'sin bin'?
 18 "Does a white list for vertical search/price
 19 comparison sites exist?"
 20 In my submission, Google had developed an algorithm
 21 designed to spot and exclude vertical search services in
 22 the form of Algorithm A. That is the position, is it
 23 not?
 24 A. I disagree. Google tried to target affiliate spam.
 25 Some of comparison shopping services might have been

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1 classified that way, but we were not trying to do that
 2 with Algorithm A.
 3 Q. I remind you of your response to Foundem's appeal in
 4 '06:
 5 "Other search engines aren't always what we want to
 6 return." [As read]
 7 A. Pardon.
 8 Q. We looked at it yesterday, your response to Foundem's
 9 appeal in '06:
 10 "Other search engines aren't always what we want to
 11 return." [As read]
 12 Mr Kwok's response we saw earlier, "We don't care
 13 for random price comparison sites." [As read]
 14 A. Mr Kwok was commenting in the context of criticisms or
 15 questions about how Algorithm A worked.
 16 Q. Algorithm A tended to demote price comparison sites, as
 17 the Commission held?
 18 A. The Commission has held that.
 19 Q. So the answer is Google had introduced such an
 20 algorithm, had it not?
 21 A. I disagree. If you go back to the design doc, you can
 22 see what we were trying to catch. It mentions malware,
 23 it mentions travel, it mentions all kinds of other spam.
 24 Q. There was a whitelist for that algorithm. Foundem could
 25 have been whitelisted from it, although so far you have

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1 decided not to do so; that is right, is it not?
 2 A. There was an exception list for Algorithm A.
 3 Q. As we saw yesterday, Algorithm A then fed into —
 4 THE CHAIRMAN: Just a moment.
 5 MR WEST: Sorry.
 6 THE CHAIRMAN: So there was an exception list for
 7 Algorithm A?
 8 A. Yes.
 9 THE CHAIRMAN: Okay. That is something different from
 10 the saving rules within stage 2 of Algorithm A? This
 11 was an actual exception list?
 12 A. So Algorithm A —
 13 MR MCGURK: Can we be careful here again —
 14 A. Yeah.
 15 MR MCGURK: — we are not in closed.
 16 THE CHAIRMAN: Right, but is the fact that there is an
 17 exception list, is that —
 18 MR MCGURK: It is not that point that I was raising.
 19 THE CHAIRMAN: No, right. Well, we know how Algorithm A
 20 works.
 21 A. I would have —
 22 THE CHAIRMAN: Assume Algorithm A caught something for
 23 whatever reason, then there was an exception list?
 24 A. There was an exception list for Algorithm A.
 25 THE CHAIRMAN: Was that something you were involved in

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1 deciding whether something met the exception?
 2 A. In this particular case, eventually I asked Cody to add
 3 Foundem to the exception list, but Cody was
 4 the maintainer, he was the person who maybe added,
 5 I don't know, 10 or 15, 15 or 20 results over
 6 six months, per six months that it landed, for example.
 7 THE CHAIRMAN: Okay, primarily him, but in this case you got
 8 involved?
 9 A. Correct.
 10 MS ROSE: But, generally, you would not respond to requests
 11 for reconsideration in relation to the operation of
 12 Algorithm A?
 13 A. No, reconsideration requests —
 14 MS ROSE: So how do you get on the exception list?
 15 A. If Cody found them through whatever means, you know,
 16 evaluations, bug reports, his own research. In all
 17 cases, the goal would be to improve and iterate on
 18 Algorithm A to make it such that exception — an
 19 exception list would not be necessary, but, you know, if
 20 you're trying to sort all the grains of sand on a beach
 21 and you're 99.99% right, but you still don't handle it
 22 correctly in some cases, I think we saw an example with
 23 a sub-domain of Experian.com, for example, Cody did have
 24 the ability to say: even though all the signals look
 25 this particular way, we haven't found a way to validate

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1 or verify that this is a good site, therefore put it
 2 into an exception list .
 3 THE CHAIRMAN: You have got a procedure of reconsideration
 4 requests for manual demotions?
 5 A. Only for manual, not for algorithmic, so they would have
 6 to have come in from, you know, press reports, Twitter,
 7 bug reports, but there was no formal channel to request
 8 that.
 9 MR WEST: As we saw — sorry.
 10 THE CHAIRMAN: So it was a bit either haphazard or you would
 11 have to be very persistent, like Foundem was?
 12 A. Persistence would definitely be one tactic that would
 13 work. In general, you know, the engineer in charge of
 14 an algorithm would be paying attention to what worked,
 15 what didn't work, taking, you know, reports from within
 16 the company, keeping an eye themselves to see if it was
 17 working as intended.
 18 PROFESSOR SMITH: Would the engineer look back at
 19 the exception list and do the reverse of what you have
 20 done, you have got a site that is appealing against
 21 essentially not being on the whitelist and you look at
 22 it and your subjective evaluation is that the algorithm
 23 is getting it right, it is sending you the wrong signals
 24 about the sorts of things that are in the algorithm.
 25 But the conversion, I always get type 1 and type 2

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1 errors confused —
 2 A. Me too.
 3 PROFESSOR SMITH: — but the converse would be that you
 4 would want to look at the sites on the whitelist and
 5 make sure that you were not letting things off, that the
 6 algorithm was right?
 7 A. Yeah, in an ideal world, absolutely.
 8 PROFESSOR SMITH: Did that happen?
 9 A. I don't know. In practice, that list was very small.
 10 The only one that I was aware of being — the only site
 11 that I recollect being added to the exception list was
 12 Foundem.
 13 PROFESSOR SMITH: But you have no recollection of sites
 14 being removed from the exception?
 15 A. I don't have a recollection of that.
 16 MS ROSE: I think Shopping.com was also —
 17 A. It could have been. I don't — I don't recall, sorry.
 18 MR WEST: As we saw yesterday, the Algorithm A penalty
 19 tended to be carried over and become an LPQ penalty
 20 within AdWords as happened to Foundem.
 21 A. You know, I don't know whether we want to get back and
 22 forth on penalty, but the algorithmic assessment that
 23 a site was bad could have flowed through to the landing
 24 page quality score on the AdWords side.
 25 Q. There was a whitelist from that as well, was there not?

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1 A. There was a whitelist on the AdWords side that didn't
 2 make its way back to, we tried to have a church versus
 3 state distinction on ads.
 4 THE CHAIRMAN: So was it a one-way traffic?
 5 A. Yeah, we —
 6 THE CHAIRMAN: AdWords was not —
 7 A. The earliest misconception that I saw was if you buy
 8 Google ads, your rankings will go up; and then some
 9 people thought if you buy Google ads, your rankings will
 10 go down. I always wished the two conspiracy theorists
 11 would get in the same room and fight it out and arm
 12 wrestle, and then I don't have to debunk one of those.
 13 But that's why I became "Google Guy", I posted on
 14 a forum to dispel those sorts of misconceptions. We
 15 tried to keep the ads — to the point of being in
 16 a separate building and not even really using the same
 17 infrastructure, we really didn't talk to the ads folks
 18 very much at all.
 19 MS ROSE: But they are essentially selling stock?
 20 A. Correct.
 21 MS ROSE: So their incentives for putting people on
 22 a whitelist are different from yours?
 23 A. Yes.
 24 MR WEST: Sorry, I have just got a bad reference.
 25 This email was forwarded on to various people

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1 including yourself; do you recall that?
 2 A. I do.
 3 Q. Sorry, I have just lost my reference for that.
 4 Sorry, it is the same document, but earlier on, so
 5 page 1 of that.
 6 At the bottom {J2A/2/1}, we can see it has been
 7 forwarded to you, amongst others, by Mr Barron.
 8 So Mr Barron was a public relations comms person?
 9 A. I think he might have been a public affairs person, but
 10 either public affairs or public relations. I think more
 11 public affairs, though.
 12 Q. It says:
 13 "Hi."
 14 Then over the page {J2A/2/2}:
 15 "We've had an aggressive enquiry from the UK's
 16 Guardian newspaper ... which appears to be heading for
 17 a big piece for Monday alleging that Google is
 18 suppressing competition in vertical search.
 19 The allegations centre on a price comparison site called
 20 Foundem which claims that it has been unfairly treated
 21 by Google over a number of years. I have spoken to
 22 the journalist this morning about our general approach
 23 to vertical search and stressed that these are serious
 24 and unfounded allegations, but the piece seems likely to
 25 go ahead.

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1 "The plan:
 2 "Seek information from Matt Cutts and the Googlers
 3 mentioned in the enquiry, Fred Vallayes and Adam Lasnik,
 4 on the status of the relationship with Foundem."
 5 Then various other plans and action points are
 6 mentioned.
 7 We can see the answers that were provided by
 8 Mr Barron following that process at tab 29 of — I was
 9 going to say J2B too, it's possibly (inaudible).
 10 {J2B/29}.

11 They are quite lengthy answers. We see, beginning
 12 at the bottom of the page, from Mr Barron to Mr Wray at
 13 The Guardian:
 14 "Further to your email to me dated 15 July ... and
 15 our subsequent telephone conversation, I am now in
 16 a position to respond to the queries you have raised ...
 17 "Your email and the questions contained within raise
 18 concerns that you may be considering publishing material
 19 suggesting Google is dishonest in the way in which it
 20 deals with vertical search/price comparison websites and
 21 that Google is deliberately suppressing competition and
 22 consumer choice. Any such allegation would be entirely
 23 inaccurate and likely to damage Google's reputation and
 24 cause it to suffer loss and damage."
 25 So a clear indication there of Google reserving

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1 the right to bring legal action arising out of this?
 2 A. I think I didn't appreciate until I was reviewing for
 3 this case the degree to which I thought the questions
 4 might have been crafted with Foundem. You see specific
 5 mentions of Fred Vallayes and stuff like that. There's
 6 questions about whether we used China filtering
 7 technology, there's questions about specific sites, like
 8 MoneySuperMarket, GoCompare. So I think Foundem was
 9 trying to pick the time and the place and the manner in
 10 which it tried its case in the court of public opinion,
 11 and I don't begrudge Foundem doing that, but I think
 12 Google was trying to put The Guardian on notice that,
 13 you know, it thought some of these questions were —
 14 were unhelpful or misguided and that Google reserved
 15 the right to respond appropriately, in its — in its
 16 perspective.
 17 Q. Go two paragraphs down:
 18 "We hope this is helpful. Please note that if
 19 the story is published, we will review it carefully.
 20 You will understand that I must reserve all of Google's
 21 rights of action in the event that, notwithstanding
 22 the comments made above, you publish inaccurate or
 23 defamatory statements ..."
 24 Again another clear statement of intent there by
 25 Google?

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1 A. I think at the point where there's allegations that
 2 Google is applying China filtering technology, you know,
 3 to search engines and things like that, Google is
 4 saying, "We reserve the right to take action if we think
 5 that there's something that's not true".
 6 Q. Then —
 7 THE CHAIRMAN: (Off microphone — inaudible) — I do not know
 8 if these are questions for this witness, but is this
 9 really relevant?
 10 MR WEST: It is background to the other penalties which we
 11 are going to get on to shortly. I will try to take it
 12 quite quickly.
 13 THE CHAIRMAN: I mean', we know this was set out, that this
 14 happened, that this exchange took place, and there it
 15 is, that they responded, yes, they warned, we reserve
 16 our right to take libel proceedings, and what can
 17 the witness add to that? There is nothing suspect about
 18 that.
 19 MR WEST: Can we perhaps just look at the specific answers
 20 to the question.
 21 Question 5 on {J2B/29/4}.

22 A. So you're skipping over the answer to 3?
 23 Q. That is AdWords, so it is slightly less relevant. Come
 24 back to that if you like.
 25 A. I just, I thought if we went back to the answer on 3 ...

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1 Q. Okay, we can look at 3.
 2 A. Which would be maybe page — sorry, not page 3 but —
 3 THE CHAIRMAN: (Inaudible).
 4 A. Yes, yes, page 2, thank you {J2B/29/2}.

5 So to your point about typos and how serious typos
 6 were, evidence of automated site scraping:
 7 "From the Lego fire station page, consider 'Oh no
 8 €™thereas a fire in Lego Ville!' and 'The €™truckas
 9 ladder extends'."
 10 They're not actually saying with apostrophe. So
 11 this is where data is coming from another source and
 12 no one's done the due diligence to actually clean it up.
 13 So, for me, this is as — as someone who has assessed
 14 many, many sites, that's kind of, like, applying to win
 15 a prize for gardening without mowing your lawn, you're
 16 not doing the table stakes to improve the quality of
 17 the data that you've gotten.
 18 MS ROSE: Why did you say that there was no whitelist for
 19 AdWords?
 20 A. I don't — I wasn't involved in the answer on
 21 the AdWords side, so I don't know what ...
 22 THE CHAIRMAN: That is not right, is it? It is not correct.
 23 A. I don't know if they interpreted it as an overall
 24 whitelist, a whitelist on — mainly on page quality.
 25 I don't know what that was about.

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1 THE CHAIRMAN: (Off microphone) There was a whitelist for
 2 AdWords.
 3 MS ROSE: And it was called a whitelist.
 4 A. I'm not —
 5 MS ROSE: We have seen that.
 6 THE CHAIRMAN: We have seen that.
 7 A. I've seen the conversations, I don't know where it fit
 8 into the infrastructure on the AdWords side. I can't
 9 speak to the AdWords side, so ...
 10 MR WEST: If one then goes over to search on {J2B/29/4},
 11 question 7:
 12 "Does a whitelist for vertical search/price
 13 comparison sites exist?"
 14 It is:
 15 "On the record: No such list exists."
 16 (Off microphone — inaudible).
 17 A. I think "On background" we're saying:
 18 "... We depend on our algorithm to learn what makes
 19 ... good (and bad) site[s] ..."
 20 Which is true. There was an exception list for
 21 Algorithm A, but again, Algorithm A, we did not think of
 22 as vertical search price comparison sites, we thought of
 23 it as affiliate spam.
 24 Q. Come off it, Mr Cutts. There obviously was a whitelist
 25 for this algorithm, but you are telling The Guardian —

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1 well, not you personally, but Google is telling
 2 The Guardian that there was not?
 3 A. This was a —
 4 Q. You told the Tribunal that there was?
 5 A. Mr West, we were not trying to lie to a journalist,
 6 that's a very high risk endeavour.
 7 Q. Just going up to finish this point, question 5 at
 8 the top of this:
 9 "Did Google introduce filtering technology designed
 10 to spot and exclude vertical search services around this
 11 time?"
 12 Again, I submit to you the answer to that is yes —
 13 A. I disagree.
 14 Q. — (inaudible) the answer given.
 15 A. I disagree. We tried to target affiliate spam and we
 16 tried to target it starting in 2004.
 17 To your question, I think there was a mention of
 18 MoneySuperMarket earlier in the trial while I was
 19 watching the stream, and there was a question about it,
 20 question number 8, and I think on the next page we said
 21 that it had been spamming, it violated our guidelines
 22 and we took action on it. So we were admitting quite
 23 a bit of stuff off the record to this journalist.
 24 Q. As you said, the enquiry was in fact in part concerned
 25 specifically with Foundem and nowhere does it say to

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1 The Guardian that Foundem is subject to an Algorithm A
 2 penalty. It does not mention that anywhere, does it, in
 3 this response?
 4 A. The journalist asked us questions that Foundem crafted,
 5 as far as I could tell, that's speculation on my part,
 6 and we responded to the questions that the journalist
 7 asked.
 8 Q. This was then forwarded on to you, as we see in the same
 9 tab, {J2B/29/1}:
 10 "Hi Matt,
 11 "[This is] the response that's gone off to
 12 the Guardian this morning. I've offered an off
 13 the record briefing with you later today — could you let
 14 me know a time that would work for you ..."
 15 So you were aware at that time of the answers that
 16 had been provided to The Guardian and you discussed
 17 them, did you, with The Guardian journalist?
 18 A. I don't remember whether I discussed them. I don't
 19 recall. But I do believe I talked to Richard Wray off
 20 the record.
 21 Q. We can see the article as published at {J3L/2/2}.
 22 17 August 2009. You see the headline:
 23 "Search for answers to Google's power leaves UK
 24 internet firm baffled."
 25 That is Foundem, is it not?

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1 A. Yes.
 2 Q. There is no mention in the story, is there, of
 3 penalties?
 4 A. I'd need to read the whole article to say.
 5 Q. You must have read this before, Mr Cutts?
 6 A. I read it before, but I don't want to testify in court
 7 whether there's a mention of penalties without reading
 8 the whole article.
 9 Q. Or indeed whitelists?
 10 THE CHAIRMAN: Well, you — it will be pointed out if that
 11 is wrong. You can take it from counsel that there is
 12 not.
 13 What —
 14 A. Okay.
 15 THE CHAIRMAN: — apart from that, which you do not need to
 16 ask the witness, what is the actual question that you
 17 want to put to him?
 18 A. To me, the most decisive aspect of this article was
 19 seeing Foundem's perception of itself and our assessment
 20 of Foundem play out in the court of public opinion and
 21 to see the comments and what people said once they read
 22 the article. For me, that was the most interesting part
 23 of the entire go-around with The Guardian.
 24 MR WEST: In fact, what we now know had happened is that
 25 Foundem's site had been demoted since 2006 so as to be

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1 invisible on the part of Google's results that users
 2 actually looked at. That is what we know had in fact
 3 happened, is it not?
 4 A. Algorithm A did apply to Foundem starting in 2006.
 5 Q. That is what the Commission Decision held happened; that
 6 is right, is it not?
 7 A. I do not know that, but I am more than happy to
 8 stipulate that.
 9 Q. The Commission found that sites had been demoted by
 10 Algorithm A because they were CSSs — by reason of being
 11 CSSs?
 12 A. I don't think that's what — I thought they said sites
 13 with these characteristics were prone to being demoted,
 14 not that ...
 15 Q. In fact, this decision — this article is in 2009, which
 16 is 18 months into the infringement which Google was
 17 found to have committed by the Commission, is it not?
 18 A. If — if you say so. I don't know what — I think 2008
 19 was the Pre-Decision Period, but I don't know what all
 20 of that means legally, I'm sorry.
 21 To me the interesting aspect of it is if Foundem had
 22 taken advantage of our support mechanism by going to our
 23 public webmaster support channel in 2006, they could
 24 have gotten the constructive feedback that they got from
 25 the public comments two years earlier, or more than

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1 two years earlier.
 2 Q. We have been over that, Mr Cutts.
 3 MS ROSE: What constructive comments did they get arising
 4 out of this article?
 5 A. I think if you go through, you can — you can see quite
 6 a lot of comments.
 7 THE CHAIRMAN: In the article?
 8 A. In the reader comments beyond the article.
 9 THE CHAIRMAN: Beyond line?
 10 A. If we go a few pages down {J3L/2/5}:
 11 "Please do not use this example as an excuse to
 12 promote Bing ...
 13 "Why did nobody tell this couple that their idea
 14 wasn't that great, certainly wasn't original and would
 15 need a lot of money spent to make it work at all?
 16 Whilst government ... bang on about 'encouraging too
 17 many ...'
 18 You know, I don't want to disparage or cast
 19 aspersions, but you can see the feedback was telling and
 20 there was critical feedback.
 21 If you go to the next page {J3L/2/6}, there were
 22 something like 96 comments on this:
 23 "... 'surely we can find better examples than
 24 a tacky price comparison site to illustrate this'.
 25 "Yes. It is a shame that the Guardian has 'diluted'

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1 a serious story by using ... a (very) bad example."
 2 So, for me, again, the context was people were
 3 asking to have fewer selling sites, "Give me back my
 4 Google" was taking out these sites, like, that was
 5 a grass roots site that someone from England did, and
 6 then Foundem chose when and how and where to go public,
 7 and then the public responded.
 8 Q. The comments are no doubt in part a product of
 9 the nature of the article. If the article had explained
 10 what was actually happening as the Commission has now
 11 found it to be at this time —
 12 A. It was —
 13 Q. — one might expect the comments would have been rather
 14 different?
 15 A. It was interesting because I did a call with Foundem
 16 later, which I believe was recorded, and even though
 17 Foundem approached the journalist, seems to have crafted
 18 at least in part of the questions that were asked, when
 19 Google was a moderating effect and said — you know,
 20 reminded them we reserve the right to take action,
 21 the piece that came out — I forget if the founders of
 22 Foundem called that resulting Guardian article
 23 a "hatchet piece" or something like that, when they had
 24 approached the journalist to write it, so ... I don't
 25 know what to tell you.

