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BEFORE THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al., .  
Plaintiffs, . Case Number 20-cv-3010  
vs. .  
GOOGLE LLC, . Washington, D.C.  
Defendant. . October 11, 2023  
1:33 p.m.

TRANSCRIPT OF BENCH TRIAL, DAY 20  
(AFTERNOON SESSION)  
BEFORE THE HONORABLE AMIT P. MEHTA  
UNITED STATES DISTRICT JUDGE

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## P R O C E E D I N G S

(Call to order of the court.)

ARJAN DIJK, WITNESS FOR THE PLAINTIFFS, RESUMED STAND

THE COURT: Thank you, everyone. Please be seated.

Mr. Kaufmann, I'm ready to go when you are.

MR. KAUFMANN: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMANN:

Q. Mr. Dijk, I'd like to talk to you about -- continue with the discussion about acquisition of customers.

In general, what percentage of Booking.com's new customers come to Booking.com via Google?

A. This is a very significant amount. I'm happy to share the details with you in a closed session, but it's a very significant amount of new customers that come to us via Google.

Q. Okay. And in general, what if we add existing customers to that calculation? What percentage of Booking.com's customers, new and existing, originate from Google?

A. That's a significant amount. So clearly, we work really hard to get people back to our platform, but reality is, we're a very low-frequent purchase, as I explained to you. So for consumers to remember what they did six months ago or 12 months ago is really difficult.

So the place they go to is the place they have been conditioned to, which is namely Google. So without even

1 thinking, and probably most of us here in the room don't  
2 realize, that any time when you access the web, you access via a  
3 route that is controlled completely, partially, or -- by Google.  
4 So when you open your phone, you go to your Safari browser. You  
5 search with something. Google. When you open your Android  
6 phone, there's a search box. Default setting is Google.

7 So the reality is that's where consumers start. Now,  
8 that's where they begin, and it means that also existing  
9 customers, you know, for us significantly use Google as a main  
10 source of traffic.

11 Q. Okay. Does Booking.com make an effort to try to get  
12 consumers to go directly either to your web page or to your app.  
13 on a phone?

14 A. Yes.

15 Q. Okay. And is there a benefit to Booking.com of doing that,  
16 of having consumers go directly?

17 A. Yes. Clearly, you know, we are fine paying advertising and  
18 doing campaigns so -- to really generate awareness and  
19 consideration. But ideally what we want is that people come to  
20 us without us having to pay enormous amounts of money to  
21 transact on our platform.

22 Q. So if a consumer accesses Booking.com, the Booking.com app.  
23 through a web search on their phone, does Booking.com count that  
24 as direct traffic?

25 A. Well, that depends. In 99 percent of the cases, that's

1 true, because people will start with Google. They will click on  
2 an ad. And then they are deep linked, as it is called, to the  
3 mobile app.

4 Q. So is that direct traffic, or is that traffic that is  
5 through Google?

6 A. That is traffic that is through Google.

7 Q. And in that case, if you -- if a consumer searches for  
8 Booking.com and they then click on the ad, does Booking.com pay  
9 for that?

10 A. Well, that is what is called branded PPC, branded pay per  
11 click. Any company to show up in ad results will have to pay  
12 for their own brand name. So, for example, if Airbnb wouldn't  
13 be paying Google branded PPC, all other companies in the world  
14 could bid on the term "Airbnb" and make it actually very  
15 expensive for Airbnb to show up.

16 So every company in the travel industry and outside of the  
17 travel industry on their own brand name have to pay money to  
18 Google to show up with their own brand name.

19 Q. Okay. Let's go to a slightly different situation. If I  
20 open a browser and I type in "Booking.com" and I go straight to  
21 the Booking.com website, does Booking.com have to pay for that?

22 A. That is called navigational search, and that is done in a  
23 browser, and the biggest browser in the world is Chrome. So  
24 when you actually do that, you're taken directly to the  
25 Booking.com website, and you don't pay for it.

1           This is kind of more because Google has decided not to  
2 charge for this, but they probably could, if they wanted to.

3       Q.    And we discussed before lunch what are the organic links,  
4 and if a consumer clicks on an organic link, does Booking.com  
5 pay for that?

6       A.    No.  Like any other company, if you want to be found on the  
7 web -- and it started that way -- you know, you really made sure  
8 that you had a very relevant home page.  And when people were  
9 looking for specific elements, for example a dog-friendly hotel  
10 in Miami, if you would have a dog-friendly hotel in Miami, you  
11 could show up in what is called natural search results.

12           The reality is, the natural search results have become  
13 irrelevant, because Google started with one ad, two ads, three  
14 ads, four ads, five ads.  So it means that, you know, you have  
15 to scroll down on desktop, and you have to scroll down multiple  
16 times on a mobile phone.

17           And you probably will have heard the joke, you know, if  
18 you're on the second page of Google, in the olden days, you  
19 might as well be dead.  I don't know if you remember the joke.  
20 But that's kind of the reality.

21           So natural search used to be a very significant part of our  
22 business.  It's now kind of anemic.

23       Q.    Okay.  Is Booking.com able to rely solely on users  
24 navigating directly to its website or its app.  on mobile for  
25 customer acquisition and growth?

1 A. No.

2 Q. Why is that?

3 A. As I told you, we're a low-frequent purchase. So an  
4 average American will buy once a year, twice a year a trip. And  
5 it means that to be top of mind all the time is incredibly  
6 difficult for any company. And it means that we have to rely  
7 for the majority of our new customers on Google, because we need  
8 that kind of high-intent traffic to come to us to drive the  
9 growth of our company.

