KELKOO GROUP'S RESPONSE TO THE CMA'S CONSULTATION ON ALGORITHMS: How they can reduce competition and harm consumers

1.ABOUT KELKOO GROUP

Kelkoo Group is a comparison shopping service (CSS) operating in 41 markets, including the UK. Headquartered in London Victoria with 75 staff in the UK and 233 globally, Kelkoo Group consists of three brands (Kelkoo, LeGuide and Ciao) which, at their peak, were valued at around £1bn. As a hugely successful company and a market leader in shopping comparison, we helped a vast number of consumers in and outside the UK to make great shopping choices and helped online retailers to reach those consumers.

However, our business was taken to a cliff edge by Google's abusive behaviour in the Comparison Shopping market. Using its overwhelming dominance in search, Google promoted its own CSS and excluded competitors like Kelkoo from its general search results through multiple algorithmic changes. As a result, consumers could no longer find Kelkoo or services like ours. Competition in shopping comparison was decimated, leaving consumers poorer and Kelkoo and others struggling for survival.

The pandemic has brought Google's anti-competitive behaviour into sharp focus - many consumers are struggling to cope with rising living costs as a result of Covid-19 and would benefit from easily discoverable price comparison sites. As such Google's stranglehold in the market has tightened, thereby increasing its dominance and the impact of its continued abuse.

A recent comment from Kent Walker, Google's SVP of Global Affairs, highlights Google's mischaracterisation of the issues: "*…people don't use Google because they have to, they use it because they choose to.*"[1]

With this approach, Google ignores the impact it has on the choices users make. With over 90% market share on search across Europe, Google has unparalleled power to affect the decisions of consumers. And in excluding rivals and favouring its own services, Google shows disdain for the very concept of the free choice it claims users make when using its service.

2. CONTACT DETAILS

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We would be more than happy for the CMA to follow-up with us and provide further insights if required.

[1] Walker, K., "A deeply flawed lawsuit that would do nothing to help consumers", The Keyword (Google Blog), 20 October 2020.

3. QUESTIONS

Q1: Are the potential harms set out in the review paper the right ones to focus on for our algorithms programme? Are there others that we have not covered that deserve attention?

Yes, the list seems to be comprehensive and we agree in principle with the premise outlined in 1.4. However, the reality is that the dominant market players abuse algorithmics to game the system as noted in 1.6 of the consultation paper and user journeys are manipulated despite **Nick Clegg, Facebook's Joint Head of Policy and Communications** recently declaring: "*The caricature that users are passive victims of algorithmic choices made for them is simply false.*"[2]

Our experience tells a different story and one that is borne out by Tobias Ellwood MP in his recent opinion piece. He said: "*Theirs is a world where they influence public opinion, taste and choice by the shadowy manipulation of their sites' algorithms which record our every move online and then use it to make vast sums of money.*"[3]

Google's decision to create choice architecture that deliberately pushes consumers to its CSS is the key harm that lies at root of its abuse.

Q2: Do you agree with how we have described each harm, and are there other examples that demonstrate them in addition to the examples we have included?

All harms appear to be described fully. We would like to draw your attention to 2.1.4 Unfair ranking and design specifically and 2.2 Exclusionary Practices. As you rightly note in 2.65, Google Shopping is a seminal case illustrating the role of algorithms in self-preferencing.

In this context, consumers now have far fewer available choices. Users are impacted in two ways:

(a) A user conducting a shopping search on Google's general search engine will usually be shown Google's comparison shopping service at the top of the page, in a visually attractive format which commands user attention. Much of the time, no alternative CSSs appear elsewhere on the page; even when they do, they do not have the opportunity, on the page, to present their results to the user in the same way Google does. Thus, Google guides the user to choose its own service and guides them away from rivals.

(b) On a typical CSS website, consumers view a large number of offers per page of results. In Google's CSS on the general search page, consumers view far fewer. This means a smaller cross-section of the available offers are seen by the user, and those retailers who do appear first (because they have paid the most) have fewer visible rivals themselves to compete with.

[2] Levine, A., "Deep-dive refutes allegations of anti-GOP social media bias", Politico Newsletter 'Morning Tech', 2 January 2021.

[3] Ellwood, T., "Why the world would be a better place without Facebook, Google and Amazon...and why Britain can lead the way in cutting them down to size", Daily Mail, 7 February 2021.

With access to CSS websites being foreclosed, the average number of offers viewed by consumers decreases dramatically and competition between retailers is itself decreased.