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1 Q. We see how Google responded to this internally, if you
 2 look at {J2B/30}.
 3 In the middle from Peter Barron:
 4 "Here's the Guardian story I mentioned, which
 5 focuses on a disgruntled price comparison site Foundem.
 6 "...
 7 "Following the work we did with the journalist he
 8 has taken a lot of care not to make any allegations of
 9 wrongdoing and has not included the suggestion that we
 10 deliberately demote price comparison sites to stifle
 11 competition, which was his original contention.
 12 "The response from other journalists and commenters
 13 seems to be general bafflement that they have given so
 14 much space to a non-story ..."
 15 Then:
 16 "Thanks to Matt and Hal ..."
 17 So "Matt", that would be you, would it?
 18 A. I think you neglected to read the next quote.
 19 Q. "The response from other journalists and commenters
 20 seems to be of general bafflement that they have given
 21 so much space to a non-story — eg: 'No website has
 22 a given right to be on page one. You could have written
 23 this article about the other 100 million websites out
 24 there that appear for sweet F.A too'.
 25 So that is one of the comments, presumably?

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1 A. I think so.
 2 Q. "Thanks to Matt and Hal for their help in talking
 3 the journalist down from what could have been a very
 4 damaging piece."
 5 So "Matt" is you, presumably?
 6 A. I believe so.
 7 Q. "Hal", was that Mr Varian?
 8 A. Hal was an internal economist, who was a friend
 9 of Eric Schmidt's, and occasionally commented.
 10 PROFESSOR SMITH: He is Google's chief economist, or was for
 11 a long time?
 12 A. Yeah, I believe so.
 13 MR WEST: So according to this you, amongst others, have
 14 talked the journalist down from his original suggestion
 15 that Google deliberately demotes price comparison sites
 16 to stifle competition. In fact, that is exactly what
 17 you did, as the Commission found, at this precise time,
 18 is it not?
 19 A. From my perspective —
 20 THE CHAIRMAN: Well, they did not find that they
 21 deliberately —
 22 MR WEST: Sorry. Okay —
 23 THE CHAIRMAN: — demoted price comparison sites.
 24 MR WEST: — but your algorithm —
 25 THE CHAIRMAN: We know what they found.

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1 MR WEST: — demoted price comparison sites, whether
 2 deliberately or not?
 3 A. I was often called in to speak to journalists whenever
 4 journalists would have questions about a particular
 5 site, or the way that Google worked. So from my
 6 perspective, it wasn't talking the journalists down, it
 7 was trying to give them Google's perspective, trying to
 8 explain as best as I could the situation and Google's
 9 perspective on things.
 10 Q. Following this article, Foundem launched a site called
 11 Search Neutrality; do you recall that?
 12 A. I don't remember if it was something called "The Google
 13 Delusion". I don't know if it was — if those were
 14 related. I think they did also launch
 15 Search Neutrality, yes.
 16 Q. We can see an internal discussion of that within Google
 17 at {J2B/14}. There is a quote there from
 18 the Search Neutrality site:
 19 "Stifling Innovation and Eroding Consumer Choice.
 20 "Search engines are the undisputed gateway to
 21 the internet, and Google, with a 90% share of the search
 22 market ... and 72% in the US, wields unprecedented
 23 economic power. Google's own revenues last year
 24 exceeded \$21 billion, but this pales next to the
 25 hundreds of billions of dollars of other companies'

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1 revenues that Google controls indirectly through its
 2 search results and AdWords listings. Recently, it seems
 3 that Google has started quietly exercising this control
 4 in ways that can suppress competition, stifle innovation
 5 and erode consumer choice."
 6 The internal discussion:
 7 "Just fyi on this 'initiative' from a UK search
 8 company called Foundem when it makes its way to
 9 the IP list discussion is sure to follow."
 10 So it is clear, is it not, that although by this
 11 time we have had the Guardian article, Foundem is still
 12 not going away, is it?
 13 A. I think it's clear every time that Foundem engaged us,
 14 even though they might have felt like we were black box,
 15 we were discussing the situation and trying to assess
 16 what was going and whether our algorithm was acting
 17 appropriately.
 18 Q. On 12 October, Ms Raff was attending a conference which
 19 was also attended by Google's chief legal officer,
 20 Mr Drummond, and at this conference she spoke to
 21 a member of Google's UK PR team, Mr Rickman; were you
 22 aware of that?
 23 A. Only in reviewing documents for this case, at least —
 24 Q. Mr Rickman emailed Mr Barron and Mr House trying to set
 25 up a call, as we can see at {M1/283}.

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1 THE CHAIRMAN: M1/283. Thank you.
 2 MR WEST: This is Mr Rickman emailing Mr Barron and Mr House
 3 saying he spoke to Shivaun Raff:
 4 "After David Drummond's speech ...
 5 "She said she was concerned that Google's PR team
 6 thought Foundem were 'spammers and scrapers', having
 7 been told by a journalist that Peter described the site
 8 in those words.
 9 "Her main point was that she has never had any
 10 proper contact with anybody at Google on the search
 11 quality (not ads quality) side who can help sort out
 12 that you are ranking. She reiterated her belief that
 13 Google risks being seen in an anti-competitive light
 14 especially as Foundem is a British company staffed by
 15 engineers who are working on real technology to improve
 16 search (she mentioned several times that they have 2
 17 patents).
 18 "She said she wanted to make one last attempt to get
 19 in touch before taking further steps (when pressed she
 20 wouldn't say what these steps might be). She struck me
 21 as sincere."
 22 It is right, is it not, that by this stage no one
 23 from Google Search had ever spoken to anyone from
 24 Foundem?
 25 A. It depends on what you mean by "spoken", because of

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1 course, Adam Lasnik was corresponding with Foundem in
 2 2008.
 3 Q. Spoken in person, or on the telephone.
 4 A. I don't believe anyone in Search Quality talked to them
 5 on the telephone until I did, later this month, in 2009.
 6 Q. Mr Barron then asked you if you would speak to her, that
 7 is 284 of M1 {M1/284}:
 8 "Hi Matt."
 9 In the middle of the page:
 10 "The Foundem saga rumbles on, and they are now
 11 working with ICOMP (The Microsoft funded front) ..."
 12 We went through that yesterday:
 13 "... to accuse us of bad behaviour at err
 14 opportunity. It [seems] ... that we will blog about
 15 the whole affair, but I wonder whether it is worth one
 16 last effort to reach out to Foundem. See ... below
 17 about a recent encounter with their CEO."
 18 So where it refers there to "one last effort", in
 19 fact, as we said a minute ago, no one from Google had
 20 actually spoken in person to Foundem previously?
 21 A. Again, I believe we had communicated with Foundem. If
 22 you're defining "spoken" as only spoken on a telephone,
 23 as opposed to communicating by email, then ...
 24 Q. You agreed to talk:
 25 "I'm okay to say that I'd be willing to talk/email

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1 with her."
 2 Albeit with a "sigh" at the start; do you see that?
 3 A. Yes.
 4 Q. Mr Barron then emailed Ms Raff to set up this
 5 discussion, which is at {J2B/15}. That may have been
 6 moved to {M1/295}. We see that at page {M1/295/7}.
 7 A. The thing that I'm looking at right now, I just want to
 8 clarify one thing. Peter Barron introduced me as our
 9 "head of Search Quality", which would give me too much
 10 credit; I was the head of the Webspam team.
 11 Amit Singhal was my boss; he was the head of quality,
 12 so ...
 13 Q. Then the next email, I think, is {M1/285}. You have now
 14 made contact with Ms Raff:
 15 "Hi Matt,
 16 "I'm afraid I can't be on the call later — I hope
 17 that's ok with you. It's ... completely off the record
 18 ... She believes that although Foundem scrapes the
 19 content of other sites, the search technology involved
 20 should be recognised as of value and original — she'll
 21 say that Google effectively does the same.
 22 "She seems not unreasonable and genuine in her
 23 belief that Google is stifling innovation by
 24 disadvantaging smaller start-ups. She is very grateful
 25 for the contact, and will I think respond well to any

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1 advice or help we can give."
 2 So he understood the position to be that Foundem was
 3 alleging that Google do the same as Foundem do, and we
 4 have been through that, and that Google was stifling
 5 innovation?
 6 A. I believe he's saying that Shivaun Raff believed that.
 7 Q. Yes.
 8 A. Not that he believed that.
 9 Q. Yes.
 10 Your response is at {J3M/11}. You say, about
 11 a third of the way down:
 12 "I'll try, but fundamentally the need to reduce
 13 the disconnect between what they think of themselves and
 14 what regular people think of comparison shopping sites
 15 with affiliate feeds."
 16 So we see, again, your objection here was that
 17 Foundem was a comparison shopping site with an affiliate
 18 feed?
 19 A. That's a short, offhand characterisation. My primary
 20 point was there seemed to be a disconnect between how
 21 Foundem thought of itself and how regular people would
 22 think of Foundem, in my experience, putting on my user
 23 hat.
 24 Q. Mr Barron responds:
 25 "... I made that point ... on the phone — what we do

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1 is ... about the user experience ..."
 2 Then:
 3 "... we don't... don't want a long list of
 4 comparison sites.
 5 "She'll say we are favouring the big players and not
 6 allowing the little guys a look in."
 7 So that is, again, Mr Barron's understanding of
 8 Ms Raff's position.
 9 We see your answer at {M1/286}, where you say:
 10 "If that were true the first two results for
 11 [running shoes] would be nike.com, Asics, and other big
 12 companies instead of smaller sites."
 13 But that missed the point, did it not, Mr Cutts?
 14 Ms Raff was talking about the larger comparison shopping
 15 sites being allowed into the results and smaller ones
 16 being excluded?
 17 A. I can't see when my email was sent, because there's
 18 a "non-confidential". Can anybody tell me?
 19 MS ROSE: It is 15/10/2009.
 20 A. What time was my reply sent, can you tell me?
 21 MS ROSE: 11.40—something.
 22 A. Okay, so a short time later.
 23 MS ROSE: Am.
 24 A. Yeah.
 25 So Peter was trying to summarise Foundem's

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1 perspective and, you know, I was — I was responding
 2 that, you know, we don't always return the most
 3 prominent brands and big companies instead of smaller
 4 sites, that there's plenty of examples of smaller sites
 5 competing effectively on the web.
 6 MR WEST: You then spoke to Ms Raff on the telephone on
 7 15 October; that is right?
 8 A. I believe I spoke to both of the Raffs.
 9 Q. Both Mr and Mrs Raff, yes, sorry, I apologise.
 10 A transcript of that call — I do not suggest we
 11 look at all of it — has been located and added to
 12 the bundles at {M4/232}.
 13 MR MCGURK: Sorry, I think there needs to be a clarification
 14 here. The transcript "has been located". I think
 15 Mr West needs to explain how the transcript came about.
 16 THE CHAIRMAN: So it has not been disclosed before?
 17 MR WEST: Yes, it has.
 18 MR MCGURK: Three weeks ago.
 19 THE CHAIRMAN: Right.
 20 MS ROSE: Well, we heard about that.
 21 THE CHAIRMAN: Yes.
 22 MS ROSE: This is the secretly recorded conversation.
 23 MR MCGURK: Yes, but before it was disclosed, the transcript
 24 that was created was created with electronic assistance
 25 by Mr Raff, and then we got it when we were told by

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1 Hausfeld that this had been recorded. So the transcript
 2 was created after the audio recording was revealed to
 3 Hausfeld. So the recording was there, then the
 4 transcript —
 5 MS ROSE: You are saying it is a recent transcript?
 6 MR MCGURK: The transcript was made at the end of May this
 7 year, we are told, and it was made by Mr Raff.
 8 MR WEST: I think it was made electronically.
 9 MS ROSE: Have you heard the recording?
 10 MR MCGURK: Yes, the audio you can listen to, there is
 11 a link to it in Opus.
 12 THE CHAIRMAN: Can you check the transcript?
 13 MS ROSE: So you have been able to check the accuracy of
 14 the transcript then?
 15 MR MCGURK: Yes. I think what Mr West is about to show you
 16 is one where we have proposed some corrections to
 17 the transcript that Mr Raff created.
 18 MS ROSE: Okay, so there is a dispute —
 19 THE CHAIRMAN: It is not an agreed —
 20 MS ROSE: The transcript is not agreed?
 21 MR MCGURK: Not quite, but I do not see why it could not be
 22 agreed. Well, we asked, "Can our corrections be
 23 agreed", and I am not sure we have had an answer to
 24 that.
 25 MS ROSE: There clearly are not enough lawyers on this case!

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1 MR MCGURK: I am going to sit down!
 2 MR WEST: I think the corrections appear on the transcript,
 3 and I am happy to use the version with those
 4 corrections. I do not believe there is any major
 5 dispute about the transcript contents.
 6 THE CHAIRMAN: Right, well, if there is a major dispute, we
 7 can rise now and you can —
 8 MR WEST: There is not.
 9 THE CHAIRMAN: — sort it out over lunch —
 10 MR WEST: There is not.
 11 THE CHAIRMAN: — but we do not want to get into disputes
 12 about transcripts while Mr Cutts is giving his evidence,
 13 or at all.
 14 MR WEST: Mr Cutts, the call was recorded. I do not think
 15 that was told to you at the time, but it was, and it has
 16 now been transcribed and that is the document we can see
 17 at {M4/232}.
 18 A. It's correct that the call was recorded without my
 19 knowledge or permission.
 20 Q. I do not propose going through it, because it is quite
 21 a long document, but could we just go to one or two
 22 extracts.
 23 If we look at {M4/232/9} of this, we see, towards
 24 the bottom:
 25 "Matt Cutts:

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1 "Okay, well, the only time I've ever looked at this
 2 ... when the Guardian asked and recently, like today."
 3 Is that what you were saying on the call, that you
 4 had not looked at Foundem's site before that, before
 5 The Guardian had asked you to?
 6 A. I think I would have — well, this statement that I made
 7 during the phone call is incorrect, because I clearly
 8 look at the site responding to Udi Manber, and I said: I
 9 clicked around the site, I grabbed a random in
 10 the snippet, I searched for it, I found nine other
 11 copies, so why should this site rank higher than those
 12 other nine copies? So I think the gist of what I was
 13 trying to communicate is Foundem was not hugely on my
 14 radar, you know, it was one of lots of sites that wanted
 15 to rank higher, and after July when The Guardian decided
 16 to write about it, it was definitely more squarely on my
 17 radar and I was paying attention to it closely, or
 18 trying to pay attention to it.
 19 Q. We see mention here being made of textual errors at page
 20 {M4/232/11}. About two-thirds of the way down:
 21 "Matt Cutts:
 22 "And ... two places in there where there's an
 23 apostrophe, there is an I with an umlaut, an upside down
 24 question mark, and a half.
 25 "So.