10 Q. So what about returning customers who may be familiar with  
11 you but you have this infrequent usage? How does that balance  
12 out?

13 A. Yeah, so clearly, you know, it's a mix. It depends on what  
14 browser you use. But very often, we pay also for what we call  
15 branded PPC. So it means that you type in "Booking.com" on the  
16 search page, on Google, and then we have to bid on our own  
17 trademark. And other companies can also do that, and they drive  
18 up the price very significantly for us. So we pay again for  
19 returning customers to come to Booking, because very often also  
20 Google Search is used as a navigational search.

21 Q. Has Booking.com tried to reduce its reliance on Google?

22 A. Yes.

23 Q. And in general terms, without getting into confidential  
24 issues, what types of things have you tried?

25 A. We clearly try to use different advertising platforms, like



1 TikTok and Facebook, television advertising. But reality is,  
2 this is all in the low-intent and medium-intent space. So it  
3 means that it's very difficult to attribute a booking to showing  
4 a baseball ad on television. So that's kind of really, really  
5 difficult.

6 So we have tried, and one of my key tasks clearly as the  
7 chief marketing officer is to make that work hard, and it almost  
8 pains me to say that I haven't been very effective yet with my  
9 team.

10 Q. And does that effort to reduce reliance on Google involve  
11 attempting to try completely different marketing channels? You  
12 talked about innovative marketing channels earlier.

13 A. Well, when you really start looking to get to high-intent  
14 consumers across the world, we, the travel industry and any  
15 company, is completely reliant on Google to open the door to the  
16 courtyard.

17 So if you allow me to draw an analogy, if you picture  
18 companies having market stalls on a courtyard, there are several  
19 doors into a courtyard. Every door of that courtyard is kind of  
20 directly controlled, partially controlled by Google. So it  
21 means that Google really decides, oh, shall we open a door or  
22 not.

23 Then on top of that, Google will cherry-pick. So they  
24 cherry-pick industries where they feel they can make more money.  
25 What they do, they put a travel stall in front of one of the

1 doors. So it means suddenly that people say, ah, yeah, oh,  
2 yeah, I was interested in travel, let me start with Google.

3 So it's a double whammy, if you understand what I mean.  
4 And I'm describing Google Hotel Ads to you.

5 Q. Okay. And when you say in specific industries, Google then  
6 puts in additional barriers for you to reach consumers through  
7 hotel ads?

8 A. Yes. So Google will cherry-pick the industries where they  
9 can monetize. For example, if you ask the time in  
10 San Francisco, this is clearly a noncommercial search query,  
11 very difficult to --

12 THE COURT: Sorry. What was the query?

13 THE WITNESS: Time in San Francisco.

14 THE COURT: Time in San Francisco.

15 THE WITNESS: Yeah, or your favorite hip-hop band. I  
16 won't make the joke again, but, you know, very difficult to  
17 monetize that. But especially industries like travel in certain  
18 areas and industry like financial services, e-commercial ping  
19 are very well positioned for Google to monetize.

20 BY MR. KAUFMANN:

21 Q. Is Booking.com able to look to other general search firms  
22 such as Bing as viable marketing alternatives to Google?

23 A. I would say no.

24 Q. And why is that?

25 A. Because the scale is kind of too small. So even if Bing

1 would be far cheaper, it would really not work for us, because  
2 we really don't get the scale that we need.

3 So to go back to the courtyard analogy, there are four big  
4 gates that Google controls, and there's a little door that Bing  
5 controls. So you kind of put a lot of people through that. So  
6 that's the reality.

7 Q. Are text ads that Booking.com purchases on Bing generally  
8 less expensive than on Google?

9 A. Very difficult to say. It depends very much on the  
10 keywords and the searches. But as I told to you, it doesn't  
11 really matter. I would gladly spend far more with Bing, but I'm  
12 constrained because the demand is clearly not there.

13 Q. Okay. Has Booking.com's general business migrated more to  
14 mobile phones than desktop in recent years?

15 A. Yes.

16 Q. And how would you describe that in terms of magnitude  
17 generally?

18 A. That's an enormous change. Clearly, ten years ago, people  
19 were not comfortable buying on a mobile phone. We see now that  
20 more than 50 percent of our bookings go through the mobile app.  
21 So it's a very important channel.

22 Q. What is Bing's presence on mobile devices as compared to  
23 Google?

24 A. I would call it zero or approaching zero.

25 Q. Do you have an understanding as to why Bing's presence on

1 mobile is so much lower than Google's?

2 A. Yeah, because it's almost impossible to really break in to  
3 the conditioned consumer. So when you're on your iPhone, you go  
4 to Safari.

5 MR. SOMMER: Objection, Your Honor; speculation, no  
6 foundation.

7 THE COURT: It's overruled. He can answer to the  
8 extent of his understanding based upon his industry knowledge  
9 and his time at Google.

10 Go ahead.

11 THE WITNESS: When you open your Safari browser, you  
12 know, you type in your search term. The default setting is  
13 Google. So people don't really realize that, you know. So  
14 that's on the iPhone side.

15 On the Android side, Google completely controls the  
16 ecosystem. The Android's ecosystem, people have preinstalled  
17 apps. The search bar, again, is default Google.