In short Google's competitors are still prevented from providing an alternative to its comparison service. Google's algorithm still decides which offers to present to the user and the order in which they will be displayed. Google still determines the format in which those offers will appear, and where on the page. And when a user clicks, they are still taken directly from the page showing the offers to the retailer's site - just as they would be if they had used any other comparison service.

The inability for shopping search sites like ours to reach consumers means that we have:

(a) no incentive to innovate on consumer facing tools in order to compete for user attention and loyalty. Ultimately, consumer facing tools suffer and consumer choice is further reduced;

(b) severely limited ability to compete to provide retailers with services linking them directly to consumers from our site who are interested in buying their products, avoiding downward pressure on the price of these services and, ultimately, increasing costs for retailers and consumers.

Q3: How likely and impactful are the identified harms now, and how might they evolve in the next few years?

Google's self-preferencing and exclusionary practices are not limited to shopping comparison. Its abuse has spread to other verticals like local, flights and hotels and investments/banking. Google is following the same pattern in these verticals that it established in Shopping. Setting an effective precedent against this behaviour is vitally important for all verticals if we are to avoid restriction of consumer choice across the board in the future.

An example of this is Hotels. Online paid-search competition is intensifying and it is getting more challenging to be visible in organic results for hotel category searches (e.g. hotels in New York). Brands are compelled to buy Hotel Ads to appear anywhere above the fold. Google Hotels offers similar functionality and tools to its competitors such as Kayak, Expedia and Booking.com, but now appears above the general search results and is given an unfair advantage over rivals who, ultimately, look to be suffering the same fate as CSSs did years earlier. In the long term, this will reduce choice for hotels and travel operators wishing to reach consumers, and as a result drive up consumer prices.

Google's power is likely to be strengthened in the years to come – unless it can be stopped in its tracks. Experience of the Covid-19 pandemic shows that consumers have moved much of their shopping activity online and have been forced to use the very limited choices available to make their shopping choices.

Its Q4 2020 earnings report highlights growth across the board including in both search and network ad revenues. Q4 operating income is up by more than 30% on last year and search grew by approx. 18% growth. Had there been a level playing field, many of Google's previous competitors (including all CSSs) would have benefited from consumers buying more goods online, and consumers would have benefited from increased choice and competition. Instead, consumer choice remains significantly limited and Google's position has become further entrenched.[4]

To quote Dr Andrea Coscelli, CMA chief executive, from his recent lecture: "Robust *and timely intervention to cut back at that web of anti-competitive mergers, carries wider economic benefits: stronger productivity, lower inequality. These things are important at the best of times. As our economies begin to recover from the devastating consequences of the coronavirus pandemic, they matter more than ever."*[5]

As such we look forward to the creation of the Digital Markets Unit as outlined in 1.8 to *'proactively prevent harms on an on-going basis… and a new pro-competition regulatory regime for digital markets.*

Q4: Are there specific examples that we should investigate further to consider whether they are particularly harmful and potentially breaching consumer or competition law?

Most issues with Google around search can be reduced to Google's self-preferencing and exclusionary tactics. Google's anti-competitive self-preferencing was clearly described by the European Commission's Decision in the Google Shopping case, yet Google continues to use its general search algorithms both to favour its own comparison shopping service and demote others on general search pages. In our view, a further investigation of this behaviour by the CMA is warranted and necessary in order to force compliance by Google with the requirements of the Google Shopping Decision.

The issues, of course, go beyond Shopping. Dr Liza Lovdahl Gormsen, senior adviser at the Financial Conduct Authority (FCA), hit the nail on the head in the Select Committee on Communications and Digital: The future of journalism*: "At this point, the market is so distorted that Google and other platforms can extract money from all sides of the market, both advertising scams and those who are advertising against scams. Things are so absurd that the chairman of the FCA, Charles Randell, said in a speech on 16 June this year (2020), "We need a framework to stop social media platforms and search engines from promoting unsuitable investments, including scams, to ordinary retail consumers. It is frankly absurd that the FCA is paying hundreds of thousands of pounds to Google to warn consumers against investment advertisements from which Google is already receiving millions in revenue". What is the competition authority's objective if not to take action against the biggest companies distorting the market?"*[6]

Google's dual role on the 'buy' and 'sell' side is succinctly summed up by Professor Damien Geradin, founder of Geradin Partners and Professor of Law, Competition and Economics at Tilburg University: *"The presence of Google on all sides of the market is a source of major conflicts of interest. There is*