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1 "And that's not untypical.
 2 "Two or three down, you see you won't have to leave
 3 any tunes behind when you're on the move because Apple's
 4 new version.
 5 "And in that snippet of text, instead of two
 6 apostrophes, there's question marks."
 7 You were raising here the issue of these textual
 8 anomalies?
 9 A. Much as I did with Richard Wray at The Guardian, I was
 10 saying, for a very popular Apple gadget — I don't
 11 remember if it was an iPod or an iPod Touch, but
 12 something that would have been popular enough that you'd
 13 expect people to have inspected or, you know, we call it
 14 "eating your own dog food", checked your own results.
 15 There were not untypical errors. It was not untypical
 16 to find errors, is the way I put it on that call.
 17 Q. Over the page to {M4/232/12}. About halfway down,
 18 Mr Raff says:
 19 "What you're trying to say is you've looked around
 20 and you're going to point out some examples where there
 21 are less than perfect quality.
 22 "Now we feature hundreds of thousands of products.
 23 "Obviously certain things get through.
 24 "But what we're saying is that we have been compared
 25 to all other leading price comparison sites and we have

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1 won hands down in many competitive examples."
 2 Then a bit further down, Mr Raff:
 3 " ... I understand that you've gone and you have
 4 found some bad examples, which is what you were looking
 5 for.
 6 "And I can go to Google Product Search and I can do
 7 the same thing.
 8 "In fact, it's very, very simple to do so."
 9 He was right about that, was he not?
 10 A. No, you're — well, he was right that every shopping
 11 site that has a sufficient amount of data will have an
 12 error, or some errors. I think my reply stands for
 13 itself. I'm saying:
 14 "No, I'm not even saying that.
 15 "I'm saying on every product that I've looked at."
 16 I found an error. So to email the CEO in 2006, to
 17 approach a Guardian reporter in 2009, now you're on
 18 a phone call, a site consultation with the head of
 19 the Webspam team and you haven't done the due diligence
 20 to look at your own data to see what the errors are.
 21 So, you know, think about an error rate of, like,
 22 1%. Foundem felt more like 10%. And in fact, on
 23 the call I'm saying "on every product ... I've looked
 24 at", I've found these errors. So it's not the kind of
 25 thing that you would, like — I remember on the phone

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1 call I was sending myself emails as I found these kinds
 2 of errors, this kind of poor treatment of the data. So
 3 I found, like, two or three. Every few minutes I was
 4 sending myself examples, which I then passed on later
 5 as, like: these are the kind of things that many sites
 6 do to clean up their data so that it's a good user
 7 experience, which is why, you know, people come back to
 8 it. All those sorts of things.
 9 Q. I am going to come to Foundem's response to those
 10 specific points, but if we just look at page
 11 {M4/232/23}, in response to the point about what Google
 12 Product Search does, if you look about three-quarters of
 13 the way down, you say:
 14 "I have nothing to do with Google Product Search, so
 15 I have no idea what they do or don't show."
 16 That is right, is it not, you did not know?
 17 A. I did not work on Google Product Search, so my
 18 understanding and experience was just from using it as
 19 a technical user, and seeing the occasional product
 20 talks and those kind of things. So when the Ruffs were
 21 saying, "Oh, but other sites have these problems",
 22 the thing that I was trying to convey is it happens at
 23 a much higher rate on Foundem, and in fact, I used
 24 the phrase "every product that I've looked at, I found
 25 these errors". So it shouldn't be the sort of thing

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1 that would be a surprise after three years.
 2 MR WEST: Would that be a convenient moment?
 3 THE CHAIRMAN: Yes. Have we finished with the phone call,
 4 or ...?
 5 MR WEST: Unless I have any further instructions over
 6 the break.
 7 THE CHAIRMAN: Right.
 8 (Loss of audio) — the adjournment.
 9 How much longer have you got, Mr West?
 10 MR WEST: Can I review that also over the break?
 11 THE CHAIRMAN: Well, if you would, because it has been
 12 a little bit repetitive at points.
 13 MR WEST: It has, but I'm afraid the same things tend to
 14 keep happening again and again. I am sorry about that.
 15 THE CHAIRMAN: I do not know if it is necessary to keep
 16 putting them when Mr Cutts has very clearly explained
 17 his thinking, his view, what he felt —
 18 MR WEST: Well, we are now in October 09 and whitelisting is
 19 in December 09, so we are nearly there.
 20 THE CHAIRMAN: Yes. So we will return at 2 o'clock, and as
 21 you know, you cannot discuss the case over lunch.
 22 A. Thank you.
 23 (1.05 pm)
 24 (The short adjournment)
 25 (2.00 pm)

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1 (Proceedings delayed)
2 (2.05 pm)
3 THE CHAIRMAN: Mr West.
4 MR WEST: I am going to do my best to speed up, but it would
5 assist me if Mr Cutts would also try to avoid certainly
6 saying things that he has said before because we will
7 have heard them the first time.
8 Thank you, Mr Cutts.
9 You mentioned, Mr Cutts, that you emailed a number
10 of examples of textual errors and we can see that at
11 {J2B/7}. This is during the call, I believe, with
12 Mr and Mrs Raff.
13 We can see that on page {J2B/7/2}. The example in
14 the middle:
15 " ... 'You won't have to leave any tunes
16 behind ..."
17 In fact I think we saw that text in the transcript:
18 " ... when you're on the move because Apple's new
19 version of ..."
20 We can see those textual anomalies there.
21 Then above the page there is one about a motorcycle
22 helmet.
23 Now, following the call, Foundem emailed — and this
24 is on the previous page {J2B/7/1} —
25 THE CHAIRMAN: Just so I understand, were you emailing this

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1 yourself?
2 A. To myself during the call.
3 THE CHAIRMAN: To yourself while you were on the call. That
4 is what I thought.
5 MR WEST: Well, you mentioned the Apple one on the call,
6 I believe. I think we saw that.
7 A. I think I mentioned the Apple one on the call and then,
8 seven minutes later was emailing another snippet to
9 myself, and then one more snippet during the call.
10 Q. We see the response from Foundem on the next day:
11 "Many thanks for your time ... As discussed, later
12 today I will send across a few examples of independent
13 verification ..."
14 Then:
15 "In the meantime, given your unremitting emphasis
16 ... on the occasional un-encoded character in Foundem's
17 merchant product descriptions, I took a few minutes to
18 try to verify your assumption that other leading price
19 comparison sites are more effective at tackling this
20 knotty issue. Please find attached a few screenshots of
21 strikingly similar issues on Kelkoo, PriceRunner and
22 Google's own Product Search that amply demonstrate that
23 this is not the case. I found all of these examples
24 with just a cursory glance, and I suspect that you could
25 easily find similar issues on all of the other leading

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1 price comparison sites.
2 "Snippet from Google Product Search."
3 The same issue:
4 "You won't have to leave ..."
5 And then.
6 "Apple's."
7 Again.
8 Kelkoo the same.
9 Then an example from PriceRunner with a wrongly
10 escaped currency sign.
11 We have the screenshots of these, although they are
12 not the best — they are not most easily visible, but
13 they are to be found at —
14 THE CHAIRMAN: Do we need to see them —
15 MR WEST: No, not necessarily.
16 THE CHAIRMAN: — for your question? I do not know what
17 the question is that is coming, but do we need to look
18 at them?
19 MR WEST: No, just so that we have the reference, it is
20 {H2A/3/40}.
21 The reason these similar errors appeared on multiple
22 CSS sites is that they originated on the merchant sites;
23 that is right, is it not?
24 A. I believe that's correct.
25 Q. So what is happening here is the CSSs are copying over

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1 the descriptions from the merchant sites and if there
2 are errors in those, those are also copied over?
3 A. In this specific instance, that's what's happening, yes.
4 Q. You never rebutted this point that the same errors were
5 present on these other sites?
6 A. I believe I said on the call that it was happening with
7 every product that I looked at on Kelkoo — sorry, not
8 on Kelkoo, on Foundem, so ...
9 I don't dispute that there were errors to be found
10 on other comparison shopping sites. My experience was
11 that it was much more rife on Foundem.
12 Q. But you have no evidence of that now you can point to?
13 A. Just the contemporaneous evidence where I was saying
14 I ran into it on every product that I was looking at on
15 Foundem on the call that was recorded without my
16 knowledge.
17 Q. The credentials document — again, we do not need to go
18 there, it is at {M1/545}, but we have seen similar types
19 of documents previously.
20 Google then discussed internally what to do about
21 this request for whitelisting, as we see at {J2B/17}.
22 Beginning at {J2B/17/4}, this is now 26 October, so
23 Foundem is following up to see if you have had a chance
24 to complete your review. You say you have been away for
25 a couple of days and you hope to complete it by Friday.

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1 We then see a redacted email, so lawyers have been
 2 involved by this stage, Mr Cutts, in these discussions?
 3 THE CHAIRMAN: Is that right?
 4 A. Yes. Julia Holtz, for example, was one of our lawyers.
 5 THE CHAIRMAN: In-house lawyers.
 6 MS ROSE: Who is Daphne?
 7 A. Daphne had a legal background, I don't know if she was
 8 a lawyer or a policy person at the time, but
 9 I suspect — I think a lawyer, because I think she
 10 worked on the Google Books lawsuit.
 11 MR WEST: {J2B/17/3}, Mr Barron:
 12 "If it's the right thing to do I don't see a problem
 13 in overriding the algorithm, it will demonstrate we are
 14 prepared to listen and change our mind rather than dig
 15 our heels. Given it's a celebrated case involving ICOMP
 16 we'll need to think carefully about how we would
 17 announce it."
 18 So Mr Barron is keenly aware of the potential public
 19 relations implications of this decision?
 20 A. I think everybody on the thread, legal and PR, were
 21 thinking about the implications of the decision.
 22 Q. Mr Collins then says, at the top of the page:
 23 "... Julia makes some good points.
 24 "If we judge it on its merits to users, the comments
 25 about this site after The Guardian article were damning.

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1 I'm not so worried that we create a precedent — after
 2 all, if we make a mistake then we should be open about
 3 it — but in this case users ... slammed the site as
 4 spam."
 5 That is The Guardian comments you were referring to
 6 earlier?
 7 A. Yes.
 8 THE CHAIRMAN: So is he saying —
 9 A. This is a person named "D—J" summarising his impression
 10 of the comments.
 11 THE CHAIRMAN: Yes, Mr Collins —
 12 A. Yes.
 13 THE CHAIRMAN: — is saying he read the comments and thinks
 14 they were damning — this is damning of Google not of
 15 the site; is that right?
 16 MS ROSE: No, Foundem.
 17 A. Foundem, yeah.
 18 THE CHAIRMAN: Oh, Foundem, sorry. Damning of Foundem.
 19 MR WEST: Mr Barron responds to that on the next page,
 20 {J2B/17/2}:
 21 "If it's the right thing to do we should do it, not
 22 because of pressure from Foundem or ICOMP.
 23 "The worst thing would be to become entrenched from
 24 a position we think is wrong, and having to defend that
 25 against future attacks, of which it seems there'll be

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1 many.
 2 "Backing down gracefully would be the best policy if
 3 we are absolutely sure of the merits of Foundem's case —
 4 disregarding all the noise. I don't think readers'
 5 opinions are relevant here — it should be our judgment."
 6 Now, Mr Barron, therefore, he was of the view that
 7 Google should change course if it was absolutely sure of
 8 the merits; do you see that?
 9 A. I think my interpretation was that all of the people
 10 said we should do what was best and figure out how to
 11 deal with the aftermath after that.
 12 Q. But your evidence, at paragraph 128, is that you gave
 13 Foundem the benefit of the doubt, but that is rather
 14 different, is it not, from being absolutely sure of
 15 the merits?
 16 A. That's absolutely different than being absolutely sure
 17 of ...?
 18 Q. Of the merits?
 19 A. On the merits? In my opinion, the decision of whether
 20 Foundem was spam or not was left to me. I made the call
 21 that I would rather give them the benefit of the doubt
 22 and call them not spam, and that's the final call, and
 23 everybody supported me in trying to figure out how to
 24 make that land well after that decision was made.
 25 Q. There are then some further internal discussions. If we

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1 look at {J2B/47}. The precise order of these is
 2 somewhat unclear because of time differences.
 3 One sees at {J2B/47/2}, an email from Mr House
 4 saying — raising some points from a comms perspective:
 5 "Foundem has been very vocal in making their case to
 6 the media, and I fully expect them to use any change in
 7 their ranking for another media cycle ...
 8 "If we believe that improving their ranking will
 9 benefit users, we should still do it but ... with our
 10 eyes open ...
 11 "The perception that the squeaky wheel gets the
 12 grease could encourage frustrated webmasters to air
 13 their grievances through the press ...
 14 "Increased scrutiny of our official reconsideration
 15 procedure, which many feel is not very responsive or
 16 transparent."
 17 Indeed, as we have seen, the reconsideration
 18 procedure was difficult to access, I think I can put it
 19 that way?
 20 A. What was your question about the reconsideration
 21 request?
 22 Q. Well, perhaps we can just move on. I think we have
 23 covered that before.
 24 But Google was anticipating increased media
 25 scrutiny, including on its appeals procedure.

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1 A. I think it's a PR person's job to flag all the potential
 2 issues, but, for me, the key part is the last line:
 3 "As I said before, though, we should find a way to
 4 do what's best for our users."
 5 So I appreciated that, 2 or 1, everyone was
 6 supportive of whatever we thought the right decision was
 7 to make.
 8 Q. And be clear on what Google's explanation would be to
 9 the media, because you anticipate media interest?
 10 A. There are definitely policy and legal implications;
 11 people needed to make sure things were sequenced and
 12 everybody had, you know, clarity of messaging, all that
 13 sort of thing. You know, the normal thing you'd expect
 14 from a company making a big decision.
 15 Q. You then say, at the top of this page, you cannot attend
 16 the meeting.
 17 If we go to the next page, page {J2B/47/1},
 18 Mr Barron says:
 19 "... we'll debate and come to united position."
 20 There is then a redacted email. Then we see your
 21 response:
 22 "Hi Peter, I'm fine with that. I'd ask that you
 23 take on the communications ... I'm happy to meet Daphne
 24 and hammer out the detailed specifics ..."
 25 So was this — I do not want to ask about anything

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1 privileged, but this is the united position has now been
 2 achieved, has it?
 3 A. I believe so.
 4 Q. If we go back to {J2B/17}.
 5 About halfway down is your email:
 6 "I've been thinking about this a lot, and I'm
 7 leaning toward overriding our algorithm. The reason,
 8 which I believe is defensible, is that Foundem has made
 9 a case that they have signals of goodness that our
 10 algorithms can't spot yet. Based on the additional
 11 information and the fact that I've seen improvements in
 12 Foundem's site from when I've done spot checks on their
 13 quality in the past, I'm comfortable taking this
 14 action."
 15 However —
 16 THE CHAIRMAN: Just before you go on:
 17 "... Foundem has made a case they have signals of
 18 goodness that our algorithms can't spot yet."
 19 What did you have in mind when you wrote that?
 20 A. Sure, there were two prongs on the decision. One
 21 was: have they done the bare minimum table stakes on
 22 trying to clean up some data, and, you know, you could
 23 argue they cleaned up some specific data. Did they
 24 clean it up exhaustively? That's a hard thing to do.
 25 The "signals of goodness" that you ask about, my

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1 recollection from the call with Foundem was Shivaun, at
 2 the end, was making some really interesting points about
 3 things like a graph of the price history, things like
 4 in-stock checking to see whether something was actually
 5 available to be bought, and I believe there was
 6 a mention of an iPhone app. This is 2009, you know, if
 7 the iPhone has just come out, it's relatively rare to
 8 have an app, this is sort of before the — there's an
 9 app, I think it was before there was an app for this.
 10 So to see those kinds of signals, none of those three
 11 could have really easily been detected by an algorithm.
 12 Whenever Googlebot would load the page, it might see an
 13 image, but it wouldn't know it was the history price
 14 graph over time. So I thought that those points from
 15 Shivaun, together with what I considered to be a good
 16 faith effort to clean up, you know, escaping errors and
 17 errors in the data, tipped the case over towards saying
 18 that we should make this decision.
 19 THE CHAIRMAN: Yes. Thank you.
 20 MR WEST: There had not yet been any changes to the site,
 21 had there?
 22 A. I think there's another email where I request for Cody
 23 to add it to the exception list. So I don't know what
 24 date exactly that happened.
 25 Q. That was later on. We will come to that.

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1 Just on the textual errors, that was not why Foundem
 2 had been struck by an Algorithm A penalty, was it? It
 3 was not because it suffered from textual errors?
 4 A. I disagree.
 5 Q. Well, we have looked at the — I do not want to go into
 6 confidential matters, but we have looked at the design
 7 document, it does not talk about that, does it?
 8 A. I'm trying to be non-confidential in my replies.
 9 The algorithm looked at signals, and those signals could
 10 be indirectly influenced by things like poor qualities
 11 or experience, including textual errors.
 12 Q. Are you saying they would — I am not sure I understand
 13 that answer?
 14 A. I'm happy to go in camera if that would make it easier?
 15 Q. I think we can probably move on.
 16 Mr Barron's response, we see on this page, is that
 17 he will start to put together "a corpcomms plan".
 18 In the third line, he says:
 19 "We'll need time to put in place the various plans
 20 that Daphne mentions."
 21 Again, those are privileged, but just to note, that
 22 is what he says.
 23 But without going to privileged matters, I suggest
 24 these are the plans for how the decision is to be taken
 25 and how it is to be justified.

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1 A. Yeah, in my mind there was no hiding the ball behind
 2 privilege or anything, it was: the decision was being
 3 made, how do we sequence the announcement, the changes,
 4 making sure that policies and communication are clear.
 5 All those sorts of things.
 6 Q. Mr Barron then spoke to Foundem and said that Google
 7 would need until the end of November to come to a final
 8 decision. I do not think we need to go there, but that
 9 is {M1/311}.

10 The next email is then of 20 November, three weeks
 11 later {J2B/2/2}, starting at page 2, where you say you:
 12 " ... have spent some time looking carefully at
 13 Foundem's pages. I should say at the outset that
 14 Foundem's ..."

15 Well, perhaps we could just --- it is an important
 16 email:
 17 " ... Foundem's relative ranking in search results is
 18 a consequence of how the site is classified by Google
 19 when we make automated decisions about quality and
 20 relevancy. We are very aware of the fact that our
 21 ability to do this is not perfect, and we're constantly
 22 trying to get better at it. However, we need to be
 23 certain that Foundem is meeting the same guidelines that
 24 all sites have to meet.
 25 "I'm pleased to say that based on those terms of

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1 quality and relevancy there have been some improvements
 2 since earlier this year when the Guardian went to
 3 press."

4 Again, I put the point to you that, at this stage,
 5 there had been no such improvements, had there?

6 A. I believe I had a phone call in October and I pointed
 7 out issues, and I thought that there was a communication
 8 from Shivaun that said, "We've fixed the issues you
 9 raised". Perhaps I'm mistaken.

10 Q. We will look at the document you may have in mind, but
 11 it is later than this.

12 A. Okay.

13 Q. "Thanks for making these changes. We hadn't seen any
 14 improvements prior to this ...
 15 " ... as things stand today, there are still a few
 16 examples where the site is not meeting our Webmaster
 17 guidelines as to content and quality. We'd like to work
 18 with you to get these issues addressed as it will result
 19 in a better outcome for Foundem and for all of our
 20 respective users.
 21 " ... there is no manual penalty ...
 22 "As I outlined in our phone conversation,
 23 the general issues here relates to inclusion of
 24 non-unique content and automatically scraped content
 25 with poorly escaped special characters. Solving this

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1 problem in general will only improve Foundem's position
 2 in results."
 3 Then you set out some specific examples:
 4 "Cutting off descriptions mid-word."
 5 You give an example of that.
 6 "Packaging descriptions" ---
 7 A. Two examples, but ...
 8 Q. Two examples.
 9 "General snippets quality" ---
 10 A. Can we advance to the next page?
 11 Q. Yes, sorry, next page. {J2B/2/3}.

12 Then you say:
 13 "These are just some examples, but I hope
 14 the general issue is clear. If you can make progress on
 15 these points, we should see some positive changes to
 16 Foundem's relative ranking in search as it will affect
 17 the way in which Google assesses the content and quality
 18 of your pages."
 19 So, by this stage, you have presumably decided how
 20 Google is going to frame and announce the decision?

21 THE CHAIRMAN: To be fair to Mr Cutts, he does say here, in
 22 the penultimate paragraph:
 23 "General snippets quality. After discussing escaped
 24 characters with you, I've seen much of this problem
 25 cleaned up ..."

