Key points in the OIP legal action

In the interest of an open Internet and neutral search, the OIP has submitted a competition complaint to the European Commission for it **to assess and tackle new anti-competitive conducts by Google.** *Not least in the light of these new abuses of dominance, in OIP's view* **Google's third set of proposed commitments are insufficient and irrelevant.** *If anything, they would entrench Google's dominance.*

I/ Characterization of Google's abuses:

General points:

- *Google's overwhelming dominance (market shares exceeding 90% for years) have made it quasi-impossible for other companies to compete with Google. This position is even reinforced by high barriers to entry (network effect, unrivalled user and data base) that provide Google with an* **insurmountable competitive advantage.**

- *In particular, data–whose importance is paramount for digital competition (*"**the new currency**")*–***are used illegally by Google to strengthen its position.** *Google co-mingles, cross-utilises and combines these data, collected through Web Search but also via nearly a hundred of other services and products.*

- ***Google discriminates against competitors in various ways.*** *It promotes its own services and demotes rivals through unannounced and unjustified algorithmic changes that primarily affect competing website but not its own sites. Both practices harm consumers and lead to competitor foreclosure, as consumers de facto no longer find the most relevant offerings.*

More precisely, the complaint refers to Google's numerous anti-competitive practices, for example:

1. Diversion of traffic:
a. **Google's preference of its own vertical and non-vertical search services:** *it develops strategies to further and unduly push its own platforms (such as YouTube and Google+), at the expense of its competitors. The scope of the proposed commitments, restricted to Google's own specialised search services, is thus far too restrictive.*
b. **Google also promotes its services via the granting of ad-extensions (i.e. additionnal information attached to an AdWords ad):** *Google has built a* **captive ecosystem,** *in which it rewards advertisers that use its whole range of services with larger and more effective ads–creating an anti-competitive incentive for customers to use other Google products (otherwise they are "punished" by higher ad prices).*
c. **Google discriminates against competitors via its Google Adwords policies:**

behind its alleged focus on consumer interests, Google has shaped its Google Adwords policies in order to harm competing advertising customers, by preventing them from using the most efficient wordings for the consumers.

2. Blockage of referrer data:

 a. **A new type of abuse lies in Google's refusal to provide webmasters with search "referrer" data, which yet are essential to compete:** *referrer data are indispensable to meet users' demands (it gives information about the search phrase / keywords that have been searched for by users before visiting their site).*

 b. **As from October 2011 Google has walled-off the access to referrer data for organic searches.** *The "privacy argument" evoked by Google to justify this evolution is not robust since Google keeps on providing referrer data for paid searches. The main goal is to deprive competitors of relevant user data.*

3. Google Analytics: *From 2005 until 2011 Google offered Google Analytics for free. Once Google's below costs offerings had eliminated competing services, Google started charging customers to recoup its previous losses (a practice referred to as "predatory pricing").*

II/ The consequences of Google's abuse of dominance:

1. Anticompetitive foreclosure leading to consumer harm: *Google uses its de-facto monopoly on the relevant search markets to expand into adjacent sectors thereby distorting competition. This leads to a weakening of SME growth to the final detriment of Europe's consumers, reducing choice and increasing prices.*

2. The inefficiency of the third set of commitments: *the commitments proposed by Google give it a carte blanche to continue its discriminatory strategy for five years. The commitments legalise abusive practices and are short-sighted, ignoring the quick and constant evolutions of that dynamic sector.* **Such an accommodating solution would have no deterrent effect for Google, which would be encouraged to continue testing new harmful conducts.** *Instead of bringing Google's self-preference to an end, the proposed auction system in which rivals have to bid to appear will reduce competition even further. This solution will increase the costs (which will eventually be passed on to final consumers to preserve a minimal margin) and push competitors to promote their most profitable offers rather than the most relevant ones.*

III/ Relief sought from the Commission through this complaint:

1. Conduct a thorough analysis of all Google's anti-competitive practices

2. Efficiently address all competitions concerns:

 a. **To adopt a principled, non-discrimination remedy** *of a broad application.*

 b. **To impose a review mechanism for algorithm changes** *that demote rivals.*

 c. **To adopt an interoperability remedy for webmaster (SEO) tools**, *not to lock up competitors within Google's own ecosystem.*

*d. **To impose obligations on Google to supply and/or licence its data** on fair, reasonable and non-discriminatory terms to competitors and customers.*

*e. **To impose obligations on Google to operate a transparent and non-discriminatory AdWords pricing mechanism / policy** so as to ensure that genuine quality prevails and so as not to place unduly burdensome restrictions on its advertising customers.*

*f. **To impose obligations on Google to establish information barriers** to prevent the passing of data between its various services in the advertising space.*

*g. **To consider the effectiveness of structural remedies** such as a functional unbundling to clearly refrain Google from engaging new competition-infringements in the future.*

3. To impose on Google a fine, *taking into account the gravity and duration of the infringements.*