[4] Alphabet, "Alphabet Announces Fourth Quarter and Fiscal Year 2020 Results", 2 February 2021.
[5] Coscelli, A., "Ahead of the curve", Speech delivered at the Bannerman Competition Lecture, 9 February 2021.
[6] Select Committee on Communications and Digital, Corrected oral evidence: The future of journalism, 8 July 2020, questions 159-168 (question 159). Randell, C. "A financial system to support the recovery", Speech to a virtual roundtable of bank chairs hosted by UK Finance, 16 June 2020.

significant evidence of self-preferencing and other anti-competitive behaviour to the detriment of rivals and, in the end, advertisers and publishers."[7]

Q5: Are there any examples of techniques that we should be aware of or that we should consider beyond those that we've outlined?

We believe that you have mentioned the right techniques.

Q6: Are there other examples where competition or consumer agencies have interrogated algorithms that we have not included?

The Which? blog in December 2020 focused on 'How to get the best price when shopping online.' In this context, it said that online retailers frequently change their pricing, with some using increasingly sophisticated algorithms to ensure they're always cheaper than their competitors. Additionally on 19 January 2021, it issued the following response to the CMA's algorithms study: "*Algorithms can help consumers find suitable products and services as well as good deals, but can also be used to track and monitor behaviours in ways they are unaware of, leading to them being manipulated or misled – either accidentally or by design…If the regulator finds that some companies are using algorithms to harms customers in the Digital Markets Unit and be prepared to step in and take action."*[8]

Separately the Netherlands Authority for Consumers and Markets launched a trial on 10 December 2020 to determine how it can practically monitor the functioning of algorithms that businesses use.[9]

Q7: Is the role of regulators in addressing the harms we set out in the paper feasible, effective and proportionate?

Regulatory systems dating back to the 1990s simply cannot keep pace with digital business 20 years into the 21st century. And it's fair to say that very few regulators can match Google's digital and technical capabilities. Professor Damien Geradin said: "*Google cases run by the European Commission have made a lot of noise, but the outcome is very disappointing. The remedies are weak – nothing has changed."*[10]

CMA chief economist Mike Wheeler and co-author of 'New Digital Realities; New Oversight solutions' said: "*Agencies have now developed a muscle memory that is not necessarily what is best for responding to the new realities of the of the digital marketplace."*[11] This view is contextualised by Professor Geradin: "*Every other year, Google is shifting gear and moving to a new strategy, with new*

[7] Select Committee on Communications and Digital, Corrected oral evidence: The future of journalism, 8 July 2020, questions 159-168 (question 159).
[8] Which? Response as CMA looks at the impact of algorithms, 19 February 2021.
[9] ACM, "ACM launches a study into the functioning of algorithms in practice", 10 December 2020.
[10] Select Committee on Communications and Digital, Corrected oral evidence: The future of journalism, 8 July 2020, questions 159-168, (question 163).
[11] Wheeler, T., Verveer, P. and Kimmelman, G., "New Digital Realities; New Oversight Solutions", Shorensteincenter.org, 20 August 2020.

products and new ways of doing things. I find it shocking that it can engage in anti-competitive behaviour and exclude rivals for more than a decade without any action being taken."[12]

We wholeheartedly subscribe to the CMA's CEO Andrea Coscelli's view that *"A new regulatory framework for the most powerful platforms is required to promote competition in a number of digital markets."*[13]

Google must be prohibited from favouring its own CSS and excluding competitors. This must translate into clear, actionable and unambiguous actions. Fines alone are meaningless as evidenced in Europe; Google's 8.25billion Euros fine is peanuts compared to a third quarter revenue in 2020 of 38billion Euros.

Q8: Are there other ideas or approaches that we should consider as part of our role?

A public information campaign led by the CMA to educate consumers about how algorithms work could be an effective tool as one piece of the jigsaw. Highlighting how businesses' commercial goals manipulate what consumers see and how they restrict choice, as illustrated in 4.9, could be powerful.

Google CEO Sundar Pichai's claims that "*users prefer using our services"* – this may not be the case if consumers were a) informed about the use of algorithms and b) had genuine choice.[14]

[12] Select Committee on Communications and Digital, Corrected oral evidence: The future of journalism, 8 July 2020, questions 159-168, (question 163).
[13] Coscelli, A., "Ahead of the curve", Speech delivered at the Bannerman Competition Lecture, 9 February 2021.
[14] Sundar Pichai, Google CEO interviewed by Stephen J. Adler, Reuters Editor-in-chief, Reuters NEXT conference 13 January 2021.