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1 So that is a reference, is it, to following
 2 the phone call?

3 A. Yes.

4 MR WEST: Yes. Although certainly my position is there had
 5 not in fact been any changes, but it may not matter.
 6 But the focus of this email, I think it is fair to
 7 say the exclusive focus is these textual anomalies; that
 8 is right, is it not?

9 A. The focus of this email primarily, if we go back to
 10 the first page {J2B/2/1} --- right now I'm on page 3, but
 11 if we could go back a tiny bit, I guess now page 2
 12 {J2B/2/2}. Yeah.

13 Q. Well, the specific examples are all textual anomalies?

14 A. But, in my mind, the focus of the email is the bottom
 15 line upfront, saying that we're seeing, you know, we're
 16 opening up a connection, we're saying, you know, for
 17 example, there's no manual penalties affecting
 18 the ranking of your Foundem pages. Like, there's quite
 19 a few things covered in this email, it's not just "also
 20 change the text".

21 Q. We see, at the end of the second page [sic], if we go
 22 back to there, you saying that {J2B/2/3}:
 23 "If you can make progress on these points, [we'll]
 24 see positive changes to Foundem's relative ranking in
 25 search ..."

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1 That appears to be suggesting that if Foundem were
 2 to make those changes that would cause Foundem to rise
 3 in the rankings?
 4 A. I'm not sure I'd characterise it that way. Like, if you
 5 improved the quality of your site, users will like it
 6 more, good things will follow as a natural consequence.
 7 Q. There is no mention here of Foundem being subject to any
 8 algorithmic demotion, is there?
 9 A. We say there's no manual penalty affecting ranking.
 10 Q. No mention that Google proposes to add Foundem to
 11 a whitelist?
 12 A. I don't believe we would have said something like that.
 13 THE CHAIRMAN: You do not say that, do you?
 14 A. No, I don't think so.
 15 THE CHAIRMAN: It is not that you do not believe that is
 16 what you would say, you did not.
 17 MR WEST: That is consistent with what Google had told
 18 The Guardian, which we again did not mention either
 19 algorithmic demotions or whitelisting.
 20 A. I'd have to go back and review the article, but if you
 21 say it, I'm willing to posit it and we can always come
 22 back for a point of discussion later.
 23 MS ROSE: I am just wondering if that is quite a fair way to
 24 put it, given the first sentence of the email — no,
 25 the second sentence of the email.

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1 THE CHAIRMAN: Automated decisions.
 2 MS ROSE: Yes.
 3 A. Ah:
 4 " ... is a consequence of how the site is classified
 5 by ... [the] automated decisions ..."
 6 Yeah, that's pretty much saying ... and then later,
 7 it's not a manual penalty. So I guess I would amend my
 8 — my answer. In fact, admitting:
 9 " ... our ability to do this is not perfect, and
 10 we're constantly trying to [improve and] get better at
 11 it."
 12 So ...
 13 MR WEST: If we could look at Foundem's response to this at
 14 {J2B/3/1}, they provided a paper which answered
 15 the various specific points in your email of
 16 20 November, and it is quite long but if we just go
 17 through it briefly:
 18 "Google's email of November 20 highlighted
 19 a selection of examples from Foundem's site that Google
 20 suggested were 'not meeting [Google's] Webmaster
 21 guidelines ...'
 22 "Foundem has now addressed all of the issues raised.
 23 Wherever possible, we have implemented general solutions
 24 that go well beyond the specific examples mentioned.
 25 [They] went Live on ... November 22.

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1 "We trust that Google will now make whatever
 2 adjustments are necessary to ensure that 'the way in
 3 which Google assesses the content and quality' of
 4 Foundem's pages allows Foundem to once again rank
 5 normally, on a level—playing—field with its competitors.
 6 "Please find below a detailed breakdown of
 7 the issues Google raised and how Foundem has addressed
 8 them."
 9 The first one was, "Cutting Off Descriptions
 10 Mid—Word", and Foundem gives some examples of those and
 11 explains that the first comes directly from the merchant
 12 data.
 13 Then going over the page to {J2B/3/2}, it says:
 14 "Mid—word Truncations on other Price Comparison
 15 Sites.
 16 "Mid—word truncation issues are not unique to
 17 Foundem, although Foundem may now be unique in having
 18 virtually eliminated them. The examples below
 19 demonstrate that such mid—word truncations are
 20 commonplace among all leading price comparison sites.
 21 In particular Google's own Product Search results
 22 exhibit similar mid—word truncations ...
 23 "It seems that Foundem is, therefore, being held to
 24 a higher standard than its competitors ...
 25 "Note that all of the examples throughout this

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1 document are representative. We have gathered
 2 a selection of examples to illustrate that the same
 3 issues can easily be found on other leading price
 4 comparison services. We believe it would be relatively
 5 straightforward to find similar examples of all of
 6 the issues Google mentioned in all of the leading price
 7 comparison sites."
 8 Then an example is there given of truncation or
 9 cutting off descriptions mid—word from Google Product
 10 Search, is it not?
 11 A. So the examples that you're showing, I'm seeing three
 12 examples on — on this page and Google and Dealtime are
 13 using " ..." to signal that it is the end of
 14 the description. Google also did that within its
 15 snippets if you looked at its search results at the
 16 time. If you go back to the Pleo example, so I guess
 17 that would be {J2B/3/1}, Foundem at the time was cutting
 18 off right in the middle of the word with no "..." or
 19 other signal to say this is the end. So you end up with
 20 a — if we can go back one page. You end up with like
 21 "explo". Looks like a word. So, you know, there were
 22 at least hints on the examples that Foundem selected and
 23 which the other engines were giving cues to sort of
 24 say: this is what's going on with the snippet. But
 25 I think I would feel free to characterise what Foundem

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1 responded with is to say: you have identified issues ,
 2 but we think there are also issues with other sites .
 3 That goes back to my assessment that the issues were
 4 much more and numerous on Foundem than on other sites.
 5 Q. "Issue 2: Sentence Concatenation ..." is over the page
 6 on {J2B/3/3}, where there is not a space between
 7 sentences. Foundem says:
 8 "This kind of issue stems directly from the content
 9 as it appears on the merchants' websites (or... product
 10 feeds). As a search service, our preference in nearly
 11 all cases is to present a merchant's data exactly as it
 12 occurs on the merchant's website.
 13 "It seems that Google is suggesting that Foundem be
 14 responsible for the quality of content on the sites we
 15 search."
 16 Then:
 17 "However, in good faith, we have now implemented and
 18 deployed functionality that allows us to detect and
 19 automatically tidy—up the vast majority of these
 20 issues ..."
 21 Then:
 22 "The Foundem examples quoted were."
 23 We see that in bold.
 24 Then going over the page to {J2B/3/4}:
 25 "Sentence Concatenation on Other Price Comparison

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1 Sites and in Google Search Results.
 2 "Again, the issue Google has highlighted was not
 3 unique to Foundem. On the contrary, such issues are
 4 commonplace, as the examples below illustrate. Indeed,
 5 Google's own natural search and Product Search results
 6 exhibit identical issues."
 7 We can see the Google Product Search example, where
 8 it is, again in bold, "design.The". So one sees exactly
 9 the same issue on Google Product Search; do you see
 10 that?
 11 A. I see the exhibit.
 12 Q. There is another example over the page, {J2B/3/5}, again
 13 in bold, at the top, with a concatenation. So, again,
 14 it appears that Foundem has found the same issue on
 15 Google Product Search?
 16 A. It definitely seemed to be Foundem's position that it
 17 could find errors on other shopping sites as well, which
 18 I do not dispute.
 19 Q. Just finishing this off:
 20 "General Snippets Quality."
 21 Again, the point is being made this has simply been
 22 taken from the text in the Tesco Direct website.
 23 I do not propose to go through all of this.
 24 The next page {J2B/3/6} was an objection to do with
 25 product dimensions, where Foundem's position was, well,

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1 these are the dimensions of the products. But, for good
 2 measure, they provide examples where that is taken from
 3 each of the listed CSSs, including again Google Product
 4 Search; do you see that?
 5 A. I believe this was less about product dimensions, which
 6 can be very helpful, and more about the punctuation and
 7 whether they were just concatenated with spaces.
 8 The examples that I'm seeing on the other competitors
 9 have commas and so you can tell one is height, one is
 10 width, one is depth, and so that's — that's more useful
 11 than just having "H 105, w 100, d 78" with just spaces
 12 in between.
 13 Q. The lack of a comma between the H and W and D?
 14 A. It's all about making things better for the user.
 15 Q. At the bottom, the next one:
 16 "Google Repeated Description Text ..."
 17 At the bottom there, page {J2B/3/6} — sorry, it is
 18 just the heading, then going over to {J2B/3/7}:
 19 "Again, in good faith, and to demonstrate Foundem's
 20 willingness to comply with all of Google's suggestions
 21 for quality improvement ... we have enabled our
 22 'de—duplication' feature ..."
 23 Then the sentence — the paragraph beginning:
 24 "As a search service, our preference in nearly all
 25 cases is to summarise each merchant's data exactly as it

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1 occurs on their website. If Currys, Dixons and PC World
 2 all offer the same product with the same description
 3 (but often with different prices and availability) ...
 4 we want our users to know that. In this way, they can
 5 make informed decisions based on all of the available
 6 information."
 7 Then they make the same point again, "Repeated
 8 Descriptions on Other Price Comparison Sites":
 9 "As with all of the previous issues, this issue is
 10 far from unique to Foundem. Every price comparison
 11 service, including Google's own, will feature repetition
 12 where repetition exists in the merchants' data ..."
 13 Then under:
 14 "Google Product Search ..."
 15 "The above text is repeated six times in a row (and
 16 the page offers several different price comparisons for
 17 the same Nikon ... camera)."
 18 Then finally on this document, the "Conclusion" —
 19 A. If I could just —
 20 Q. Yes, sure.
 21 A. I think this is actually a pretty good illustration of
 22 some of the points that I was making. The screenshot
 23 that I showed to the European Commission showed the same
 24 paragraph about a pink or silver phone 15 times on one
 25 page and there were 130 entries total, and the counter

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1 examples that we're getting in this case are repetition
 2 --- six --- repetition six times, repetition five times,
 3 repetition seven times on Google, Kelkoo and Ciao. So
 4 I think this kind of proves my point about an order of
 5 magnitude more, because even the screenshot that was
 6 shown as a counter, on Google's, there were four
 7 descriptions that were the same, and then there were
 8 other diverse results, and so taking the Samsung or
 9 whatever Tocco phone, 130 or 40 or 50, you know,
 10 duplicate paragraphs versus five, six and seven. So
 11 that's the kind of order of magnitude difference that
 12 I was seeing on my --- on my assessments.
 13 Q. Go to the "Conclusion", {J2B/3/8}:
 14 "Foundem has now addressed all of the issues ...
 15 "We have also provided examples demonstrating that
 16 all of the issues raised are commonplace among all
 17 leading price comparison services. It is ... noteworthy
 18 that Google's own Product Search service contains
 19 examples of every issue that Google has raised in
 20 relation to Foundem.
 21 "Google says that it needs to ensure that Foundem
 22 is 'meeting the same guidelines that all sites have to
 23 meet'. It seems that Foundem has, in fact, been asked
 24 to exceed this standard by some considerable margin.
 25 "We hope that Google will now expedite whatever

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1 adjustments are necessary to allow Foundem to once again
 2 rank normally on a level playing field with its
 3 competitors."
 4 Again, Google never rebutted any of that analysis,
 5 did it?
 6 A. Google --- we read the reply. Fundamentally, I said
 7 here's some feedback about your site. Fundamentally,
 8 Foundem said: we have taken your feedback and taken
 9 action, and by the way, here are counterpoints. But
 10 what I cared about was the issues that we were
 11 highlighting, they were addressing, and so that was
 12 the primary goal was to make sure that they were
 13 addressing those points.
 14 Q. What that showed is, in my submission, I put to you that
 15 Foundem's site was no worse than any of the other sites
 16 in relation to these textual amendments ---
 17 A. That's not true. I just gave you an example where
 18 Foundem picked the examples that it was five, six, seven
 19 repetitions, and the examples that I had already given
 20 to the European Commission were 130 repetitions, that's
 21 more than 10 times more.
 22 Q. We have seen that the text errors, which were
 23 highlighted in your email, originated on the merchant
 24 sites, where we were talking about wrongly escaped
 25 characters, for example, those were taken over from

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1 the merchant sites, I think we agreed that.
 2 CSSs therefore, when faced with that sort of error
 3 on the merchant side, have to take a decision whether to
 4 reproduce the same text or to amend that text, do they
 5 not?
 6 A. I agree.
 7 Q. If they take the decision that they are going to amend
 8 errors of that kind, that would be an algorithmically
 9 imposed solution, rather than manually?
 10 A. It depends on the scale of the affiliate data, but
 11 certainly they were --- Foundem, for example, said they
 12 were able to implement changes in 24 hours, certainly
 13 less than a week. Some of these changes are pretty
 14 simple, don't cut off your description right in
 15 the middle of the word so it looks like "explo" instead
 16 of "explode". Some of these changes are very simple and
 17 some of these changes probably could have appeared as
 18 constructive feedback as early as 2006, if Foundem had
 19 used our recommended method of doing support.
 20 I guess I just remember wondering how it got to that
 21 point in 2009, that the site would go to The Guardian
 22 and not have cleaned up these issues that, to me, seemed
 23 pretty obvious.
 24 Q. Well, anyone's CSS would either feature errors of that
 25 kind or would not because it had introduced an

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1 algorithmic solution?
 2 A. In computer science we have a notion called "garbage in,
 3 garbage out". If you have garbage coming in, you have
 4 garbage coming out, and it's relatively easy to look at
 5 the quality of the data that you're getting and, if you
 6 can, make fixes. Some of those fixes may be trivially
 7 easy, like don't cut off something in the middle of
 8 a word. They're not hard changes to make. Some changes
 9 could be incredibly difficult because, you know, this is
 10 raw text, that's coming from other people and there
 11 could be errors that are very hard to spot. But I was
 12 not talking about hard to spot errors; this wasn't low
 13 hanging fruit, this was fruit that was lying on
 14 the ground, in my opinion.
 15 Q. If a CSS decides to solve errors of that kind, then they
 16 will not appear on the site?
 17 A. Excuse me?
 18 Q. If they solve errors of that kind algorithmically, then
 19 those errors will not appear on the site?
 20 A. I don't think I understand your question. You're saying
 21 if you clean up noisy data, you won't appear on Google's
 22 site?
 23 Q. Sorry. Let me try again.
 24 Let us take the other position, where a CSS takes
 25 the view that it is not going to amend the original

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1 text.
 2 A. Okay.
 3 Q. The frequency with which that appears on the CSS will
 4 therefore simply reflect the frequency with which those
 5 errors appear on the original merchant sites, will it
 6 not?
 7 A. That would be correct.
 8 Q. Whereas if it does introduce an algorithmic solution
 9 which solves the problem, then those errors will not
 10 appear on the CSS site?
 11 A. They will be less frequent. It is impossible to clean
 12 up noisy raw data 100%, but you wouldn't have users
 13 getting annoyed or deciding not to come back to the site
 14 or taking other actions because of finding errors on
 15 every single product page.
 16 Q. I suggest to you therefore it makes no sense to say
 17 these were more frequent on Foundem than elsewhere,
 18 because if they had not been solved by any particular
 19 CSS, the frequency with which they appear simply
 20 reflects the frequency with which those errors appear on
 21 the merchant site.
 22 A. I completely disagree. It was easy to make many of
 23 these fixes. They said they did it very quickly.
 24 I think there was another submission from a different
 25 comparison shopping site that said, yes, we dedicated

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1 staff and effort to trying to clean up the data, as
 2 a good comparison shopping site would do.
 3 Q. What we then see happening is you instruct Mr Kwok to
 4 whitelist Foundem out of the algorithm. That is
 5 {J3M/15}.
 6 A. Yeah, I wouldn't use the word "whitelist" and I don't
 7 think I did in that email. I asked them to make sure it
 8 no longer flags as a thin affiliate site and I document
 9 some of the stuff that I mentioned. The three signals
 10 of goodness in stock checking, price changes over time,
 11 and the iPhone app, in my mind showed they were trying
 12 to, you know, put — put sweat of the brow into
 13 improving their site and that they had additionally made
 14 good faith changes. Those were the errors in
 15 duplication and escaping and cutting off things in
 16 mid-word, that sort of stuff.
 17 Q. What you say is:
 18 " ... [could you] make sure that your [Algorithm A]
 19 ... no longer flags Foundem ... as a thin affiliate
 20 site?"
 21 A. I say, "Cody, would [you] make sure that ...
 22 [Algorithm A] ... no longer flags foundem.co.uk as
 23 a thin affiliate site?"
 24 Q. In other words, add it to the exception list?
 25 A. Correct.

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1 Q. We see that it was then added to the exception list. We
 2 can see an example at {M1/572}. If we look at — some
 3 of this is confidential, but if we look at {M1/572/2},
 4 this is the exception list for Algorithm A, is it not?
 5 A. I don't know. I haven't seen this document before, but
 6 I would believe it. It's only two pages, so if you're
 7 going to try and — I don't know if this is
 8 the exhaustive list. It stops two-thirds of the way
 9 through the second page, so a relatively small number of
 10 sites on the exception list, if this is the exhaustive
 11 list. I don't know whether it is the exception list and
 12 I don't know whether it's the — exhaustive.
 13 Q. There are different lists at different periods of time,
 14 but this one in any event has Foundem on it, as you see,
 15 and indeed it also has, as we see towards the top,
 16 MySimon on it, do you see that, and indeed Shopping.com?
 17 A. Shopping.com is about five down, MySimon is two below
 18 that, and then the things with a "#" are comments. So
 19 you see "long discussion with matt ..." before Foundem
 20 was added to the exception list.
 21 MS ROSE: Sorry, on page 1 or page 2?
 22 A. Sorry, page 2.
 23 MS ROSE: Okay.
 24 MR WEST: That is the reason, Mr Cutts, why Foundem rose in
 25 Google's rankings.