18 Maybe if you allow me, Mr. Kaufmann, the importance of  
19 default settings is really, really key. In my days at Google --  
20 I worked there 11 years -- it was clearly understood that being  
21 the default is almost everything, because when you're the  
22 default 95 percent of people will stick with the default. Maybe  
23 5 percent of people will opt out. And that kind of realization  
24 was very clear.

25 BY MR. KAUFMANN:

1 Q. Do the market dynamics that create Booking's dependence on  
2 Google apply to the online travel industry generally, or are  
3 those unique to Booking.com?

4 A. These apply to the online travel industry. I would  
5 actually say online and offline, but online, yes.

6 Q. Okay. Could Booking.com stop buying text ads on Google and  
7 sustain its business?

8 A. No.

9 Q. Let me switch gears a bit, and I want to ask you a few  
10 questions about markets outside the United States.

11 You mentioned that you operate in markets outside. Are  
12 there --

13 MR. SOMMER: Objection, Your Honor. Outside the  
14 United States is not relevant to this case.

15 THE COURT: We've heard some testimony about other  
16 markets and competition in other markets, and maybe that's where  
17 this is going. If it's not relevant, it's not relevant.

18 Go ahead.

19 BY MR. KAUFMANN:

20 Q. Are there markets outside the United States where  
21 Booking.com does business in which there is more competition  
22 among general search firms?

23 A. Yes. Very limited, to be honest. It used to be Russia, so  
24 where Yandex, the local search engine, has a very strong  
25 position. So we really would divide our marketing budgets

1 between Yandex and Google. We, you know, at the moment do not  
2 do business in Russia until things hopefully will go back to  
3 maybe where they were.

4 Then in South Korea, there's a search engine called Naver  
5 where we also really see that as a viable option.

6 Interesting enough, in Japan, you have Yahoo!, but then the  
7 ads engine is powered by Google. So we're back to Google  
8 actually.

9 Q. Does Booking.com spend or distribute its marketing budget  
10 differently in those markets, those three markets which you  
11 described and at least Russia previously?

12 A. Yes.

13 Q. And how do you distribute the marketing spend differently  
14 in those markets?

15 A. Well, we clearly always look at return on investment and at  
16 diversification of channels. So -- and we are a company that is  
17 a, we call it, scaled. So we're very focused on attracting a  
18 mass audience. So it means that any channel that can give us  
19 the quantity and area that we need, we will invest in.

20 Q. If Microsoft were able to become a stronger alternative to  
21 Google, would Booking.com spend more on Microsoft?

22 A. Yes.

23 Q. On Bing? If another search engine were to become a viable  
24 alternative to Google, would Booking.com consider using that --  
25 well, let me rephrase that.

1           If another general search engine were to become a viable  
2 alternative to Google, would Booking.com consider using that  
3 general search engine as an alternative advertising channel?

4           A.    Yes.

5           Q.    Now, we talked about organic search traffic briefly before.  
6           Would you explain again what organic traffic is?

7           A.    So organic traffic is traffic when you type in a keyword in  
8 Google, you show up for free, more or less. And you will  
9 remember, that was really the thing that made Google so  
10 powerful. That's when you typed in 20 years ago some keywords,  
11 a website that is relevant would show up. That was kind of the  
12 unique thing that was really good.

13           The key problem in kind of more commercial categories, like  
14 shopping, travel, anything else, it's kind of impossible now to  
15 really use organic results, because I told you Google started 20  
16 years ago with one ad, two ads, three ads, four ads, five ads.  
17 So it means that if you have to scroll down, you know,  
18 endlessly, it's impossible.

19           It also means that smaller companies will never be able  
20 almost to show up. It's very, very, very difficult.

21           Q.    In general terms, what proportion of Booking.com's total  
22 business are accounted for through organic traffic now?

23           A.    It's low, and I'm happy to give you an exact percentage  
24 point.

25           Q.    How does that compare with, say, five or ten years ago in

1 terms of the source of business through organic search?

2 A. Yeah, it has -- everyone in the travel industry, industry  
3 in general, has seen this really significant tendency of this  
4 going down, down, down, down, down. And it makes sense.

5 Q. You mentioned the proliferation of advertising pushing  
6 organic searches down. Are there other factors that have pushed  
7 organic searches down on the search engine results page?

8 A. Well, it's clearly also how the ads are characterized. So  
9 it means there's a little word that says "ad." So it means that  
10 by making that more or less prominent, Google has a lever to  
11 really make it more difficult or easier to differentiate between  
12 natural results and paid results. So that's one thing.

13 Another thing is also what we call audience quality. So  
14 Google decides when they show ads to you. And that depends on  
15 the keywords that you put in.

16 So if you, for example, would put in "apartments in New  
17 York City," you know, Google will decide if that's a commercial  
18 query or not.

19 And you see that also the amount of keywords and search  
20 queries that are being monetized has gone up significantly. And  
21 for us particularly, it means that what we call audience quality  
22 has gone down, because commercial -- more queries are treated as  
23 a commercial query, if you understand what I mean.

24 Sorry to be a bit technical. Let me know if that answers  
25 your question.



1 Q. I think we understand that. Thank you.

2 In general terms, how has the reduced relevance of organic  
3 results changed Booking.com's marketing strategies?

4 A. Well, it means that we have to pay more and more and more  
5 for the same. So if you look also worldwide, the absolute  
6 number of search queries on Google haven't gone up, but the  
7 revenue has been growing every year with 10, 20 percentage  
8 points. So it means the only way Google is doing that is by  
9 just monetizing more, more, more, more out of kind of the same  
10 search queries. So volume hasn't gone up, but the price, you  
11 know, has gone up significantly.

