

SL13-038/94140

By email

European Commission

DG Competition

Antitrust Registry

COMP-GOOGLE-CASES@ec.europa.eu

Brussels, 29 May 2013

Re: Comments on the commitments proposed by Google Inc. in the case COMP/AT.39740

ECTAA regroups the national associations of travel agents and tour operators of 29 European countries, representing some 70 000 companies with more than 500 000 direct employees in the travel business.

ECTAA welcomes the European Commission's efforts in ensuring fair competition in the online search market through its investigation into allegations that Google Inc. has abused its dominant position. Due to the fact that Google's horizontal search service serves as starting point in 60 to 90% online travel searches, ECTAA believes it important to strive for neutrality and transparency in the way consumers can access services over the internet, and in particular when guided through vertical search services.

In this paper, ECTAA provides comments on Google's proposed commitments of 3 April 2013 from the perspective of European travel agents and tour operators that ECTAA represents at EU level. This submission raises concerns in particular concerning the distribution of air services and hotel bookings over the internet.

While ECTAA believes that all competition concerns identified by the European Commission need to be addressed in order to create a sustainable digital business environment, ECTAA members are primarily concerned about fair competition in vertical (specialized) search and the use of third party content in Google's search results.

As rightly pointed out by the European Commission in its Communication 2013/C 120/09, this concern relates to the way Google displays links to its own specialised search services in its web search results. In addition to its flagship web search service, Google also operates several specialised search services such as Google Flights, which specialises in the search for air services, or Google Hotel Finder, which specialises in the search for hotels.

Google prominently displays links to its own specialised search services within its web search results and does not inform users of this favourable treatment. Due to the favourable treatment of Google's own services, consumers are more likely to not make use of potentially more relevant competing services. First, users are not aware of the promotion of Google's offer within the search results. Second, competitors' results that are potentially more relevant are less visible and even sometimes not directly visible to users - they are more difficult for the user to find, for instance because the user has to scroll down the screen to see them or has to go to a subsequent search results web page.

ECTAA shares the Commission's concern that this practice unduly diverts traffic away from Google's competitors in specialised search towards Google's own specialised search services. It therefore reduces the ability of consumers to find a potentially more relevant choice of specialised search services. Since Google is an important source of traffic for competing specialised search services, this may reduce competitors' incentives to innovate in specialised search.

Furthermore, traffic acquisition cost for providers of services or goods have increased since the inclusion of specialised search products on Google's web search results page. This poses an unnecessarily high economic burden on all such impacted providers.

Healthy competition between these providers is also significantly impacted and negatively biased by including specialised search products on the side of service providers for free.

As a result, marketing activities of all non-Google providers focus on smaller parts of the respective market, in turn leading to the end consumer having less choice and being forced to use Google specialised search products that might be suboptimal for the case in question.

A) Distribution of Air Services over Vertical Search services

The transparency of air service distribution is currently to a large extent secured through EU Regulation 80/2009 on a Code of Conduct for Computerized Reservation Systems (CRS).

In its current form, the CRS Code of Conduct secures transparency and neutrality for consumers concerning products that are available in a CRS and distributed through a CRS. However, the proportion of services and travel searches benefiting from the CRS Code of Conduct are diminishing due to two developments: (a) the increasing role of connection portals as a starting point for leisure travel search and (b) the use by airlines of their strong leverage to restrict access to their services in CRSs.

Consumers are increasingly starting their travel search through a search engine. The search can be biased at two stages: (1) directing consumers to preferred vertical search services through discriminatory ranking, and (2) providing discriminatory ranking in the vertical search service in the absence of applicable legislation ensuring neutrality and transparency for the ranking of flight offers.