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1 A. That's correct.
 2 Q. Because it had been whitelisted out of an algorithmic
 3 demotion?
 4 A. It had been put in an exception list so that Algorithm A
 5 no longer triggered.
 6 Q. It had nothing to do with making what were, in my
 7 submission, relatively minor amendments to textual
 8 errors on the webpage?
 9 A. I would not characterise them as necessarily minor,
 10 although it might — I understand the decision to think
 11 that they might be typos or something like that, but
 12 they go to the core user experience of landing on
 13 the site and interacting with the site.
 14 Q. Indeed, there is no evidence of Google having raised
 15 similar objections to textual errors on other sites,
 16 even though, as we have seen, they were commonplace on
 17 all CSSs?
 18 A. I wouldn't want to speculate on that. I wouldn't be
 19 surprised if I'd sent comments to other sites about
 20 the content of their site, but I don't have any specific
 21 recollection.
 22 Q. Certainly not of requiring to make these amendments to
 23 textual errors as a condition of appearing within
 24 Google's results?
 25 A. I'm not sure that I would characterise it as requiring

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1 Foundem to make those changes, rather pointing out that
 2 there were still issues with the site.
 3 Q. The reason Google had decided to whitelist Foundem was
 4 because, as Mr Barron put it in his email that we looked
 5 at earlier, Google did not wish to become entrenched in
 6 a position it now realised was wrong?
 7 A. The reason that Google whitelisted in Algorithm A
 8 Foundem.com was because I believed the site had made
 9 good effort to improve, that there were some signals
 10 that the algorithms couldn't easily detect, and that
 11 they had been working to try to improve their site and
 12 therefore, when faced with the effort of saying is this
 13 site spam or not, I wanted to give the benefit of
 14 the doubt to Foundem.
 15 Q. Could we look at {J3M/19/4}.

16 At the top, this is from Mr Collins in an internal
 17 email, this is dated 1 December, so around the date of
 18 the whitelisting.
 19 He says:
 20 "Agree with Pete, they'll certainly try to make news
 21 out of this. I think that while we don't go into
 22 the ins and outs we [say] ...
 23 "On the record ... something like 'while its not
 24 fair on individual websites for us to go into all their
 25 details publicly, some sites do change their practices

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1 and as a result rise in our rankings."
 2 I put to you again, it was not the case that because
 3 of these amendments to the textual errors in Foundem's
 4 site that is why they rose in the rankings, they rose
 5 because they were whitelisted?
 6 A. It was because I saw good faith efforts on trying to
 7 correct these systemic errors that I felt confident
 8 saying this site was not spam.
 9 Q. This was also the story Google was preparing to tell
 10 the press. We can see that at {J2B/46}.

11 So this is an article written by a Chris Lake who
 12 was an SEO commentator; is that right?
 13 A. I don't know who Chris Lake is, but I'm enjoying reading
 14 what he wrote.
 15 Q. Mr Kovacevich, we see, around a third of the way down:
 16 "Hat tip to Peter for flagging this (and more
 17 importantly working with the writer to shape it)."
 18 Do you see that?
 19 A. Ah, I do. It's Kovacevich, by the way.
 20 Q. "It was a penalty! Or was it?"
 21 This is about Foundem's case.
 22 If we look over the page at {J2B/46/2}:

23 "I asked Google to comment, and while it won't talk
 24 about individual sites, it did confirm it does not
 25 whitelist sites, nor does it punish sites purely due

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1 their sector."
 2 So, again, that is what Google had earlier said to
 3 The Guardian. The date of this, I should say, is
 4 5 January 2010.
 5 A. So I wasn't involved with this article trying to —
 6 I don't remember Chris Lake. I don't think I did a call
 7 with him. It seems what he is saying is that Google
 8 does not whitelist sites, nor does it punish sites due
 9 to their sector, that is their nature, and I believe
 10 that's true. Google algorithms worked on, you know, we
 11 saw the list of eight different types of spam that it
 12 tried to operate on. So it wasn't as if Foundem
 13 being — you know, us considering — there was no manual
 14 decision that said, you know, take action on Foundem.
 15 As I said to the founders of Foundem, there was no
 16 manual action, so it's no manual penalty.
 17 Q. I think I have put my case to you on that so I do not
 18 propose to go back over it.
 19 The same message was repeated, was it not, by
 20 Ms Julia Holtz in a discussion with journalists in
 21 Brussels in February, so a month later. If we look at
 22 it at {J2B/60}. This is Reuters news agency.
 23 If one looks at {J2B/60/3}:

24 "Foundem's complaint focuses on the fact that its
 25 Web site dropped sharply down the rankings of pages that

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1 appear in a Google search. It argues that this was
 2 because it competes with Google and that it was being
 3 blacklisted because of this. In December the price
 4 comparison site returned to the high position in the
 5 page rankings.
 6 "Holtz ..."
 7 That is Julia Holtz; is it?
 8 A. That would be Julia Holtz, correct.
 9 Q. "... said Google neither blacklists nor whitelists
 10 pages, and explained why Foundem returned to greater
 11 prominence in Google's search results.
 12 "'They made changes to their Web site that caused
 13 them to rise again', she said, adding that the webmaster
 14 tools on the Google search Web sites give detailed
 15 instructions how to gain a higher position in search
 16 results."
 17 But again, the reality, as I put to you before, is
 18 that Foundem had risen because it had been whitelisted?
 19 A. Foundem rose because it made changes, improved
 20 the quality of its site, which convinced me that it was
 21 worth putting on the exception list.
 22 Just to address Julia's comment about "Google
 23 neither blacklists nor whitelists pages", I wasn't
 24 involved with that article, I don't know what Julia
 25 said, but we often would see reporters misunderstand

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1 something nuanced that somebody said, such as Google
 2 doesn't blacklist or whitelist based on the sector that
 3 someone was in. A reporter could have elided that. So
 4 I don't know what Julia was trying to say there. That
 5 was unfortunate.
 6 Q. But it is the same as Google had told The Guardian
 7 the previous August, no, it does not whitelist, there is
 8 no whitelist.
 9 A. Are you talking about Edwards? We can go back to
 10 The Guardian —
 11 Q. I do not want to go back over it.
 12 THE CHAIRMAN: We do not need to. We are just looking at
 13 this one.
 14 MR WEST: I think I have put my case to you —
 15 THE CHAIRMAN: But being on the exception list, that means
 16 that Algorithm A does not apply at all?
 17 MR WEST: I think I have put my case to you, but just to be
 18 sure, what had happened is that Google had realised that
 19 continuing to subject Foundem to an Algorithm A penalty
 20 was indefensible and had decided to whitelist Foundem,
 21 but had decided to suggest that Foundem make some
 22 trivial changes to textual errors as a pretext so that
 23 it did not have to say publicly that Foundem had been
 24 penalised or that it was now whitelisted. That is what
 25 was really going on here.

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1 A. That's absolutely not true. The decision to —
 2 the decision we took on Foundem was absolutely
 3 defensible, if we wanted to continue it, and in fact
 4 some people within Google thought we should continue it.
 5 I decided to give Foundem the benefit of the doubt.
 6 Q. Now, that public position that Foundem had risen in
 7 the rankings because it had made changes to its site,
 8 that depended, did it not, on Foundem only rising by
 9 a small amount in the rankings?
 10 A. Also not true.
 11 Q. Well, can we look at paragraph 30 of Cutts 2
 12 {H3A/10/11}.
 13 A. I'm happy to say that Julia's statement, "They made
 14 changes to their site that made them rise again", is
 15 doing a lot of work there, and personally I would have
 16 preferred different communication. It is strictly true
 17 they made changes to the site which convinced me, along
 18 with conversations with Shivaun and Adam Raff, that
 19 there were signals of goodness that the algorithms
 20 couldn't detect, and those two elements together led to
 21 my decision to give the benefit of the doubt to Foundem.
 22 I would have preferred if Julia's quote didn't do that
 23 much work.
 24 THE CHAIRMAN: Yes, it rather glosses over —
 25 A. I agree.

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1 THE CHAIRMAN: — the fact that —
 2 A. It does gloss over.
 3 THE CHAIRMAN: — not only that, but I think it is not fair,
 4 it gives the impression they had made changes,
 5 the algorithmic ranking is as before, and because of
 6 their changes they have risen up, that is —
 7 A. I would prefer that communication not have glossed that
 8 much, if it were me.
 9 MR WEST: Just on your paragraph 30, if we have it there,
 10 towards the end, you say:
 11 "Just changing a few words that people would see on
 12 the page typically would not have changed the ranking
 13 very much."
 14 That is right, is it not?
 15 A. Sorry, which — which paragraph are we talking about?
 16 Q. The last sentence of paragraph 30.
 17 A. Sorry, which — paragraph which? 30?
 18 Q. The last sentence of paragraph 30.
 19 A. Yes, typically, changing a few words would not matter
 20 that much. If it's a long tail query where there's not
 21 many results and you drop one word back can make a big
 22 difference. But typically whenever we were doing
 23 a search, we would want the results to be relatively
 24 robust, not to shake around a lot if you just change
 25 a word or two, if possible.

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1 Q. That is why the explanation that Foundem made some
 2 changes to its site and rose as a result depended upon
 3 its rise being relatively modest?
 4 A. I disagree with the premise of the question. Once we
 5 made the decision to put Foundem in the exception list
 6 for Algorithm A, as much traffic as it got from our
 7 ranking algorithms was completely fine with me, and
 8 I assume Google by proxy.
 9 Q. Prior to whitelisting, Foundem was getting perhaps
 10 single digit visits from Google every day, and if that
 11 had risen in December 2009 to hundreds of thousands or
 12 millions of visitors per month, the explanation that
 13 this was due to some changes they made to the wording of
 14 the site would not have been credible, would it?
 15 A. I completely disagree. I think I have a document
 16 somewhere that I've seen in the submission where
 17 I monitored the traffic to the site after it was in
 18 the exception list and it went up by something like
 19 a factor of ten to something like 40,000 impressions
 20 a day, clicks a day, whatever it was, the traffic went
 21 up by roughly a factor of ten, which is roughly what you
 22 would expect if the multiplier before had been 0.1, so
 23 a 90% reduction in score. So, again, I was completely
 24 fine with Foundem getting as much traffic as they got
 25 after we were putting them in the exception list.

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1 Q. Could we look at a document at {M1/382}. I think parts
 2 of this are confidential so we need to be a bit careful
 3 but I think it should be fine. If we go to
 4 {M1/382/4-5}. Sorry.
 5 A. That seems like something different.
 6 Q. Let us go to the next page just to check {M1/382/6}.
 7 Yes. Actually, if we carry on scrolling through towards
 8 the end to see what this is. Yes, if you stop there
 9 {M1/382/9}.
 10 I think the confidential parts of this are marked,
 11 I believe, but it is a complaint by a particular CSS
 12 that it has suffered a material drop in visits; do you
 13 see that?
 14 A. I'm trying to get context on what this is. I see that
 15 text, but I'm just trying to orient myself, so I might
 16 need a moment.
 17 THE CHAIRMAN: This is not Foundem?
 18 MR WEST: This is not Foundem, no.
 19 THE CHAIRMAN: Yes.
 20 A. Do we have dates on when this was?
 21 MR WEST: Yes. It is email, so there should be dates on
 22 them. If we go to {M1/382/3}.
 23 THE CHAIRMAN: This is from 2012, is it?
 24 MR WEST: 2012, yes.
 25 MS ROSE: Is this the introduction of Panda?

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1 MR WEST: Yes.
 2 A. Panda was in 2011, I believe.
 3 Q. This is post-Panda.
 4 Sorry, could we look at {M1/382/3}.
 5 So Mr Kwok explains, in the second bottom email, so
 6 we see it is now January 2012, so that is where we are
 7 in time, and this is about Algorithm A. I will not
 8 read it all out because part of it is marked as
 9 confidential, but you can read for yourself what has
 10 happened. They have been hit by Algorithm A.
 11 MS ROSE: They have been hit by Panda.
 12 MR WEST: Well, they have been hit by both, in fact.
 13 So they are complaining of a drop in traffic.
 14 Mr Kwok explains that they have been hit with this
 15 double penalty.
 16 So, again, without going into anything confidential,
 17 we can see the wording in blue. This is a particular
 18 example of what is mentioned in that particular wording,
 19 having previously saved this site from being penalised;
 20 do you see that?
 21 A. I see that.
 22 Q. Now, we see what Mr Kwok says at the end:
 23 "Would be nice to smoothen the demotion though."
 24 Again, that is not marked as confidential.
 25 Your response:

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1 "In general I'm always a fan of making things
 2 smoother rather than abrupt."
 3 So, is this right, you and Mr Kwok thought it would
 4 be a good idea to reduce the level of penalty to which
 5 this site was subject in order to make the change seem
 6 less abrupt?
 7 A. No. I was saying — this is a, you know, an offhand
 8 comment from four years later or however. In general,
 9 it's a bad experience if one day you're typing in
 10 a query and you get one set of results, and then
 11 the next day, you get a completely different set of
 12 results, or you type in the same query and it goes to
 13 one data centre and it goes up and down a lot or it goes
 14 to another data centre and it goes up and down a lot.
 15 So, in general, having, you know, a hard threshold
 16 that's like, oh, at this point, something huge kicks in
 17 can be confusing to users, it can generate a bad user
 18 experience, so, in general, you'd rather have something
 19 that, you know, kicks in smoothly, rather than like —
 20 it's almost like taxes, if you make a certain amount and
 21 suddenly a huge tax kicks in, you'd rather have
 22 something that's gradual, that sort of thing.
 23 Just in a larger perspective, you just want ranking
 24 to be robust, you don't want it to be, you know,
 25 arbitrary, and so if you see large changes happening,

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1 then that is a worse user experience, is I believe what
 2 I was trying to communicate in that email. So I don't
 3 think it at all supports if you're trying to say it was
 4 important for perception that Foundem not get too much
 5 traffic. Again, asked and answered that I was happy for
 6 Foundem to get whatever traffic they got.
 7 Q. But if you had wished to smoothen the change following
 8 whitelisting, then Google would have had multiple tools
 9 at its disposal to do that?
 10 A. I believe the exception list was just the exception list
 11 and once it was in or out of the exception list, that
 12 would flow through. Certainly there are places in
 13 general scoring where you might want to, you know, have
 14 knobs to make things happen gradually or smoothly or
 15 stuff like that. But, again, once I'd made my decision,
 16 I was completely happy for Foundem to get as much
 17 traffic as they got.
 18 Q. Can I just try that once more.
 19 If Google had wished to smoothen the abruptness of
 20 the change following whitelisting, it had multiple tools
 21 at its disposal to do so.
 22 A. No, it did not. They would have to build tools to make
 23 that easier.
 24 Q. Now, almost immediately following whitelisting, Foundem
 25 contacted Google, did it not, to ask whether its site

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1 was now penalty free? Do you remember that?

2 A. I believe so, yes. I believe Peter Barron wrote back to

3 say Foundem doesn't think they've gotten as much as they

4 should get.

5 Q. Yes. That is {J3M/19}.

6 Well, if we start on page {J3M/19/3}. So, Mr Cutts,

7 I think this is the email you were mentioning earlier,

8 where you say, about a third of the way down:

9 " ... foundem ... has seen increasing traffic

10 (... 2—3K [to] 30—40K visitors from Google)."

11 A. So, more than a factor of ten improvement in traffic.

12 Q. More than a factor of ten, but still, on any view, very

13 modest figures?

14 A. How long is a piece of string? Like, a factor of ten

15 increase in traffic seems pretty good to me.

16 Q. Well, we will come back and perhaps have a look at what

17 other CSSs were getting at that time.

18 In any event, the previous page, {J3M/19/2}. This

19 is Mr Barron's email reporting a discussion with

20 Ms Raff:

21 "She called me this morning. Overall she is very

22 happy, but asked me to circle back to you with one final

23 inquiry — can we confirm they are now on a completely

24 level playing field with Kelkoo and others? They have

25 seen big improvements, but believe their score has risen

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1 to 7/10 rather than 10/10."

2 So they are immediately coming back and saying we

3 think we are still penalised, albeit to a lesser extent?

4 A. Foundem did believe that they should get more traffic or

5 higher rankings or something, even after they were

6 placed in the exception list.

7 Q. If we look up to the top of the page, you say:

8 "Just for internal info: I don't believe foundem ...

9 should have any remaining issues, although I haven't

10 done an exhaustive check."

11 So you had not — you had made limited enquiries

12 about whether they were continuing to be subject to any

13 other penalty?

14 A. I followed up to make sure that the Algorithm A

15 exception list was working, which it was, because

16 I gathered the amount of traffic and saw that it went up

17 by more than a factor of ten. I think I would have done

18 additional checks just to make sure there were no other

19 penalties, even though I had already told Shivaun that

20 there were no manual penalties. So I think I did my due

21 diligence to make sure things were working as expected.

22 Q. We see the response that Foundem got, {J2B/4}:

23 "I spoke to Matt about your outstanding issues ..."

24 So this is about whether they are still penalised:

25 " ... and he came back to me with the following ...

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1 "'We can't make direct comparisons between how

2 different sites are indexed, and we can't comment on

3 the performance of other sites. With foundem ... we're

4 pleased that we had the opportunity to work together to

5 address concerns regarding quality and uniqueness. The

6 result is relative improvement to ranking of

7 the affected pages from your site. As you probably

8 know, it can take a while for us to index large sites,

9 so as we complete the process of indexing, you may see

10 more incremental improvements'."

11 So Foundem were not being told we have now checked

12 and you are subject to no other penalties?

13 A. Not in this email, no.

14 Q. In fact, it is not correct, is it, to say that

15 whitelisting took time because of the need to index

16 sites?

17 A. Once the algorithm no longer applied, the ranking

18 traffic went up by a factor of ten. Google takes time

19 to crawl websites. You know, you might consider

20 crawling seven — you know, 10% of the web every day, so

21 there could have been additional changes over time where

22 more pages were crawled for various reasons, you're

23 always assessing what the PageRank of a URL is, all

24 those sorts of things. So, from my perspective

25 the issue was resolved. But we didn't want to promise

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1 things might not change over time, you might not get

2 crawled more, all those sorts of stuff. So we probably

3 could have said more explicitly, we believe there are no

4 remaining issues regarding your site, but I think Peter

5 tried to convey that gist, whether it was received or

6 not.

7 Q. Part of the reason why Foundem considered it was subject

8 to a 30% penalty is that soon after whitelisting, many

9 of its AdWords LPQ scores dropped from 10 out of 10 to

10 7 out of 10. If we look at {C3/2/21}. At the top of

11 the page, we see all the scores on the box in the left

12 are 10 out of 10. This is between 29 September and

13 7 December. A number of them we see fall to 7 out of 10

14 on the right; do you see that?

15 A. I've never seen these documents before. I don't

16 understand AdWords or the landing page quality score.

17 I had no involvement in any of these scores. As far as

18 I'm concerned, it's completely unrelated, as far as

19 I know. I have no idea why any of these changes would

20 happen and it would be speculation since I am not an ads

21 person.

22 Q. But you did accept, did you not, in your evidence

23 yesterday, that the search penalty in the form of

24 Algorithm A then fed through to the LPQ penalty applied

25 in AdWords?