12 Q. What's the problem with paying Google for ads on its search  
13 engine results page?

14 A. There's no problem. I gladly will pay for advertising.  
15 The only problem is that if it's a one-sided relationship, that  
16 you get dictated, more or less, or imposed, you know, and you're  
17 completely relying on one channel, that's kind of the issue.

18 And we're a big company. We spend billions in the past  
19 years with Google. And I can tell you, it's a completely  
20 one-sided relationship. We're very friendly with each other,  
21 and, you know, you could even say the relationship is wonderful,  
22 because I like my account managers. But reality is that we're  
23 in a benevolent dictatorship, which means that we just have to  
24 accept any changes that Google makes.

25 There is no discussion. There's no kind of real like, oh,

1 do you think this is a good idea or no. We get this imposed on  
2 us. And it's a fascinating thing when you spend billions, but  
3 that's how it is.

4 Q. Okay. I would like to talk to you about one of your  
5 confidential exhibits, if I may approach, Your Honor.

6 THE COURT: Sure.

7 MR. SOMMER: Your Honor, we have an objection on this.  
8 We would prefer to be heard at sidebar, if that's okay with Your  
9 Honor.

10 THE COURT: Okay. Why don't you come on up.

11 (Bench conference.)

12 MR. SOMMER: Your Honor, our objection to this  
13 document is that this was prepared in response to inquiries in  
14 the EU. It's clear, when you flip through it, you will see  
15 everything is in Euros. Your Honor has already ruled on one  
16 other document that was in response to an EU inquiry. That's  
17 hearsay and should not be admitted.

18 The same is 100 percent true of this.

19 MR. KAUFMANN: Your Honor, this is not a submission to  
20 the European Commission. This is an internal business document  
21 analyzing their costs and expenses on Booking.com that deals  
22 with worldwide expenses, not just --

23 THE COURT: If he's asked whether this was prepared  
24 for the purpose of the European Commission's investigation, what  
25 will the answer be?

1 MR. KAUFMANN: I don't know the answer to that.

2 THE COURT: How do you know that it was, in fact,  
3 prepared for business purposes?

4 MR. KAUFMANN: We will be able to establish that this  
5 is a business record. We have a 902.11 declaration. But I'm  
6 willing to establish the foundation.

7 THE COURT: There is an earlier record, and you can  
8 have your declaration. That's fine. But if this was something,  
9 for example, that was prepared for a regulator, I don't think it  
10 is a business record.

11 MR. KAUFMANN: This is not something that was  
12 submitted to a regulator. This is an internal -- this is an  
13 internal document, and it is different from something submitted  
14 to a regulator.

15 MR. SOMMER: Just so there's no confusion, we're not  
16 saying it was submitted to a regulator. It was prepared as a  
17 result of inquiries from regulators.

18 So if you look at the first page, Your Honor, look -- the  
19 second bullet point is all about potentially anticompetitive  
20 activity, because those were the inquiries. And that's what  
21 they were -- they were gathering data to respond to inquiries in  
22 the EU on the subject matter, which is not the business of  
23 Booking.com.

24 MR. KAUFMANN: Your Honor, we've already heard this  
25 witness testify about anticompetitive activities and what his

1 perspective is from a business perspective on those types of  
2 issues.

3 THE COURT: Let's do this: Is he familiar with the  
4 document and its creation?

5 MR. KAUFMANN: This was prepared by his team.

6 THE COURT: So let's go ahead and just get the  
7 foundation. If this was prepared for the purpose of the  
8 European Commission investigation, it falls clearly on one side.  
9 If it's prepared in response to, for their own internal business  
10 purposes, I think that's a different issue.

11 MR. SOMMER: That's not the regularly conducted  
12 business of Booking. So just because you prepare something as a  
13 business doesn't make it a business record.

14 THE COURT: Well, it is if he's going to get up and  
15 testify that this was something that was done as, I think he  
16 testified earlier -- I don't know if this will connect up, for  
17 example, with efforts to move away from Google. In other words,  
18 are they collecting information as a strategy.

19 The thing is, given a title that suggests that it had to do  
20 with an internal project --

21 MR. KAUFMANN: Your Honor, there's also issues that  
22 were discussed here and not in this same deck but different  
23 versions of this that were raised with Google where they wanted  
24 to raise the problems and concerns they had with Google to be  
25 able to identify what those problems were. So we're not just

1 talking about something that is framed in terms of a filing, but  
2 as a part of the regular business of their dealings with Google.

3 MR. SOMMER: I have no objection to them inquiring  
4 about their dealings with Google. My objection, I think it's  
5 probably clear to Your Honor, is this was created in response to  
6 inquiries from regulators. That's not the normal business of  
7 Booking.com.

8 THE COURT: I'm not sure I agree with that entirely.  
9 I mean, it's about the purpose for which the document was  
10 created and how it was then maintained and used.

11 So if, for example, what he testifies is that we had this  
12 inquiry by the EU, it caused us to think about strategies and  
13 ways in which we can move away from Google and we collected  
14 information, the fact that it was triggered by the investigation  
15 doesn't, I think, negate it being a business record, it seems to  
16 me. But I want to hear what he has to say.

17 MR. SOMMER: Understood.

18 MR. SCHMIDTLEIN: There's been an awful lot of leading  
19 questions of this witness. The foundation of this document, try  
20 some nonleading questions.