While Google Flights currently only partially covers the European market, ECTAA believes the development of the business model and its impact on travel distribution in Europe needs to be closely monitored:

- Google general search engine is the starting point for online travel search in 60 to 90% of cases.
- Google has acquired the leading travel technology provider ITA Software. It launched on 13 September 2011 a Flight Search product (<http://www.google.com/flights/>) and expanded its service to the European market on 18 March 2013.
- Google Flight Search provides links to airline websites only, thereby excluding online travel agents (this is possibly due to the fact that ITA is highly dependent on airlines' content and therefore abides by airlines' direct distribution policy). Google has indicated that it is working on creating opportunities for other of its partners in the travel industry to participate as well, but so far solutions have not materialized yet.
- Online travel agents are for the moment simply excluded from the Google Flight Search product.
- Google may drive online consumers searching for flights under Google general pages to its Flight Search product. Considering the very strong position that Google Flight Search could have in such conditions, distributors and suppliers would critically need to be ranked well in it. Google could make ranking depend on costly commercial agreements.

As highlighted above, internet Portals and search engines are for the moment excluded from the scope of application of the EU CRS Code of Conduct. In this Code, CRSs are defined as systems making information available to subscribers and subscribers are defined as making reservation on

behalf of clients. Thus the CRS Code of Conduct only addresses a B2B context between travel suppliers and travel agents.

Due to the non-regulated status of flight search services, ECTAA believes it is of outmost importance to ensure transparency and neutrality through the application of competition law.

The problems outlined above can be best illustrated by the following screen shots:

Screen shot 1.

The screenshot shows a Google search for 'flights'. The search bar at the top contains the word 'flights' and a search button. Below the search bar, there are tabs for 'Web', 'Images', 'Maps', 'News', 'More', and 'Search tools'. The search results page displays 'About 359,000,000 results (0.29 seconds)'. A cookie consent banner is visible, stating 'Cookies help us deliver our services. By using our services, you agree to our use of cookies.' Below this, there are several ads related to flights, including 'CheapTickets - De beste deals voor uw vliegticket', 'Connections Flights - Easily book your flight online', 'Cheap Flights - CheapOair.com', 'Flights from City of Brussels (BRU)', 'Flights - Google Search', 'Flights?', 'Flights from €20', 'British Airways Flights', 'Cheap Flights Sale', 'Find Super Cheap Flights', and 'easyJet Cheap flights'. The 'Flights from City of Brussels (BRU)' section includes a table with columns for 'To', 'Duration', and 'Airlines', listing destinations like London, UK, Milan, Italy, and Frankfurt, Germany, along with flight durations and airlines like British Airways, easyJet, Alitalia, and Lufthansa.

Screen shot 2.

Round tripOne wayMulti-city

Economy

Paris (all airports)toHelsinki (HEL)

Thu, June 13toMon, June 17

Stops

Airline

Price

Duration

More

Paris to Helsinki Thu, June 13

Sort by Round trip price

2:05 pm	—7h—>	10:10 pm	SAS	1 stop	from CDG	from \$324
10:40 am	—5h—>	4:45 pm	SAS	1 stop	from CDG	from \$330
2:00 pm	—5h—>	7:50 pm	SAS	1 stop	from CDG	from \$330
6:40 pm	—4h—>	11:55 pm	KLM / Air France	1 stop	from CDG	from \$333
5:35 pm	—5h—>	11:59 pm	Air Baltic	1 stop	from CDG	from \$339
7:00 am	—5h—>	1:25 pm	Lufthansa	1 stop	from CDG	from \$373

Ads

Helsinki @ \$974 RoundTrip
www.cheapoair.com/Helsinki-Cheap-Flight
Low Fare Helsinki Flight Available.
Book Now & Save Big. Limited Seats!

\$690+ Helsinki Flights
www.travelzoo.com/Helsinki
Find Cheap Flights to Helsinki
Compare Flights up to 80% Off!