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1 A. The original site quality scores could go downstream to
 2 AdWords. As far as I know, AdWords had whitelisted
 3 Foundem. I don't know whether that applied regardless.
 4 In essence, I have no information to add on this point.
 5 Q. But if Foundem was subject to a 30% search penalty at
 6 this time and that carried over into AdWords, that would
 7 explain why these rankings fell?
 8 A. I'm not sure I agree with your hypothetical, because
 9 whatever whitelist they were in, they could have still
 10 been in. We whitelisted and then, from my point of
 11 view, the matter was closed.
 12 Q. Following —
 13 A. Or put in the exception list, and then from then on
 14 the matter was closed.
 15 Q. If we go to {C3/2/16} in this document.
 16 At the bottom, Foundem tracked its rankings on
 17 Yahoo! and Google for a set of like—for—like keywords,
 18 and the results here are set out and are that Foundem
 19 ranked consistently lower on Google than on Yahoo! for
 20 those keywords; do you see that?
 21 A. I do.
 22 Q. Of course one would not expect a site always to have
 23 the same rankings between different search engines, but
 24 if a site is consistently higher on one than the other,
 25 that suggests, does it not, that its rankings on one of

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1 them are being suppressed?
 2 A. No, that's absolutely not true. Every search engine has
 3 a different philosophy; it ranks things in different
 4 ways. I don't know how Ask Jeeves works, I don't know
 5 how Bing works, I don't know how Yahoo! works. Yahoo!
 6 might have liked Foundem a lot; that's their right.
 7 Google had its assessment; it ranked it. To the best of
 8 my knowledge, only two algorithms, Algorithm A and later
 9 Panda, affected Foundem and no person at Google, to
 10 the best of my knowledge, ever took any sort of manual
 11 action against Foundem. The only manual action that
 12 happened, to the best of my knowledge, is when I decided
 13 to give them the benefit of the doubt and put them in
 14 the exception list.
 15 Q. We see what you say about this in your statement
 16 {H3A/5/62}, paragraph 163:
 17 "In paragraphs 6–8 of the Amended Further
 18 Particulars, Foundem asserts that its lower ranking on
 19 Google, compared to other horizontal search engines such
 20 as Yahoo! and Bing, is evidence of unfair
 21 discrimination. I disagree. In my view, the fact that
 22 Foundem ranked lower on Google is better explained by
 23 Google's ability to identify and filter out low quality
 24 sites more effectively than its competitors."
 25 Are you saying that Google was identifying and

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1 filtering out Foundem?
 2 A. The — I've already asked — answered this in
 3 the previous answer. The only things that I know of, to
 4 the best of my knowledge and recollection, that ever
 5 triggered on Foundem were Algorithm A and later Panda.
 6 Both of those were algorithmic and were trying to find
 7 proxies for quality.
 8 What I was trying to communicate in this paragraph
 9 is saying, "Well, we ranked well on Yahoo!", is not
 10 great motivation for someone at Google to say, "Oh,
 11 well, we got it wrong", because we didn't view Yahoo!'s
 12 quality as that good compared to ours.
 13 Q. I am just asking you about the words of your own witness
 14 statement. You are talking about identifying and
 15 filtering out low quality sites as explaining why
 16 Foundem is doing worse on Google.
 17 A. I — what I'm trying to say in that is the fact that
 18 Foundem ranked lower, especially for the years 2006 to
 19 2008 —
 20 Q. No, no, this is about post-whitelisting.
 21 A. In general, what I'm trying to say is citing Yahoo! or
 22 Bing as a reason why, you know, Google's not ranking
 23 well is not a valid argument. In the following
 24 paragraph I said, well, if a child says, "If Bobby and
 25 Yvette are allowed to, why can't I?". Well, Bobby and

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1 Yvette are different children. Bobby is Bing and Yvette
 2 is Yahoo! in my metaphor.
 3 PROFESSOR SMITH: Can I ask you a question, Mr Cutts, about
 4 the kind of criteria that different websites use to
 5 assess quality and provide these scores?
 6 A. Yeah.
 7 (Off microphone discussion)
 8 PROFESSOR SMITH: No, my question indeed is about
 9 confidentiality. I am not going to — I am trying very
 10 hard to get Mr McGurk frowning at me!
 11 In the time you have been in the witness box, we
 12 have seen how much care you and your team take over
 13 disclosing what, to an outsider, may look like quite
 14 petty details about the way that you make these
 15 rankings. So, presumably, you are not afraid of us
 16 learning them, but clearly you would rather that Bing
 17 and Yahoo! and other competitors did not know what your
 18 signals were, and if you are successful in safeguarding
 19 this, the confidentiality of what I have heard referred
 20 to as your "crown jewels", then you would expect that
 21 other websites would be using different criteria from
 22 you —
 23 A. Exactly, so —
 24 PROFESSOR SMITH: — and you would be surprised or
 25 disappointed if it turned out that you were using

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1 the same criteria?

2 A. You could not be more correct. In fact, one of

3 the strangest episodes of my career at Google was, we

4 found out that Microsoft was using Internet Explorer to

5 look at what people were clicking on on Google to change

6 their rankings. To the best of my knowledge, Microsoft

7 still does that, and one of their spokespeople said,

8 "Well, we use a customer experience improvement program

9 to improve search rankings", and I replied on Twitter

10 "Regular people call that Internet Explorer 8". People

11 did not realise that by using Internet Explorer and then

12 going to Google, they were giving data to Microsoft

13 which then Microsoft directly incorporated into their

14 search rankings. It was a big deal.

15 So, yes, we very much care about the confidentiality

16 of our signals, we try to protect them, and we have seen

17 dedicated attacks by spammers, and by others, to try to

18 reverse-engineer how Google works.

19 MR WEST: Can we go back to {C3/2/26}.

20 The top graph is Foundem's traffic and the part

21 in — shaded in a sort of lime colour is the period of

22 whitelisting; do you see that? Between whitelisting

23 from Algorithm A and being struck by Panda?

24 A. I wouldn't — I wouldn't put it this way. The green

25 should extend forward going on, because it was on

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1 the exception list for Algorithm A from the time I made

2 the decision in late 2009 going forward. So I guess

3 when you're trying to communicate is, when a completely

4 different algorithm from a completely different part of

5 Google's ranking group, Panda, triggered for Foundem,

6 but that, again, is not my area of expertise.

7 Q. No. But if we look at the interim period in green, we

8 can see that, with the exception of a spike in around

9 February 2010, which was when Foundem went public with

10 its complaint to the Commission, its traffic was running

11 at about 100,000 monthly visitors; do you see that?

12 That spike goes up to about 170,000.

13 A. Okay.

14 Q. If we then look at the bottom graph, this shows UK

15 Google Search traffic to other CSSs which are listed on

16 the right there.

17 A. What's the source of this data?

18 Q. I can find you the answer to that, I do not know it off

19 the top of my head. But if you just take from me that

20 this is the data that we have.

21 A. I just don't know if this is from Google or from some

22 third party estimating things.

23 Q. I am told it is Google organic traffic. I think we do

24 have more detail on precisely where it is from, but if

25 you just assume that this is accurate for the moment, we

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1 can debate whether it is, if necessary, later.

2 Foundem —

3 THE CHAIRMAN: It is drawn from files disclosed by Google.

4 Who actually prepared the graph, I do not know. Can you

5 see it on there?

6 A. I can see it there.

7 THE CHAIRMAN: Do we have a larger copy?

8 A. I think I do —

9 PROFESSOR SMITH: The one we have a larger copy of is not

10 quite the same as that.

11 THE CHAIRMAN: It is different, is it?

12 MS ROSE: No, this is 14B.

13 THE CHAIRMAN: Ah.

14 MR WEST: I think it may be the same as —

15 THE CHAIRMAN: No, it is not, is it.

16 MS ROSE: The one we have is 30.

17 PROFESSOR SMITH: Some of the lines are the same and some of

18 them are not.

19 (Pause)

20 MR WEST: I have been looking at this slightly different

21 version of it at figure 30 of {H2A/2/60}.

22 THE CHAIRMAN: Ah, it is different.

23 MR WEST: We have different —

24 MS ROSE: Why are they different?

25 MR WEST: With some different CSSs.

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1 THE CHAIRMAN: What is your question? Then we might need to

2 understand why we have got two versions.

3 MR WEST: So we see Foundem, the blue line, essentially

4 stuck to the bottom of the graph, because this is in

5 the millions now, so as we saw, Foundem, even at its

6 height, was about 100,000, so it is almost

7 imperceptible. There is a slight rise, as you see, in

8 the Foundem line after December '09, but on this scale

9 it is almost imperceptible; do you see that?

10 A. I'll withhold judgment until I hear the question —

11 Q. The other leading CSSs, or the leading CSSs in the UK,

12 we see them achieving traffic of the order of, certainly

13 some of them, in millions, 2 million or thereabouts,

14 much, much higher levels of traffic —

15 MS ROSE: The top line is Ciao; is that right?

16 MR WEST: Yes.

17 MS ROSE: Some of these colours are very similar.

18 MR WEST: Yes, I am sorry. I think we do have a larger

19 version.

20 A. That's why I'm reserving judgment.

21 MS ROSE: The colours are similar even on the larger

22 version.

23 THE CHAIRMAN: Is Google — sorry. Is Foundem at the very

24 bottom —

25 MR WEST: Yes.

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1 THE CHAIRMAN: — such that you really only see it in
 2 December '08 with a little, very small peak, and then in
 3 about November/December '09 and March 2010, where it
 4 just lifts off the bottom and that I think is the
 5 Foundem?
 6 MR WEST: So December '08 would have been The Gadget Show,
 7 I guess —
 8 THE CHAIRMAN: Yes.
 9 MR WEST: — (overspeaking — inaudible) — whitelisting.
 10 THE CHAIRMAN: That is what we assume, yes. So that is
 11 Foundem.
 12 So what is your question?
 13 MR WEST: So, these CSSs are providing broadly similar
 14 services with broadly similar content, my point to you
 15 is that —
 16 A. Sorry, broadly similar services with broadly
 17 similar ...?
 18 Q. Content.
 19 Absent a penalty and indeed many of the same
 20 merchants and merchant feeds as we have heard, absent
 21 a penalty, one would expect them to have broadly similar
 22 rankings?
 23 A. No. Different sites have different quality, different
 24 signals, they get ranked differently. That's like
 25 saying all newspapers should have similar rankings.

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1 That's not the case.
 2 MR WEST: Well, I will not go over again with you
 3 the various quality factors that we have mentioned
 4 before in relation to Foundem, but I have put my point.
 5 Would that be an appropriate moment for a short
 6 break? I am doing pretty well, this is my last topic.
 7 THE CHAIRMAN: Yes.
 8 MR WEST: I am not going to address Panda with this witness
 9 because that is mainly addressed with Mr Kim.
 10 THE CHAIRMAN: But is Mr Jowell seeking to go? That is what
 11 our understanding was.
 12 MR WEST: Yes.
 13 THE CHAIRMAN: You know we have to stop today at 4.15, and
 14 we also know that Mr Cutts has to get away after lunch,
 15 effectively.
 16 MR WEST: I think we will end up going over a little into
 17 tomorrow with Mr Cutts.
 18 THE CHAIRMAN: We have got to take the gentleman from, is it
 19 Australia or New Zealand first?
 20 MR WEST: New Zealand, yes.
 21 THE CHAIRMAN: But that is expected to be fairly short,
 22 is it?
 23 MR WEST: Yes. I think it is an hour max.
 24 THE CHAIRMAN: One hour for that, and then turn to Mr Cutts,
 25 and you will be finished by lunch, allowing for some

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1 re-examination. As long as we keep to that in
 2 the timetable and I think we must do so; Mr Cutts must
 3 not miss his plane.
 4 MR JOWELL: I think, provided that Mr West is finished by
 5 quarter to and I have half an hour today, I think we
 6 should be okay tomorrow for time.
 7 THE CHAIRMAN: Fine. Very well. So we will return at 3.30.
 8 (3.21 pm)
 9 (A short break)
 10 (3.32 pm)
 11 THE CHAIRMAN: Yes, Mr West.
 12 MR WEST: I am told that the reason for the difference
 13 between the two graphs is that one of them combines
 14 Bizrate and Shopzilla together, presumably because they
 15 were in common ownership.
 16 THE CHAIRMAN: Yes. Unless that is of great consequence to
 17 separate — to have them combined, the one which we have
 18 at figure 30 {H2A/2/60}, which comes from Mr Raff's
 19 witness statement, if we can stick to that one.
 20 The other one I think comes from a pleading, but we then
 21 have to have that one blown up. There is no point
 22 having two unless anything turns on it, so if we could
 23 stick to figure 30, please.
 24 MR WEST: Just to finish this point, could we look at
 25 {H2A/2/62}. These are traffic figures for leading

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1 comparison shopping services in the UK, and we see it is
 2 from 2006 to 2015, although not every year is covered.
 3 But what we see is, following the application of
 4 the Panda penalty in around 2011, we see Foundem rising
 5 from 16th in 2011 —
 6 A. I really have to say, I would not consider Panda
 7 a penalty at all, it's a ranking change.
 8 Q. Okay. After the introduction of Panda —
 9 A. It didn't — Panda did not come from the web spam group.
 10 Q. After the introduction of Panda in 2011 —
 11 A. Okay.
 12 Q. — we see Foundem obtaining rankings which are much more
 13 similar to those of the other leading CSSs, and indeed
 14 by 2014 it is above Kelkoo, Pricegrabber, Dealtime and
 15 so on, and what I suggest to you that this shows is that
 16 the relative rankings of Foundem and these other CSSs is
 17 primarily driven by the extent to which they are subject
 18 to algorithmic demotions.
 19 A. Not true. I agree, I think, things like quality, things
 20 like user satisfaction, things like comprehensiveness,
 21 things like speed, things like all the different aspects
 22 of user experience, in — in my experience, tend to be
 23 very large factors. So I'm afraid I might not be
 24 the fact witness you're looking for. I'm not sure
 25 exactly what these graphs are — are trying to show, and

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1 I'm not a Panda expert.
 2 Q. But Google did not keep comprehensive records of all of
 3 the algorithmic penalties it applied, or algorithmic
 4 demotions if you want to call them that, to websites?
 5 A. The way that I would put it is, over time, we realised
 6 we'd need to be able to track these sort of things, so
 7 we built an internal server, we called it
 8 the Penaltyserver, and it was comprehensive, you know,
 9 didn't want to try to diagnose and issue and not be able
 10 to diagnose it. I would not characterise it as military
 11 grade, so not the sort of thing that was designed to
 12 build up, you know, complete, watertight, you know, in
 13 a court of law, 100% sure, it was built for internal
 14 usage. But from my knowledge, recollection, belief,
 15 examining the contemporary documents, I strongly,
 16 strongly believe there were exactly two algorithms that
 17 applied to Foundem, one was Algorithm A and the second
 18 was Panda, and you can see that through all of my
 19 communications it's talking about Algorithm A., there's
 20 never any other algorithms that are discussed.
 21 Q. Could you look at Mr Kwok's second statement in these
 22 proceedings {H3B/2}.

23 THE CHAIRMAN: Just when you say only two algorithms that
 24 applied to Foundem, Algorithm A, you call a demotion
 25 algorithm, then there is Panda, but presumably

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1 the rankings are all done by algorithms, are they not?
 2 A. The rankings are 99.9% done by algorithms, and then
 3 there are the small manual penalties that my team did.
 4 THE CHAIRMAN: Yes, so there would be a lot of other
 5 applying to Foundem all the time?
 6 A. Well, ones — ones that would have a punitive effect.
 7 THE CHAIRMAN: Yes.
 8 A. I mean, all the other algorithms are how many times did
 9 the word appear on the page, how close were the words —
 10 THE CHAIRMAN: But that is how you rank?
 11 A. The same algorithms that every other site —
 12 THE CHAIRMAN: Yes.
 13 A. — you know, and no differentiation between Foundem in
 14 any way, shape or form.
 15 THE CHAIRMAN: Yes. So when you say only two algorithms —
 16 A. Yes.
 17 THE CHAIRMAN: — applied to Foundem, you mean —
 18 A. Yes. Thank you for the correction. I appreciate it.
 19 MR WEST: Can we look at page 3 of this {H3B/2/3}. So
 20 Mr Kwok gave this witness statement in response to
 21 a request for disclosure by Foundem relating to penalty
 22 algorithms, and he says at 9(a) here:
 23 "Demotions may have been applied in various at
 24 different times (and do interact with each other)."
 25 I will not read the next bit out. He says:

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1 "That file may or may not have been checked into
 2 Google's CMS systems (checking files in and out is
 3 the way in which a CMS manages files and allows for
 4 version control)."
 5 Then the next paragraph:
 6 "To the extent that these files are present within
 7 the history of Google's CMS systems, there is no good
 8 way of locating them comprehensively, especially when
 9 you add in historic algorithms and/or versions over a
 10 (nearly) 20-year period."
 11 I will not read this out — all of this out due to
 12 time.
 13 (c):
 14 "Not all demotions applied to sites will have been
 15 effectuated via configuration files checked into
 16 Google's CMS systems."
 17 (d):
 18 "While the precise approach has changed over time,
 19 Google search is a 'live' system. There is a tendency to
 20 presume that there must be a log of every search and its
 21 results ... However, that is a misunderstanding."
 22 Then he goes on to say at 16 {H3B/2/6}:
 23 "I understand from Google's solicitors that Foundem
 24 focuses on Google's Penaltyserver as a way to locate the
 25 information it is seeking. The Penaltyserver is a

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1 service within Google that an engineer can query and it
 2 will tell you whether specific ranking algorithms apply
 3 to a specific website or page at the time of the query.
 4 However, it only responds in relation to those
 5 algorithms that it is set up to query. Whether an
 6 algorithm is included in Penaltyserver, and how much
 7 data is then shared with it, is a decision for the
 8 team(s) working on that particular algorithm. Even now,
 9 and despite its extensive remit, the Penaltyserver does
 10 not cover all demotion algorithms ... it would generally
 11 exclude anything done 'live' at the time of searching."
 12 Finally, 18:
 13 "As should be clear from the above, I can
 14 categorically confirm that there is no single CMS that
 15 stores all algorithmic demotions that can be queried by
 16 the Penaltyserver and not all demotion algorithms are
 17 associated with the Penaltyserver. It would accordingly
 18 be impossible to provide a comprehensive list of all
 19 demotion algorithms over time."
 20 So my point to you is that if there had been
 21 a further penalty which applied to Foundem over
 22 the period after whitelisting, Google would not
 23 necessarily have a record of it, would it?
 24 A. I disagree. If you ask an engineer, "Is there any way
 25 that something could have slipped between the cracks",

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1 engineers will be very creative in describing the ways
2 that something could have slipped between the cracks.
3 As the person who was there from 2000 until 2016,
4 Foundem, by the time it made it into The Guardian
5 article, was on my radar. I do not have any
6 recollection of any other algorithms other than
7 Algorithm A or Panda having a punitive or demotion sort
8 of effect on Foundem.