21 (End of bench conference.)

22 THE COURT: Thank you very much.

23 BY MR. KAUFMANN:

24 Q. Mr. Dijk, if you could look at Exhibit PSX0097, which is in  
25 front of you.

1 Are you familiar with that document?

2 A. Yes.

3 MR. SOMMER: We ask that the document be taken down.

4 THE COURT: Well, I mean, that's fair. I don't know  
5 if it was only for the witness. I don't know whether it was  
6 elsewhere. But yes, until it's admitted, it shouldn't be put on  
7 the screen.

8 BY MR. KAUFMANN:

9 Q. Was this document prepared by people who work for you?

10 A. Yes.

11 Q. And was this -- can you tell us what this document is?

12 A. This document outlines really has Google has more or less  
13 made the paid placements far more dominant and has made us pay  
14 far more for the same traffic.

15 Q. And how does this document inform Booking.com's business  
16 strategies going forward?

17 MR. SOMMER: Objection.

18 THE COURT: Can we just do it this way: Sir, can you  
19 just describe for me the context in which this document arose.

20 THE WITNESS: So this document is from October 2019, I  
21 believe. So this is around four years ago. And we clearly were  
22 at the time very concerned with the developments of us having to  
23 pay more, more, and more for our Google clicks, and that we  
24 became for our new customer acquisition very, very dependent on  
25 Google.

1           And this is really the outline of this document that shows  
2           kind of how things were in 2015. Then it contrasted with how  
3           things were in 2019. And then you see that the paid placements  
4           have become far more prominent, and it means that if consumers  
5           go to a desktop or a mobile phone, the only thing they will see  
6           on the screen is an ad. You have to scroll down then to go to  
7           the natural search results.

8           THE COURT: Okay. So the next question is, how did  
9           Booking use this document once it was created?

10          THE WITNESS: Yeah, so this is a document that we  
11          discussed with our management team, with our board, really to  
12          see if we can find solutions. And it has proven to be very  
13          tough, I will be honest with you.

14          THE COURT: And was this document in any way -- its  
15          preparation, was it prompted by regulatory inquiries?

16          THE WITNESS: Not at all; not at all.

17          THE COURT: Okay. Any follow-up questions from either  
18          side?

19          MR. KAUFMANN: No. I move the admission of PSX97.

20          THE COURT: All right. So the witness's answers in  
21          combination with the business records declaration I think  
22          warrants admission as a business record.

23                 So it will be admitted, PSX97.

24                 (Exhibit PSX97 received into evidence.)

25                 BY MR. KAUFMANN:

1 Q. Mr. Dijk, this exhibit has a number of portions that have  
2 been redacted for confidentiality purposes. And those will be  
3 highlighted on the hard copy that you have, but when those  
4 appear on the screen, it will show only as redacted. I will try  
5 to stay away from the redacted information and not ask you about  
6 it, and if I delve into that area, you will please correct me.  
7 And again, if you would stay away from that, too.

8 A. No worries.

9 Q. Okay. So on the top of what's the second page, if you  
10 would go to the executive summary on the second page, please,  
11 and that first bullet point, that "Google has consistently  
12 introduced changes to the search results page that give paid  
13 placements (PPC ads and Google Hotel Ads) more visually  
14 prominence and screen real estate, displacing organic (SEO)  
15 content."

16 Would you explain what that is, please.

17 A. I think I explained it already a bit to you. So it means  
18 that, you know, Google has favored the position and size of  
19 their ads on their search page. So it means that consumers will  
20 have to work pretty hard to find the natural search results.

21 Q. Okay. And what is SEO?

22 A. SEO is a -- the acronym is search engine optimization, and  
23 a synonym would be natural search. And it's kind of the free  
24 search that Google offers companies to be found on the web.

25 Q. Okay. And as a part of the executive summary, did



1 Booking.com determine that the -- that Google's optimization of  
2 search results page towards paid placements cost Booking.com a  
3 certain dollar amount, and did you calculate that amount?

4 A. Yes.

5 Q. And is that shown in the executive summary in what is the  
6 fourth bullet point?

7 A. Yes.

8 Q. And then the next bullet point says, "When we account for  
9 our relatively speaking improved visibility within the organic  
10 ranking, our estimate increases by almost," and then there's  
11 again a confidential number.

12 What is -- could you explain what that is, please.

13 A. So it more or less says that if we look at everything, our  
14 estimate really significantly increases.

15 Q. If you would go, please, to page 5. Now, much of this is  
16 confidential, but I want to draw your attention to the  
17 hypothesis at the very top where it says, "Google is optimizing  
18 their search result page (SERP) such that Booking.com gets a  
19 smaller fraction of free clicks over time and thus the  
20 advertising spend is increased."

21 Is that the hypothesis that your team sought to analyze in  
22 this?

23 A. Yes.

24 Q. If you could turn to page 9, please. I'm sorry. Page 10.  
25 You know what? We can skip this page. I think we've already

1 covered this.

2 Could you explain what the similar dynamics are that you've  
3 seen and how that has been affected on mobile as compared to  
4 desktops?

5 A. Yeah, you can read this. What you see is that it is  
6 really, really difficult to find natural search results on a  
7 mobile phone screen. So you don't have to scroll down one page;  
8 you have to scroll down probably three, four pages before you  
9 even get to the natural search results.

10 So I made the little joke to you before, you might as well  
11 be dead on page 2 of Google. This more or less applies even  
12 stronger in the mobile area.