Fly to Helsinki
www.flysas.com/Helsinki
Book flights to Finland with SAS.
Most nonstop from US to Scandinavia

Hotels in Helsinki, Jun 13–17 Sponsored
www.google.com/hotels

Sokos Hotel Helsinki \$189

Score: 20 / 30
17 reviews
4-star hotel

Scandic Simonkenttä \$171

In screen shot 1, Google Flights has been ranked as first organic result for the search 'flights' in Brussels while the service covers only a small part of the options available for consumers.

In screen shot 2, Google Flights returns limited options on the Paris-Helsinki flight and excludes Online Travel Agents from the results.

B) Distribution of hotel bookings over Vertical Search Services

In the case of Google Hotel Price Ads, there are two types of specialised search services offered on the search results page: the Google Hotel Finder commercial box (marker (1) in figure 1) under the third, more prominently displayed AdWords ad, and Google Local Search (marker (2) in figure 1) extending the information provided as part of the original version of Local Search.

Screen shot 1: Google web search results page including Hotel Finder commercial box and Google Hotel Price Ads in Local Search

The screenshot displays a Google search results page for the query "hotel london". At the top, there are navigation tabs for "Web", "Images", "Maps", "Shopping", and "More". Below these, it indicates "About 328,000,000 results (0.35 seconds)". A cookie consent banner is visible. The main results area includes several sponsored ads and organic search results. A large blue number "1" is overlaid on the left side of the page, and a smaller blue number "2" is overlaid on the right side of the page.

1

Hotels in London, United Kingdom on Google
Compare hotels based on reviews, prices, photos, Street View and more.
Sunday, May 26 to Monday, May 27
Hotels from €30 3 stars from €30 4 stars from €52 5 stars from €117
Prices per night More Google hotels results »

2

Map for hotel london

Hotels in London
www.onfinestay.com/london/hotel
Why stay in a Hotel Room if you can have a Designer Apartment? Book Now

London Hotels from €20
www.venere.com/London-Hotels
★★★★★ 41 reviews for venere.com
Choose from 600 hotels in London.
Save up to 70% on your Booking!

Hotel London
www.agoda.com/London
Plenty of choices in London hotels. Save up to 75%. Don't miss!
agoda has 630,766 followers on Google+

St Ermin's Hotel London
www.sterminshotel.co.uk/
Official Site: London City Center
Book Online Now and Save 10%

Accommodation in London
www.summerbreaks.org/Accommodation
020 7841 0486
Visiting London this Summer? Book cheap rooms with Sanctuary today!

A specialist in the field of online marketing will easily recognize that many of the results displayed in the visible area of the first results page are paid ads. Amongst these, two very prominently positioned products are Google's own specialised search products mentioned above. However, the average customer is not aware of this situation and may be misled to believe that all the results and offers being shown are those of third party services.

Additionally and as indicated above, the positioning of Google's own products displaces other, potentially more relevant market players' entries. This might lead to the customer having to scroll down or turn to the next search results page to find these, potentially more helpful, entries.

In Google's commitments presented to the European Commission, Google offers to

- label promoted links to its own specialised search services so that users can distinguish them from natural web search results
- clearly separate these promoted links from other web search results by clear graphical features (such as a frame)
- display links to three rival specialised search services close to its own services, in a place that is clearly visible to users

However, as illustrated in screen shot 2, these proposals are not likely to have any impact on the current situation. The mentioned "promoted links" are already labelled by the word "Sponsored" (marker (1) in screen shot 2), "Ads" (marker (2) in screen shot 2) or "Ads related to ..." (marker (3) in screen shot 2). However, due to the style and design of labelling customers are not being made aware clearly enough of the promotional nature of inclusion of Google's own specialised search products. Moreover, there is no clear indicator for end consumers to distinguish between links to Google's own product (in this case, the Google Hotel Finder via the Google Hotel Finder commercial box; marker (4) in screen shot 2) and other paid links to competitor services via Google AdWords (markers (5a) and (5b) in screen shot 2).