9 And I understand why Cody would add these caveats
10 about the Penaltyserver, but we did try to be
11 exhaustive. Like, if we wrote something to detect part
12 domains, which is when you land on a domain and it says,
13 "This domain is for sale", you know, and, "Click here to
14 buy it on GoDaddy", then we would add that information
15 into the Penaltyserver. It would be counter-productive
16 to have things that could trigger and affect a site and
17 not be able to diagnose that. So I understand that
18 Cody's statement here is potentially leaving, you know,
19 some sunlight, or a little bit of wiggle room, but to
20 the very best of my knowledge and recollection, nothing
21 would have affected Foundem except for Algorithm A and
22 Panda.

23 MS ROSE: Would you necessarily know?

24 A. I believe I would have, because Foundem was on my radar.
25 You'll see — you had these questions about: how deep of

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1 an evaluation did you do? Well, even in 2006 I was
2 checking, because I was saying, "Oh, Adam, tell them
3 that they have issues with, you know, affiliate".
4 Whenever Udi was doing it, I was saying, "Ah, yes, there
5 is duplicate content, but also our algorithms think that
6 it's, you know, low affiliate stuff without value-add".
7 So the contemporaneous record over a period of years
8 shows me checking in regularly on Foundem and not
9 finding or reporting on internal discussions anything
10 other, and I don't remember anything like that, anything
11 else besides that as well.
12 THE CHAIRMAN: Did you continue to check on Foundem after it
13 was put on the exceptions list?
14 A. Not — I didn't think of — I wasn't obsessed with
15 Foundem, I didn't think about Foundem all the time, but
16 any time they came up, you know, I was — you know, did
17 a quick check. So, for example, I'm not a Panda expert,
18 but there's a document where the Foundem founders write
19 when Panda launched and they say, "It's inconceivable
20 that you wouldn't have checked Foundem". Well, Panda
21 applied to 500,000 different sites, so we didn't check
22 in advance before Panda launched, but the day
23 afterwards, one of the web spam analysts was like, "Oh
24 by the way this seems to be applying", and so that was
25 part of my messaging. So there were regular checks that

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1 were happening on an ongoing basis. It was, well,
2 I guess it was irregular checks, but, you know, every
3 few months at least.
4 MR WEST: You do not disagree with the evidence that Google
5 advanced, through Mr Kwok, in response to the disclosure
6 application, do you?
7 A. I think it's probably wise for Cody to leave wiggle room
8 for there to not be mistakes. It's absolutely true that
9 there was not a — you know, there's these — you
10 lawyers call them "eDiscovery platforms", where they
11 make sure that every single document is saved, and
12 cross-referenced and all those sorts of things. We were
13 just primarily operating a search engine, and it was
14 very helpful to check in data, you know, be able to pull
15 historical copies of that data, all that sort of thing.
16 But it is true that, like, you had teams working
17 independently and so there was no completely 100%
18 watertight, you know, willing to put your son's life on
19 the line source of ground truth. That said, I have a —
20 I have a completely clear conscience about saying I do
21 not think anything applied to Foundem other than
22 Algorithm A and the Panda algorithm.
23 Q. Indeed, we know, do we not, Mr Cutts, that when Ms Raff
24 asked for confirmation as to whether Foundem's site was
25 now totally penalty free, you said internally,

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1 "I haven't carried out a comprehensive search"?
2 A. I said — if we want to go back to that, I'm happy to
3 read off the first part, which was I think there were no
4 outstanding issues regarding Foundem.
5 Q. I know you say that Foundem's site was not subject to
6 another penalty, but if we look at what such penalty
7 might have been, if there was one, could we just look at
8 {K1/15/14}.
9 THE CHAIRMAN: The response to the Commission, this is?
10 MR WEST: Yes, Google's further information.
11 It refers there, at the bottom, to something called
12 the "Keyword stuffing stroke/gibberish algorithm", and
13 it deals with the exception log for that, and says,
14 "The exception log includes", and you see there a long
15 list of CSSs; do you see that? It goes over the page
16 {K1/15/15}.
17 "Keyword stuffing" refers to a form of spam where
18 sites seek higher rankings by multiple repeated keywords
19 on the body of the page, is it not?
20 A. Can you go back a page {K1/1/14}? I think this is
21 saying this is a list of things that — it's
22 a whitelist. That's — that's to say: should not be
23 affected by keyword stuffing or gibberish.
24 Q. So can you just answer my question. It is a form of
25 spam where websites seek higher rankings by repeating

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1 the keyword multiple times on the page?

2 A. You can keyword stuff by repeating the same keyword, or

3 you can repeat lots of different keywords. That's what

4 the gibberish —

5 Q. CSSs are liable to be penalised by it because, as we

6 have seen, by their very nature, they contain multiple

7 repeated references to product names and models?

8 A. I disagree with that.

9 Q. That is why it has been necessary to whitelist this long

10 list of CSSs that we see here?

11 A. The list of 642,000 sites, the fact that this includes

12 some, you know, "fashion.de", or "Epinions", I wouldn't

13 even call those comparison shopping engines.

14 Q. I will not go back to it, but in the email to

15 Jenifer Austin back in 2006 that was forwarded to you,

16 Ms Raff said of Foundem's pages {J2B/1/35}:

17 "[They] ... tend to contain a naturally high

18 concentration of the make/model keywords, as well as

19 a naturally high degree of duplicate content ..."

20 That would make them a candidate, would it not, for

21 a keyword stuffing penalty?

22 A. Sorry, what was your question?

23 Q. That would make them a candidate for a keyword stuffing

24 penalty?

25 A. I don't think Foundem would have been a candidate for

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1 a keyword stuffing. Keyword stuffing, you can — there

2 was a part of my European Commission thing about

3 a different complainant named "eJustice" and I included

4 screenshots that just included phrases over and over and

5 over again. So if you wanted an example of those kinds

6 of things, that's what keyword stuffing is. Just

7 repeating product names wouldn't necessarily count as

8 something like keyword stuffing. To the best of my

9 knowledge, I never saw Foundem flagged for keyword

10 stuffing.

11 THE CHAIRMAN: If we look at the list of — this is an

12 exception log.

13 A. Yeah, you'll say — you'll notice it ends with

14 "_whitelist", so this is saying these are sites that

15 should not be considered keyword stuffing.

16 THE CHAIRMAN: But might otherwise have been caught for

17 keywords, because it has triggered the keyword stuffing;

18 is that what it is saying?

19 A. I believe that's correct, yeah.

20 THE CHAIRMAN: Looking at the list, there are quite a number

21 of CSSs there, are there not, like Ciao, Kelkoo —

22 A. I see Bizrate and Ciao, but I also see Epinions and —

23 THE CHAIRMAN: Yes — (overspeaking) —

24 A. — (inaudible)

25 THE CHAIRMAN: — not exclusively —

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1 A. Right.

2 THE CHAIRMAN: — but there do seem to be a number of CSSs,

3 and is that because they might otherwise have been

4 caught because they repeat the product name?

5 A. I doubt that. But this is speculation. The fact that

6 it's a list of 642,000, that's not something that would

7 be compiled manually. A person can compile or rate,

8 like, 300 to 500 items as spam or not spam, so someone

9 is probably creating an automatic list of sites that are

10 high quality and therefore shouldn't be considered

11 keyword stuffing, or something like that, is my best

12 estimation. I haven't seen this document before.

13 MR WEST: Just finishing off on this point, if you look at

14 paragraph 70 of your statement {H3A/5/25}, you refer

15 there to the keyword stuffing penalty, and halfway down

16 you say:

17 "For something like keyword stuffing it would not

18 always be appropriate for a twiddle to have a

19 significant impact. The severity of the demoted score

20 would depend on how many times the same word had been

21 repeated as the greater the repetition the more

22 frustrating this would be for the user."

23 So it is quite possible, is it not, that if there

24 was a keyword stuffing penalty applicable to Foundem, it

25 would have been 30%?

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1 A. I'll repeat my answer, which is, I don't think keyword

2 stuffing would have applied to Foundem, I don't remember

3 ever seeing it applied to Foundem and I don't think it

4 would have caught Foundem.

5 Q. If you go forward then to paragraph 112 in your

6 statement {H3A/5/41} —

7 THE CHAIRMAN: Can I just understand. Why do you think it

8 would not catch Foundem if it catches Kelkoo?

9 A. Well, I suspect the whitelist was computed automatically

10 and was probably high—reputation sites, is my best

11 guess. Keyword stuffing, like, is repeating the same

12 phrase almost ad infinitum, like imagine repeating

13 the same thing 400 times, or different phrases,

14 completely different phrases, 400 times. When you —

15 you know, the famous definition of pornography is,

16 "I know it when I see it". Like, if — when you copy

17 and paste or control—A to select the page, you'll

18 suddenly see, you know, a huge list of keywords.

19 If it is possible to bring up the — my submission

20 to the European Commission, the one that had the phones,

21 about five pages on from that I gave examples where

22 eJustice actually did have what I would consider keyword

23 stuffing.

24 MS ROSE: Are you saying that the whitelist we are looking

25 at here with 642,000 sites on it, that might not in fact

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1 be sites that would have been caught by keyword stuffing
2 but for being on that list ?
3 A. That's — I suspect that is a very large —
4 MS ROSE: You do not know, though?
5 A. I don't know.
6 MS ROSE: No.
7 A. But I suspect, given the length of it, it was computed
8 automatically and probably highly reputable sites.
9 MS ROSE: I mean, we have no idea. Given the number of
10 sites, we do not know. I mean, there could be Wikipedia
11 on there.
12 A. Exactly.
13 MS ROSE: Yes.
14 THE CHAIRMAN: Do we know if Foundem is on there, on that
15 list ?
16 A. I — what I can tell —
17 MS ROSE: (Overspeaking — inaudible) — is not.
18 A. I do believe that keyword stuffing was flagged in
19 the Penaltyserver and I don't think I ever saw Foundem
20 for keyword stuffing, and based on what I know of how it
21 worked, I don't think it would have triggered on
22 Foundem.
23 MR WEST: Could you look, finally, at paragraph 112 of your
24 statement {H3A/5/41}. You say:
25 "There was a 'whitelist' (what we would later call

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1 an 'exception list') for [Algorithm A]. Whitelists, or
2 exception lists, mean that an algorithm would not apply
3 in a particular case. Exception lists like this, in
4 relation to an algorithm, were very rare. I cannot
5 recall any other algorithms which had an exception
6 list."
7 Why did you not mention the keyword stuffing
8 exception list ?
9 A. I didn't know, or remember, or recollect that keyword
10 stuffing had an exception list until you just showed it
11 to me.
12 Q. You must have known that as head of web spam?
13 A. I'm sorry, I didn't. We had 25 engineers, many of them
14 had multiple projects, one of them was keyword stuffing.
15 I didn't remember whether there was an exception list
16 for keyword stuffing.
17 Q. You must have been involved in this RFI to
18 the Commission?
19 A. I don't — when was it submitted?
20 Q. 2010.
21 A. I was there at Google, but I don't remember being part
22 of that particular submission.
23 MR WEST: I see the time. We have other candidates which we
24 say may have applied, but Mr Cutts' evidence is clearly
25 that he has no knowledge of those.

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1 THE CHAIRMAN: He says that — basically, I think he says,
2 if one had applied, he would have become aware of it.
3 He is absolutely clear that he is not aware of any up or
4 down, in summary, is what you are saying?
5 A. Yes.
6 THE CHAIRMAN: Even though the Penaltyserver, I think you
7 said, was not military grade, or I think you said
8 necessarily defensible in court. So one isn't relying
9 on it.
10 A. Not so watertight that you could declare with perfect,
11 but I got the impression that Mr West wanted to ask
12 about JS demotion, or other possible things, and to
13 the best of my knowledge, nothing like JS demotion,
14 which would be sneaky JavaScript redirects, applied to
15 Foundem. Keyword stuffing, to the best of my knowledge,
16 did not apply to Foundem. To the best of my knowledge,
17 recollection, and looking at the contemporary records,
18 only Algorithm A and Panda, to the best of my knowledge,
19 affected Foundem.
20 MR WEST: Well, I have put my case to you about other
21 penalties and I do not propose to go back through it.
22 THE CHAIRMAN: No, you have put your case.
23 (Pause)
24 MR WEST: Thank you very much, Mr Cutts.
25 Cross-examination by MR JOWELL

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1 MR JOWELL: Good afternoon, Mr Cutts.
2 In 2005, you worked in a team within Google that was
3 called "Search Quality"; correct?
4 A. The broad team was Search Quality, and the specific team
5 was webspam, yes.
6 Q. You reported to someone called Amit Singhal, who was
7 the head of Search Quality?
8 A. I don't remember exactly. At one point I was peers with
9 Amit and I reported to either Peter Norvig or Udi, but
10 at some point I did start reporting Amit Singhal.
11 Q. For several years you shared an office with Mr Singhal;
12 correct?
13 A. That's correct.
14 Q. So I imagine you collaborated a great deal with him and
15 shared information with him?
16 A. Yeah, it was a good way — we call it "two in a box"
17 sometimes, where people could keep apprised of different
18 situations.
19 Q. Also part of the Search Quality team were those people
20 who were working on the OneBox, the Seti OneBox and
21 the Product Universal; correct?
22 A. I remember the term "Seti", but I don't remember what it
23 referred to, but people who were working on OneBox, you
24 know, would come in and talk to Amit, yeah.
25 Q. Yes, and they were within your same Search Quality team;

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1 correct?
 2 Mr Ginsberg, do you remember him? He is coming to
 3 give evidence.
 4 A. I do remember Mr Ginsberg, but you need to bear in mind
 5 that search was something like a thousand engineers at
 6 one point, so ...
 7 Q. But they were all working under Mr Singhal?
 8 A. Eventually they were all working under Mr Singhal. At
 9 least in 2008, I think they were under Udi Manber. So
 10 eventually they were all under Mr Singhal.
 11 Q. Those — the Seti OneBox, you were aware that that was
 12 a box that appeared at the top of the organic search
 13 results, or next to or within the search results, yes?
 14 A. I'm getting hung up on the word "Seti". I don't
 15 remember —
 16 Q. Well, the OneBox. Let us just say OneBox.
 17 A. The OneBox, yeah, was trying to surface information on
 18 the page but that wasn't in the web search results.
 19 Q. Yes. It was providing specialised or vertical search
 20 results; correct?
 21 A. The way I would describe OneBox is if there were
 22 different corpuses. For example, image search was
 23 the easiest. That was the first one to be delivered.
 24 Trying to surface that information. So if someone typed
 25 in "pictures of daffodils", you'd get thumbnails,

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1 pictures of daffodils. Web search results wouldn't be
 2 good for that. But through a OneBox mechanism, you
 3 could surface that kind of information from a different
 4 corpus.
 5 Q. Products —
 6 THE CHAIRMAN: What is "surface"?
 7 A. So, you know, if you —
 8 THE CHAIRMAN: Would show it in a prominent position on
 9 the page?
 10 A. I don't remember if it was always the first position, or
 11 1, 4 and 10, but it would — it would try to, you know,
 12 offer it as an option.
 13 THE CHAIRMAN: Always on the first page?
 14 A. Yes. I mean, on the results page. Sometimes it would
 15 be in — I think they called it "1, 4, 10". I'm not an
 16 expert on this, but in position sort of 1 or, like,
 17 would be the fourth position or would be the tenth
 18 position. So if you're not sure if it's all that
 19 useful, maybe you put it in the bottom in the tenth
 20 position such that, you know, it's there, if they scroll
 21 all the way down. But then the web searches would be
 22 around the OneBoxes.
 23 MR JOWELL: One of the specialised search results that
 24 appeared in the OneBox — was the Froogle, the Froogle
 25 results; correct?

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1 A. I believe so.
 2 Q. Well, you know so, do you not?
 3 A. I believe so. I'm not an expert on OneBox. I don't
 4 even remember what "Seti" referred to.
 5 Q. But you are an expert on Google's SERP, right, and you
 6 would have seen it appear there regularly?
 7 A. I was an expert on Google's web search results, but what
 8 everybody else in the group was doing and exactly how —
 9 like, take me as a tech savvy lay user, is the way
 10 I would probably describe it, regarding OneBox.
 11 Q. Well, Mr Brougher, he was also part of the Search
 12 Quality team; correct?
 13 A. Brougher was — Bill Brougher was a product manager for
 14 search.
 15 Q. In search quality? In the same team as you?
 16 A. I hate to say it, but we thought of it more like
 17 the engineers, and then the product managers were sort
 18 of the interfaces that would often talk to the rest of
 19 the world. So it was slightly in a different part of
 20 the org chart, but ...
 21 Q. But you and Mr Singhal worked closely with Mr Brougher?
 22 A. We often crossed paths.
 23 Q. It would be fair to say that Mr Brougher — I think you
 24 said he is the interface with the more commercial side
 25 then of Google; is that fair?

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1 A. One of the roles that Bill Brougher had was, you know,
 2 if people were coming from the executive level, or from
 3 the sales side or whatever, to sort of interface and
 4 talk to those people, and then, you know, talk to us and
 5 go back and forth.
 6 Q. Yes. So he would bring requests or suggestions
 7 sometimes for changes, or ways of improving searches and
 8 then you, the engineers, would try to implement those
 9 suggestions or requests; is that fair?
 10 A. The way I would describe it is Search Quality was a very
 11 engineering-driven organisation. It was completely
 12 different in ads. In ads, the product managers would
 13 tell the engineers what to do. In Search Quality,
 14 the engineers would kind of tell the product managers
 15 what to do and what to say and those sorts of things.
 16 So I wouldn't characterise it as Bill Brougher would
 17 bring us an assignment that we would then have to
 18 implement.
 19 Q. But he would bring you suggestions/requests; correct?
 20 A. Sure, he would relay suggestions and requests.
 21 Q. Jonathan Rosenberg, was he effectively Bill Brougher's
 22 boss?
 23 A. I think Jonathan Rosenberg was the head of the product
 24 team, so I think Bill Brougher would have reported up to
 25 Mr Rosenberg at some point.