13 Q. Okay. If you would turn to page 14, please. Now, I direct  
14 you to the bottom of the page, and what I've -- identified there  
15 are PPC, GHA, and total Google spend for 2019 by Booking.com,  
16 and the numbers are confidential.

17 Can you explain what PPC and GHA are, please.

18 A. PPC is pay per click. It's analogous to Google text ads.  
19 So it's really what we're paying on the text ads on Google.

20 GHA is Google Hotel Ads. It's the ad unit that Google  
21 serves with the price comparisons.

22 Q. And are those numbers that we're seeing there, the total  
23 spend in 2019, at least through October, that Booking.com spent  
24 on Google?

25 A. Yes.

1 Q. Okay. And if we would turn to page 15, please. Now, this  
2 is largely redacted, and I'm going to want you to explain this  
3 page, if you would, please, for the benefit of those of us who  
4 can see the highlighted version.

5 Is this the calculation that your team did of the 2015 to  
6 2019 costs?

7 A. Yes.

8 Q. And when we see the trend lines moving up over time, what  
9 does that show us?

10 A. So it shows that the cost of nonbranded PPC -- so these are  
11 general keywords -- are going up and up, that the cost of  
12 branded PPC goes up -- and branded PPC is really when people  
13 type in "Booking.com" on Google Search -- and that's the organic  
14 results are going down. So the growth we're seeing in each  
15 channel, you know, the organic results more or less are not  
16 growing as fast or are not growing at all.

17 Q. Okay. Now, if you would turn to page 18, please. Again,  
18 this is a largely redacted page.

19 And is this a calculation that your team did of the  
20 increased cost to Google as -- from 2015 to 2019 based upon the  
21 volume in 2019?

22 A. Correct.

23 Q. Okay. And there is a red box that appears in the original  
24 of the document.

25 Do you see that?

1 A. Yes.

2 Q. Okay. And within that red box, is that the increase in  
3 cost that your team calculated?

4 A. Yes.

5 Q. Okay. So if I may clarify that, is that number that's in  
6 that box, is that the increased cost that Booking.com paid to  
7 Google?

8 A. We actually formulate it a bit differently. So we would  
9 have to spend a significant amount less in 2015. So we  
10 formulate it on the page differently, but it's the same thing,  
11 to be fair.

12 I'm trying to be correct. I'm sorry.

13 Q. That's fine. Now, if you would turn to page 24, please.

14 Now, this page results to a specific -- what appears to be  
15 a specific change in what was happening at Google in  
16 May of 2019.

17 Do you see that?

18 A. Yes.

19 Q. Can you explain what that -- what that change was that you  
20 observed?

21 A. Yeah, so this was a design update making the ad units more  
22 prominent. And we saw, therefore, a very big decrease in the  
23 free clicks that we used to be getting from the mobile phone.

24 Q. And over what period of time did this one change occur?

25 A. We -- we really -- we have to observe it ourselves, because

1 those changes are imposed on us. So it's not as if we get a  
2 notification that, hey, we have changed the ad units. So this  
3 is stuff that just happens, and we react to it. So it means  
4 that we clearly are trying to monitor and adapt as good as we  
5 can.

6 Q. And did you attribute those changes to a decrease in  
7 organic clicks?

8 A. Yes.

9 Q. And are those shown, then, in the confidential -- the first  
10 confidential number that is highlighted on the bottom of the  
11 page?

12 A. Yes.

13 Q. And did you also notice a decrease in your growth rate from  
14 organic results or search engine optimization?

15 A. Yes.

16 Q. And what we're talking about here is actually a decrease in  
17 growth for Booking.com, because it's a growing business; is that  
18 right?

19 A. Yes, but also the reality that we have to pay more, more,  
20 and more to get more or less to the same results or be able to  
21 grow our business.

22 MR. KAUFMANN: I have nothing further at this time and  
23 pass the witness, Your Honor.

24 THE COURT: All right. Thank you, Counsel.

25 MR. SOMMER: Judge, can I have one second?

1 Oh, you guys are going? Sorry. Never mind.

2 MS. FREEBORN: We have no questions for this witness.

3 MR. SOMMER: Okay. Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. SOMMER:

6 Q. Mr. Dijk, good afternoon. My name is Michael Sommer. Good  
7 to meet you.

8 A. Good to meet you, Mr. Sommer.

9 Q. In your testimony just before the lunch break, you were  
10 asked, does Booking.com sell any advertising, and your answer  
11 was "quite minimal."

12 Do you remember that response?

13 A. Yes.

14 Q. But you also mentioned what you refer to as commission  
15 partners.

16 Do you recall that?

17 A. No.

18 Q. Do you recall saying, "There are some partners who pay  
19 Booking to appear higher up on the results page"? Do you  
20 remember discussing that?

21 A. Yes. I did not use the word "commission partners."

22 Q. That's what I was going to follow up on.

23 Does Booking use the term "preferred partners"?

24 A. Yes.

25 Q. And just so we're clear here, whether you want to say it's

1 advertising or not, let me make sure we understand the elements  
2 of what's going on here.

3 Booking takes money from hotels and other travel-related  
4 sources so that those companies' ads can appear higher on the  
5 Booking.com page; is that a fair description?

6 A. Yes.

7 Q. And Booking is charging that money and accepting that money  
8 so that the advertiser can feature its ad higher up than what  
9 you described as an organic result; is that also fair?

10 A. In our business, there is no such thing as an organic  
11 result, because hotels or partners will always pay a commission.  
12 That's a difference.