Screen shot 2: Highlighting inclusions of sponsored search products on the web search results page

The screenshot shows a Google search results page for 'hotel london'. The page includes a navigation bar at the top with links to Web, Images, Maps, Shopping, and Search tools. Below the navigation bar, there is a search bar and a map of London. The search results are displayed in a grid format. Various markers are placed on the page to highlight specific elements:

- Marker 1:** Points to a 'Sponsored' label next to a search result.
- Marker 2:** Points to an 'Ads' label next to a search result.
- Marker 3:** Points to an 'Ads related to hotel london' label.
- Marker 4:** Points to a search result for 'Hotels in London, United Kingdom on Google'.
- Marker 5a:** Points to a search result for 'Hotel London - Hotels.com'.
- Marker 5b:** Points to a search result for 'HRS - Hotel in London'.

The search results include various hotel listings with details such as price, location, and user reviews. The page also features a map of London and a sidebar with additional search results.

The same observation applies for the inclusion of Google Hotel Finder ads in Google Local Search results as per marker 1 in screen shot 3.

Screen shot 3: Inclusion of Google Hotel Price Ads in Google Local Search results

The screenshot displays a Google search results page for 'Central Park Hotel'. The top navigation bar includes 'Web', 'Images', 'Maps', 'Shopping', 'More', and 'Search tools'. Below the navigation bar, it states 'About 328,000,000 results (0.35 seconds)'. A cookie notice is visible, followed by a section for 'Ads related to hotel london'. This section includes links to '1/2 Price London Hotels' and 'Hotel London - Hotels.com', both with star ratings and review counts. Below the ads, there is a 'Sponsored' section titled 'Hotels in London, United Kingdom on Google', which allows users to compare hotels based on reviews, prices, photos, and Street View. This section includes a date range selector (Sunday, May 26 to Monday, May 27) and a table of hotel prices per night for different star ratings. To the right of the sponsored section, there is a detailed view of the 'Central Park Hotel', including its address (49-67 Queensborough Terrace, London W2 3SS, United Kingdom), phone number (+44 20 7229 2424), and a section for 'Reviews' with a score of 8. Below the hotel details, there is a list of nearby locations with markers A through E, including 'Strand Charing Cross, London' and 'Bankside 34 Park St, London'. A small inset window shows a 'Check in' and 'Check out' date selector and a list of hotel prices from various booking sites like Hotelopia.com, Booking.com, HRS, and Easytobook.com.