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1 Q. He would also have liaised with Marissa Mayer?
 2 A. I don't know how the — Marissa was an important product
 3 manager, especially within search for a while, but
 4 I don't know how the lines of reporting worked between
 5 Marissa, Jonathan Rosenberg and Bill Brougher. I don't
 6 know who he reported to.
 7 Q. Jeff Bartelma, how did he fit in?
 8 A. The name is familiar, but I don't recall who that person
 9 was.
 10 Q. Now could I remind of you some of your evidence. Could
 11 we go, please, to paragraph 82 of your first statement,
 12 it is at {H3A/5/29}. You say at the bottom:
 13 "I was aware of sites ..."
 14 You say:
 15 "... I know that these proceedings are brought by
 16 comparison shopping sites ... back in the early
 17 days—..." —
 18 A. I'm sorry, what paragraph are we on?
 19 Q. Paragraph 82, at the bottom of the page.
 20 A. Okay.
 21 Q. "... back in the early days I didn't have a strong
 22 separate conception of a CSS. I was aware of sites like
 23 MySimon.com, which I recall was a CSS ..."
 24 If we could go over the page {H3A/5/30}:
 25 "... in the United States, but 'comparison shopping

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1 site' wasn't really in our vocabulary."
 2 Now, just to be clear, by "the early days", you are
 3 not talking about 2005? I mean, by 2005, you clearly
 4 knew what a comparison shopping site was, did you not?
 5 A. So I think I actually found an email that I wrote in
 6 2005 where people were complaining about the quality of
 7 the search results and I — phrase I used was "selling
 8 sites" at that time. So it still wasn't extremely
 9 common parlance in 2005. People were sort of trying to
 10 figure out how to refer to it.
 11 THE CHAIRMAN: I think it is not about how you refer to it.
 12 I mean, you can call it different things —
 13 A. Sure.
 14 THE CHAIRMAN: You can call whitelisting, exceptions; it is
 15 the concept.
 16 A. I think I was familiar with the concept, yes.
 17 MR JOWELL: Indeed, you must have known, because Froogle was
 18 a comparison shopping site, was it not? That had been
 19 around for three years by 2005?
 20 A. I don't know it was a shopping site. I don't know
 21 whether I would characterise Froogle as a comparison
 22 shopping site. I'm not an expert on that.
 23 THE CHAIRMAN: But you were aware of Froogle?
 24 A. I was definitely aware of Froogle, yes.
 25 MR JOWELL: Right, can we go to a document at {M3/3.3},

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1 please, and if we can go to {M3/3.3/2}. You can see
 2 here an email from Mr Brougher and it is about
 3 a presentation. It says — you can see it says at
 4 the top:
 5 "Re: Vertical Search Strategy Presentation."
 6 It is about a presentation that was going to
 7 the EMG. Now, the EMG, that is the executive management
 8 group, yes?
 9 A. That's correct.
 10 Q. You can see below the email from Mr Brougher. He says:
 11 "What is the real threat if we don't execute on
 12 verticals?"
 13 Do you see that? It is the paragraph just before
 14 the (a), (b), (c) and (d) —
 15 A. Mm.
 16 Q. — yes?:
 17 "(a) loss of traffic from google.com because folks
 18 search elsewhere for some queries.
 19 "(b) related revenue loss for high spend verticals
 20 like travel.
 21 "(c) missing opportunity if someone else creates
 22 the platform to build verticals.
 23 "(d) if one of our big competitors builds
 24 a constellation of high quality verticals, we are hurt
 25 badly."

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1 Now, you in Search Quality must also have been aware
 2 about the concern about the threat from verticals from
 3 specialised search; correct?
 4 A. I would not agree with that. I'm sort of getting
 5 dropped down in the middle of this, and product managers
 6 were always talking about product manager things, in my
 7 opinion, but the nice bubble that we had around search
 8 quality was all we had to worry about was returning
 9 the best, most relevant, most useful results and
 10 answers, and we didn't even care if it hurt our revenue,
 11 and so we just tried make sure that the web search
 12 results were as good as we could.
 13 Q. Right, well, if you look above, do you see the third
 14 paragraph? It says:
 15 "Finally, tomorrow starting at 10:45–11:00 ... in
 16 43/Tripoli the Search Quality team ..."
 17 That is your team, is it not?
 18 A. I'm not sure whether he's talking about the Search
 19 Quality team of product people like Marissa.
 20 Q. Well, it says:
 21 "... the Search Quality team is going to discuss
 22 vertical strategy so it may be useful for you stop by.
 23 It's mostly a search quality discussion rather than
 24 a googlebase/new property discussion, but there may be
 25 some takeaways for you. Some of you may want to crash

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1 the meeting."
 2 It does seem that Search Quality was involved in
 3 discussions about the vertical strategy?
 4 A. I don't recall meetings like that, and that was — in
 5 general, engineers kind of tried to avoid those kind of
 6 meetings like the plague; we just wanted to improve
 7 search quality. So I don't know if he's talking about
 8 product managers talking about it, or something else.
 9 Q. Well, do you see at the bottom he talks about "some
 10 possible approaches"?
 11 A. Mm—hm.
 12 Q. Yes?
 13 A. Mm—hm.
 14 Q. Do you see the second thing he says, he says, number (2)
 15 at the bottom:
 16 "Heavy investment in onebox."
 17 Do you see that?
 18 A. Mm—hm.
 19 Q. So, clearly, you would have been aware that there was
 20 going to be heavy investment in the OneBox at this time?
 21 A. No, I disagree. This is speculative things people are
 22 talking about on strategy. What percolated down to
 23 the kind of projects that we did were, in search
 24 quality, motivated by quality. I knew someone who
 25 spent months just trying to improve proper name

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1 searches. So product managers were doing product
 2 manager things, and I don't know what sort of
 3 discussions they had, but I don't recall anything like
 4 this filtering down to the engineers.
 5 Q. Well, we will see. We will see what filters down.
 6 If we can go, please, to your second witness
 7 statement at {H3A/10/24}, and here we see paragraph 83;
 8 do you see it?
 9 A. Mm—hm.
 10 Q. In the middle of that, you see you say:
 11 "If Froogle or Google Product Search results had
 12 been shown in the general Search results, they would not
 13 have had any special protections; whatever algorithms
 14 would have triggered on any other website would have
 15 triggered on Froogle or Google Product Search pages in
 16 the same way, if those results were webpages."
 17 Then you go on in paragraph 84. You say:
 18 "However, I do not think that it is likely that
 19 [Algorithm A] or manual penalties would have triggered
 20 on the Froogle or Google Product Search pages if they
 21 showed up in the generic search results. Froogle was an
 22 engineering—heavy group, which started as a way to
 23 examine webpages and reverse engineer information about
 24 different products and their specifications and
 25 characteristics. They did a lot of work to make sure

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1 that the Froogle and Product Search pages were high
 2 quality. For example, there wouldn't have been things
 3 like multiple pages containing copies of the same
 4 product ..."
 5 Do you recall that evidence?
 6 A. Mm—hm.
 7 Q. So your view is that Froogle was a high—quality site and
 8 not affiliate spam; correct?
 9 A. My view was that Froogle was an engineering—heavy site
 10 that invested heavily in quality and, especially when it
 11 was called Froogle, which was what I was referring to,
 12 there were organic results and then ads. So it would
 13 not have been triggering Algorithm A, because the vast
 14 majority of the traffic was organic traffic, not
 15 anything related to affiliates.
 16 Q. It was not — just to be absolutely clear, you would say
 17 it was not anything like affiliate spam?
 18 A. In my experience, it was nothing like affiliate spam,
 19 no.
 20 Q. Could we go to {M3/502}, please. Now, this is an email
 21 from 4 October 2005 from someone called Jess Lee within
 22 Google, and it is regarding a Q&A plan for Froogle UK
 23 and German, in which there was new UI, that is user
 24 interface, and new infrastructure for Froogle. You see
 25 that it is forwarding feedback from Google's UK —

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1 Froogle's — Froogle and Google's UK office, and
 2 the feedback is dated 27 September 2005 and it is from
 3 a Mr Andy Ku; do you see that?
 4 A. I see September 27, 2005. I am just trying to recreate
 5 — it's from Andy to Jess.
 6 Q. To Jess.
 7 He is discussing — he is giving some feedback on
 8 the new Froogle site. If you can just read with me what
 9 he says. He says:
 10 "From random discussions with people and from using
 11 my own gut, I believe search quality is the most
 12 important aspect of any such service (more important
 13 than features). Kelkoo, UK's leading service, does
 14 a very good job of returning exactly what the user is
 15 looking for, even with incomplete information. Kelkoo
 16 is still much better at this ..."
 17 Then he gives a series of examples. Perhaps if you
 18 can just read the five examples yourself.
 19 A. I just — I don't want to use too much of your time, so
 20 I don't know what you want to ask. Like, I'm happy to
 21 read the examples in detail, but it seems like this
 22 Googler is praising Kelkoo and saying that it's doing
 23 its job well.
 24 Q. Better than Froogle?
 25 A. Yes, it seems like, at the end of the first paragraph,

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1 he's saying "Kelkoo is still much better at this".
 2 Q. Yes.
 3 So if Froogle was not affiliate spam, then I take it
 4 that Kelkoo, the UK's leading comparison shopping
 5 service at this time, which, internally, Google rates
 6 higher than its own service, certainly was not affiliate
 7 spam, was it?
 8 A. So this was an email from a — like, not a Googler that
 9 I knew and I don't know where they're based, and I take
 10 your point that this organic feedback from a Googler is
 11 praising Kelkoo. Our particular systems were operating
 12 with the data that we had, over the signals that we had,
 13 trying to produce the best results. So affiliate —
 14 Algorithm A could have triggered on Kelkoo. I don't
 15 know exactly the specifics or timeline with Kelkoo, but
 16 it would have been operating independently of the fact
 17 that, for example, this particular person was praising
 18 the site.
 19 Q. Okay, that was a very long answer, but the question was
 20 a bit simpler.
 21 A. Okay.
 22 Q. Because you accepted that Froogle was not anything like
 23 affiliate spam, right? You accepted that a moment ago;
 24 you recall that?
 25 A. Yes.

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1 Q. I have just shown you an internal Google document, an
 2 internal communication telling — within Google, saying
 3 Kelkoo is the UK's leading comparison shopping site and
 4 it is superior in quality to Froogle. So if — so just
 5 my question is a very simple one. If Froogle is not
 6 what you are trying to catch by affiliate spam, then
 7 Kelkoo certainly is not, is it?
 8 A. I think it's an incorrect syllogism, because what you
 9 are providing is one person within Google making their
 10 claim. That's their opinion. I don't think that this
 11 was a person inside of Search Quality, as far as I know.
 12 I don't recognise the name. So I don't think that
 13 the syllogism automatically applies.
 14 Q. Now, I want to take you to — Mr West already took you
 15 to the 2007 version of Google's rater guidelines,
 16 the guidelines you provide to your raters, and we
 17 actually have an earlier version which I can — if I can
 18 just show you that and remind you of that. It is at
 19 {M3/541}. This is Google's web spam rater guidelines
 20 from October 2006.
 21 A. No. These are general guidelines. These are the 12,000
 22 outside raters, not —
 23 Q. Yes. No, that is what I mean, the outside raters.
 24 A. Yes.
 25 Q. But these are Google's guidelines provided to outside

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1 raters?
 2 A. Correct.
 3 Q. If we could go, please, to {M3/541/35}, you see at
 4 point 3 there is a definition there of a thin affiliate,
 5 yes?
 6 A. Yes.
 7 Q. It explains what a thin affiliate is, yes?
 8 A. Yes.
 9 Q. Then on the next page, if we could go to the next page
 10 {M3/541/36}, we see there is a section:
 11 "Recognizing true merchants."
 12 Then there should be a — it should — we should
 13 see:
 14 "Recognizing thin affiliates."
 15 Do you see that?:
 16 "Not all affiliates are ..."
 17 Can you see a section that says:
 18 "Not all affiliates are thin."
 19 "If a page offers some value in addition to its
 20 links to the merchant, then it is not a thin affiliate."
 21 For example, if the affiliate offers price comparison
 22 functionality, or displays product reviews ... etc, it
 23 is not a thin affiliate, and, therefore, not Spam. Some
 24 companies that offer price comparisons or other helpful
 25 shopping features in addition to the affiliate link

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1 are."
 2 Then you see an example: kelkoo.co.uk?
 3 A. Mm—hm.
 4 Q. Now, those were the guidelines that were given in 2006
 5 to the external raters, so, clearly, again, I have to
 6 suggest to you, kelkoo.co.uk was not regarded within
 7 Google as properly regarded as a thin affiliate.
 8 A. So I think this goes back to our earlier discussion of
 9 these rater guidelines. These are written for
 10 the 12,000 raters, who are not quite as sophisticated or
 11 nuanced, and this is the earliest version, that I know
 12 of, of the rater guidelines, and so my characterisation
 13 of it is that it's a little more rote, it's a little
 14 more instructive, it's a little more — I think I used
 15 the word "flowchart", "If this, then that", kind of
 16 thing, and the rater guidelines that were produced in
 17 2012 or whenever were a little more nuanced and left it
 18 open as, like, four or five questions. You could rate
 19 something as "maybe spam". You know, does this — is
 20 this a value—add to the user and so it tried to give a
 21 little more nuanced guidance. I would absolutely agree
 22 that this particular guide instructs the outside raters
 23 to say that Kelkoo added value and therefore it was not
 24 spam.
 25 Q. Okay. Let us look at what you said to European

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1 Commission. Now —
 2 THE CHAIRMAN: Just before going on there.
 3 These guidelines were produced by which team?
 4 A. I didn't write these spam instructions, but they're
 5 pretty well written. So I think it would have been
 6 the quality evaluation group, which was in the larger
 7 Search Quality Group. So I think it was probably
 8 guidance written by Google for the raters.
 9 THE CHAIRMAN: Well, it is clearly by Google, is it not?
 10 A. Yeah. Sorry, within the Search Quality Group, so ...
 11 THE CHAIRMAN: Within the Search Quality Group.
 12 A. Yeah.
 13 MR JOWELL: Are you —
 14 THE CHAIRMAN: The later one might have been more nuanced,
 15 you said, but it is clear the people who wrote this, and
 16 I imagine it is not just one person signs off on this,
 17 is it, it would have been considered —
 18 A. I don't know. It was probably a committee that wrote
 19 it, you know, each person wrote about one area kind of
 20 thing is my guess.
 21 THE CHAIRMAN: Yes, and then got approved by the committee,
 22 and they took the firm view that Kelkoo, like
 23 Shopping.com, is not a thin affiliate?
 24 A. That was the rating guidance and it is pretty clear.
 25 I just want to go back and add the one bit where I said

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1 the purpose of the side-by-side ratings was to inform
 2 the decisions of the search engineers, but not to
 3 dictate. So, you know, just because a side-by-side
 4 might have been negative or might not have — you know,
 5 the raters might have said this site is better or that
 6 site is better, that doesn't automatically mean that we
 7 had to accept those decisions. If we had good reasons
 8 why we thought, okay, yes, the raters might have thought
 9 that this was slightly negative but it actually improves
 10 diversity or, you know, meets some other goal of
 11 the Search Quality team, those ratings are not gospel
 12 that they have to listen to. You would want to explain
 13 why, you know, something looks somewhat negative but
 14 still might be good to launch but that would be
 15 possible.
 16 THE CHAIRMAN: Well, that is a long explanation —
 17 A. Sorry.
 18 THE CHAIRMAN: — but all I was asking is, specifically
 19 identifying Kelkoo as, say, some companies, and
 20 the specific examples that other companies, they would
 21 have to form a view, they are being told, are they not,
 22 by the committee, approved the text, that Kelkoo is not
 23 a thin affiliate?
 24 A. Yeah, if I had eyes on this I would not have given hard
 25 coded results, because if you say, "eBay can't be spam",

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1 then you're handing them a golden pass and eBay could do
 2 whatever you want and then raters would still say not
 3 spam.
 4 MR JOWELL: Well, you said the later ones of these were more
 5 nuanced. Let us just show — maybe I can just have time
 6 show to you that before we adjourn. It is {M3/336}.
 7 These are the same guidelines from June 2012.
 8 If you go to {M3/336/161}, you can see under "Thin
 9 Affiliates", and then again you see a paragraph:
 10 "Not all affiliates are thin."
 11 You see the same text and the same reference to
 12 kelkoo.co.uk as not being a thin affiliate.
 13 A. I do. If you could go to the page after that
 14 {M3/336/162}. This is the last page?
 15 Okay, this is — if we go back to the table of
 16 contents, there was — there was — this set of
 17 guidelines ended with an overview of, like, two or three
 18 pages of how to rate spam, but there was another part
 19 about spam.
 20 Q. I am sure you will be taken to it in re-examination if
 21 it exists, but ... my learned friend will take you to
 22 it.
 23 A. Okay, yeah. But my memory in reviewing these documents
 24 is that there was a section that left more guidance,
 25 more autonomy and agency up to the individual raters.

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1 Q. But this does continue to list — specifically list
 2 Kelkoo —
 3 A. It does.
 4 Q. — as not being a thin affiliate?
 5 A. That's correct.
 6 THE CHAIRMAN: This is the more nuanced guidance?
 7 A. This is the more nuanced version, correct.
 8 MS ROSE: What is the date of this?
 9 MR JOWELL: This is June 22, 2012.
 10 THE CHAIRMAN: So in the six years between the two, the view
 11 within Google and the guidance on what is not a thin
 12 affiliate, specifically in Kelkoo, had not changed?
 13 A. The guidance to the raters which —
 14 THE CHAIRMAN: Yes.
 15 A. — didn't have as many eyes on it from
 16 the search quality side but certainly got longer.
 17 THE CHAIRMAN: In this respect —
 18 A. In that respect, it did not change, that's correct.
 19 MR JOWELL: Sir, I could go on, but I do not know if we can
 20 go on.
 21 THE CHAIRMAN: No, we cannot. We have to stop, not because
 22 some people may be keen to watch the football, but
 23 because I have to give a lecture at a conference.
 24 I think tomorrow we are due at 9.30 because we are
 25 hearing evidence by video-link.

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1 I think you are aware of that, Mr Cutts, so your
2 evidence is going to be interrupted to accommodate
3 a witness on the other side of the world.
4 A. 10.30 is my time, or when ...
5 THE CHAIRMAN: I think, is it fair to say to Mr Cutts he can
6 come at 10.30?
7 MR JOWELL: Yes.
8 THE CHAIRMAN: I think that is absolutely fine, yes.
9 A. Okay. Thank you.
10 THE CHAIRMAN: You remain, of course, in the course of your
11 evidence and therefore I must formally warn you,
12 tonight, you cannot discuss it with anyone from
13 the legal team or indeed outside.
14 So we resume at 9.30 tomorrow.
15 (4.21 pm)
16 (The Court adjourned until 9.30 am on Thursday, 2 July 2026)
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