13 Also, the big difference is that, you know, all our  
14 partners have a choice. There are at least 10, 12 different  
15 OTAs that any hotel partner or accommodation partner can choose  
16 between.

17 The point I made is that for our high-intent traffic, we do  
18 not have a choice but to work with Google.

19 Q. I wasn't asking about that, so let me try one more time.

20 The way you designate these people who have paid  
21 Booking.com money to appear higher up, if I'm right, is a yellow  
22 thumbs up; is that right?

23 A. Correct.

24 Q. So the people who don't pay don't get the yellow thumbs up;  
25 is that right?

1 A. Yes. You're asking the same question but the other way  
2 around; no?

3 Q. Did you understand my question?

4 A. I hope so.

5 Q. Okay. And the people that don't pay Booking.com, they  
6 appear lower on Booking.com's site than the people who do pay  
7 and get the thumbs up; correct?

8 A. Yes. To be clear, everyone pays to be a part of our  
9 platform. We're a store. So it means that, you know, everyone  
10 will have to pay to show up, and we pay a commission when people  
11 book with us. So it means also that if a company, you know,  
12 shows up high but does not get booked, they will never pay. So  
13 a guest will have to stay at a property. Then, actually, they  
14 will pay for that.

15 Q. So since everybody has to pay, the preferred partners, the  
16 ones -- those who get the thumbs up, they're paying more; is  
17 that right?

18 A. Correct.

19 THE COURT: I'm sorry. Just to be clear, much like  
20 the payment with a click on Google, do I understand you  
21 correctly that the higher payment from a partner would only be  
22 if a user clicked and then made a purchase or booking?

23 THE WITNESS: Yeah, that's how our model works. So  
24 any partner, vacation rental, hotel, will only pay for our  
25 services the moment a booking has happened.



1 THE COURT: Okay. Thank you.

2 BY MR. SOMMER:

3 Q. All right. We will come back to that in a moment, sir. I  
4 want to follow up on a term I heard you use a few times in your  
5 direct testimony, and that term is "direct."

6 Does that refer to users coming to Booking.com in a manner  
7 Booking.com describes as direct? Is that a term you guys use?

8 A. Yes.

9 Q. I want to make sure I understand what direct means. Direct  
10 means people coming to Booking in a manner that Booking does not  
11 have to pay someone for; correct?

12 A. Yes.

13 Q. Okay.

14 A. Although you could argue that our brand advertising, for  
15 example, is very difficult to attribute to a booking, but  
16 indeed, if there's no direct link between, you know, seeing an  
17 ad and a click, we would call that direct.

18 Q. I want to try one more time. Within the -- the realm of  
19 direct, does that -- is that people who come to Booking in a way  
20 that Booking does not have to pay someone for? Is that right?

21 A. Correct.

22 Q. So, for example, direct would be anyone coming to Booking  
23 by typing "Booking.com" in a URL; correct?

24 A. That's a navigational search. It depends on the browser  
25 you're in. But yes.

1 Q. Okay. On any browser, if someone types in on the URL  
2 "Booking.com" and comes to Booking.com, Booking.com does not pay  
3 for that; is that correct?

4 A. Correct.

5 Q. Okay. And it also includes anyone coming to Booking from  
6 your app. on any device. You don't pay for that; right?

7 A. No.

8 Q. And that's direct; correct?

9 A. No.

10 Q. That's not direct?

11 A. No.

12 Q. Now I'm confused again, because I thought direct was  
13 someone coming to you where you didn't have to pay for it.

14 A. I think I explained it earlier, that a very significant  
15 part of our traffic in a mobile app. comes from Google Search.  
16 It's called deep linking. I mentioned this one hour ago, and  
17 I've been very clear about that. So I wouldn't call that  
18 direct. That's kind of paid traffic.

19 Q. Okay. Now, during your tenure at Booking -- it's been  
20 about three and a half years; is that right?

21 A. No, four and a half years.

22 Q. Four and a half years. My math is bad.

23 Has there been an emphasis on generating more direct  
24 traffic?

25 A. Yes.

1 Q. And has Booking succeeded in generating more direct  
2 traffic?

3 A. Moderately.

4 Q. You're aware that Booking has quarterly earnings calls;  
5 correct?

6 A. Yes, I'm a part of those.

7 Q. Okay. And those are done every quarter for analysts and  
8 shareholders and any other member of the public that's  
9 interested in listening in; correct?

10 A. Yes.

11 Q. And then those are transcribed and posted on the website  
12 for some period of time; correct?

13 A. Yes.

14 Q. And even when they're taken down from the website, they're  
15 maintained at Booking in case anyone needs to go see what  
16 someone said at one of the earnings calls; correct?

17 A. Yes.

18 Q. And that's a part of the regular business of Booking  
19 Holdings; correct?

20 A. Yes.

21 Q. Okay. I'm going to get you a binder.

22 A. You're scaring me. Those are big binders.

23 Q. I'd like you to open up in your binder to -- and the  
24 exhibits are in numerical order. Can you turn to 3148, please.

25 Are you there, sir?

1 A. Yes.

2 Q. Okay. And this is the Q1 2019 earnings call; correct?

3 It should say it right on the cover, right under Booking  
4 Holdings, Inc. Do you see that?

5 A. 02-03-2021.

6 Q. Are you at 3148?

7 A. 3138, yes.

8 Q. 3148.

9 A. Oh, 48. I'm sorry.

10 Q. I'll try to be more clear.

11 3148 is the Q1 2019 earnings call; correct?