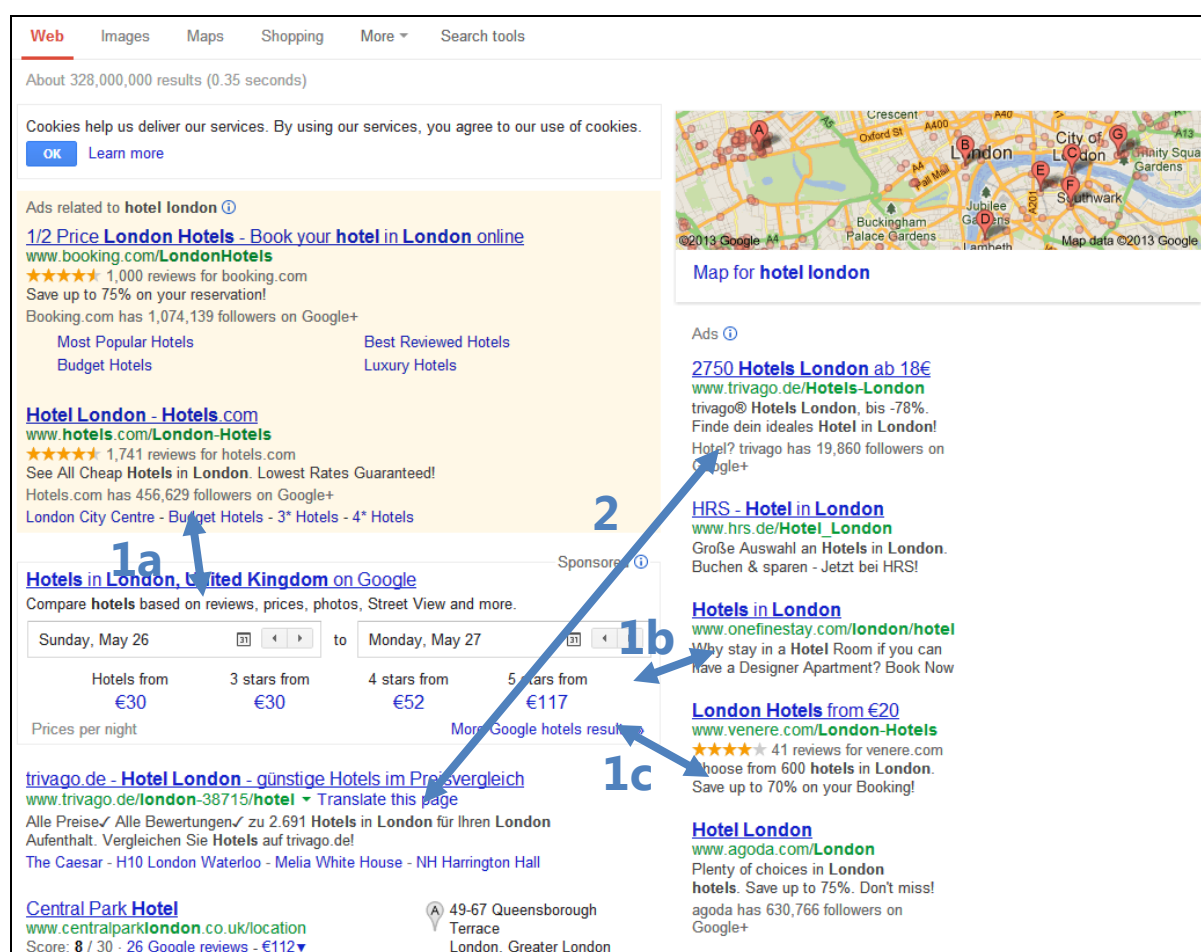
The announced clear separation of specialised search products from other search products by “a frame” (marker (1) in screen shot 4) does not draw the end consumer’s attention to any significant extent. The exact same framing can be found around other elements on the search results page in various different contexts (markers (2a) and (2b) in screen shot 4). In these contexts, the frames do not separate “usual”/ “organic” web search result from promotional paid searches, but serve as a design element in the first place or help to separate navigational elements from results (marker (2a) in screen shot 2).

Screen shot 4: Frame lines as design and separating element on the Google search results page

The screenshot shows a Google search results page for the query "hotel london". The page is divided into several sections by horizontal lines. At the top, there's a navigation bar with "Web", "Images", "Maps", "Shopping", "More", and "Search tools". Below this, a status bar indicates "About 328,000,000 results (0.35 seconds)". A cookie consent banner is present. The main content area is divided into two columns. The left column contains several search results, including "1/2 Price London Hotels - Book your hotel in London online" and "Hotel London - Hotels.com". The right column features a map of London, a "Map for hotel london" link, and several sponsored ads for hotels like "2750 Hotels London ab 18€" and "HRS - Hotel in London". A sidebar on the left (marked with a large blue '1') shows a date filter for "Sunday, May 26" to "Monday, May 27" and a price range from "€30" to "€117". A large blue '2a' is placed near the top right, and a large blue '2b' is placed near the map. A small blue '1' is placed near the date filter.

Finally, the proposed “display of links to three rival specialise search services” is not of the game changing nature it claims to be at first sight. Local proximity of links to at least three rival providers is already a given by means of the links provided via the Google AdWords product (marker (1a), (1b), (1c) in screen shot 5). Moreover and especially in case of Google AdWords, listed providers do not necessarily have to be of highest quality and relevance to the end consumer’s needs. Providers have the option to “buy their way to the top” by setting an appropriate bid. In addition to this, providers do have the option to be listed in paid search and natural search results at the same time (marker (2) in screen shot 5). Hence, sourcing the “three rival providers” from both, paid and organic search, will most likely limit the end consumer’s choice. As such, proposal (c.) cannot be seen as a transparency generating measure. A self-imposed placement of specific search products next to organic search results of at least three rival providers would much more cater for transparency in favour of end-consumers needs.

Figure 5



C) Use of third party content in specialised search services

In addition to the above, large portions of the content, such as photos or user reviews, shown in the specialised search services have not been produced by Google. They have rather been copied from other websites most of which belong to rival providers of specialised search without prior consent. Although this seems to be good for end consumers since they do not need to look any further but to Google's specialised search service, it suggests a situation of "wrong safety" for customers. The service itself might well be inferior to those of the competition, leaving the end consumer with a suboptimal experience. And, once more, Google are diverting traffic away from these rival sites, since customers are not being made aware that the content on Google's specialised search products is not the original version.

Moreover, Google applies two different measures in the placement of its specialised search products. Competing websites take a setback on organic search results' rankings when relying on duplicate content as their primary source of website content, whereas Google's own specialised search services are placed right at the top of organic search results using the exact same duplicate content strategy.

The positioning of its own services seems to bypass all well-established and continuously changing criteria applied to competing web services. At this point, one could conclude Google are using their dominant market position to bias search results pages' look and content in an unduly manner.

Past objections of rival websites against this practice have been answered by an offer from Google to surrender the inclusion of foreign content from the site in question together with the inclusion of this particular site in organic search result listings. Obviously, this unnecessarily links two as such completely separate topics and areas of inclusion. However, Google can do so due to its

overwhelming market position which it misuses in order to promote its own specialised search services.

Since more and more customers are seeing Google (or, effectively, search engines in general) as central hubs of the internet, search engine traffic is the dominant source of any website's traffic. This is not only rooted in an active and conscious change in user behaviour, but also linked to the emergence of search tools like Google Chrome's omnibar. As a result, the complete exclusion from search engine services including, but not limited to, organic search listings is an economically unacceptable measure.

As a response to the concerns raised by the European Commission regarding the use of third party content, Google proposes to

- a. offer all websites the option to opt-out from the use of all their content in Google's specialised search services, while ensuring that any opt-out does not unduly affect the ranking of those web sites in Google's general web search results
- b. offer all specialised search web sites that focus on product search or local search the option to mark certain categories of information in such a way that such information is not indexed or used by Google

Due to the central role of search engines in user behaviour and the existence and promotion of related specialised search services, traffic from these services to rival website providers is already of significant economic meaning to those providers. Although explicitly stating that an opt-out as per offer (a.) will not "unduly affect the ranking" Google instead proposes an "all or nothing" approach limited to the specialised search service in question only. This seemingly less rigorous treatment is still not acceptable from a specialised search provider's standpoint since it means the complete exclusion from Google's specialised service. Adding to the economic burden this imposes on providers of specialised search is less choice on the side of the end consumer. The customers again have to accept a potentially suboptimal choice of services with the most relevant services fulfilling their needs are listed out of their field of immediate attention, again driving up their opportunity cost of search as mentioned above.

Similarly, offer (b.) equals an exclusion from organic search listing "in disguise". Once content on rival specialised web search services is marked as "no index" this content will not be taken into account for natural search listings. As a result, content and services are not included in any of Google's search services, including specialised search and general, organic web search. This means no effective change to the current behaviour of Google in this matter. The only difference being that the website operators themselves have instructed Google not to use their content at their own discretion. But the overall effect remains unchanged, the website is excluded from all natural listings. As above it seems Google are mis-using their market position to enforce inappropriate measures upon website operators.

Due to the concerns outlined above, ECTAA believes that the commitments proposed by Google are not sufficient to ensure transparency and neutrality in the online search market.

With kind regards,

Michel de Blust
Secretary General