12 A. Correct.

13 MR. SOMMER: Your Honor, we offer DX3148 in evidence.

14 MR. KAUFMANN: No objection.

15 THE COURT: It will be admitted.

16 (Exhibit DX3148 received into evidence.)

17 MR. SOMMER: And, Your Honor, to save a little time,  
18 the other earnings calls that I am offering into evidence are  
19 all from the period 2019 to 2023. They are DX3131 through 3133,  
20 3135 through 3140, 3143 through 3152, 3157, and 3167 and 3168.

21 I offer each of those.

22 THE COURT: Let me just make sure Mr. Douyon got all  
23 those numbers. Otherwise, I'm going to ask you to repeat those.

24 The court reporter got those as well?

25 Terrific. Because I did not.

1 All right. Any objection to admitting those?

2 MR. KAUFMANN: Having not reviewed them all at this  
3 time, but assuming they are as Mr. Sommer represented, there's  
4 no objection.

5 MR. SOMMER: Scout's honor.

6 THE COURT: They will be admitted, subject to any  
7 future objections.

8 (Exhibits DX3131 through 3133, 3135 through 3140, 3143  
9 through 3152, 3157, 3167, and 3168 received into evidence.)

10 BY MR. SOMMER:

11 Q. Let's go ahead and take a look at 3148, and if you could  
12 turn to page 3 of that report. There's a paragraph, the second  
13 one from the bottom, just before the bottom, that begins "we are  
14 pleased." You can look at your monitor as well, Mr. Dijk, if  
15 that's helpful.

16 Do you see the second sentence says, "Our direct channel is  
17 growing faster than our pay channels"? Do you see that?

18 A. Yes.

19 Q. Okay. And I take it, sir, that if something was said in an  
20 earnings call, would you accept it as accurate?

21 A. Yes.

22 Q. Okay. So this was in Q1 2019. The direct channel was  
23 growing. And was that just before you got there?

24 A. Yes.

25 Q. Okay. Let's turn to DX3145, which is the Q4 2019 earnings

1 call, on page 5. And on that page, it says -- I'm sorry. I  
2 started before you.

3 Are you there, sir?

4 A. I see it on the screen. So you have to give me a little  
5 time to find it.

6 Q. 3145, page 5.

7 A. Page 4, you said, or page 5?

8 Q. Page 5.

9 A. Yeah.

10 Q. Do you see where it says, "In each quarter of 2019, our  
11 direct channel grew faster than our primary pay channels and our  
12 direct channel increased its share for the year"? Do you see  
13 that?

14 A. Yes.

15 Q. Just so we're clear, what are the pay channels? That's  
16 when you pay for advertising; correct?

17 A. Yes.

18 Q. Moving forward, I'm just going to cover a couple more of  
19 these. DX3140 is the Q1 2021 earnings call, 3140. And I'm  
20 going to ask you to turn to page 5 and the paragraph  
21 beginning "mobile bookings."

22 Do you see the second sentence -- withdrawn.

23 Next sentence, "Our direct channel gained share both  
24 sequentially and year on year."

25 Do you see that?

1 A. Yes.

2 Q. So in 2019 and into 2020, the direct channel was growing;  
3 correct?

4 A. Yes.

5 Q. Let's look at 3132, at page 8, please, the bottom  
6 paragraph. "The direct channel increases as a percentage of our  
7 room nights in the first quarter relative to the first quarter  
8 of 2022."

9 Do you see that?

10 A. Yes.

11 Q. So fair to say, sir, since you've arrived -- and if you  
12 want to take the credit, you may, but since you've arrived, the  
13 direct channel has continued to grow; is that fair?

14 A. Yes.

15 Q. And again, the direct channel is Booking not paying someone  
16 to get those customers; correct?

17 A. Correct.

18 Q. Let me show you an exhibit that has been marked  
19 confidential by Booking. Is there a way we can just have it  
20 shown to the -- this is, just for the record, PSX94A.

21 It should be in the binder; correct? It's in your binder,  
22 and Your Honor has it.

23 And if you could turn -- do you see at the bottom, if you  
24 turn in a few pages, you see there are black numbers at the  
25 bottom that have been placed?

1 THE COURT: Sorry. Did you say 394? 3194? What's  
2 the number again?

3 MR. SOMMER: PSX94A. 94, PSX94.

4 THE WITNESS: Oh, is it in the back?

5 BY MR. SOMMER:

6 Q. If you could turn to page 11. Stamped at the bottom,  
7 it's .011. Just let me know when you're there, sir.

8 A. Okay.

9 Q. I wanted to ask you about some of the terminology in the  
10 middle of the page. Do you see where it says "interco"?

11 A. Yes.

12 Q. Okay. And is that referring to related assets, you know,  
13 some of Booking's partners, like Priceline, Kayak? Is that  
14 right?

15 A. Yeah, it's mainly Agoda, Priceline, and Kayak.

16 Q. Is that indicating traffic to Booking is coming from those  
17 partners?

18 A. So it's partners who have signed up with Booking.com that  
19 we have made available to our sister brands. So if they book  
20 the property on Agoda, we would call this intercompany.

21 Q. And then the next one under that is meta, m-e-t-a. We've  
22 heard that in a very different context in this case.

23 That's not the company that owns Facebook; correct?

24 A. Correct.

25 Q. So meta is referring to traffic search engines like



1 Expedia, Hotels, Skyscanner, et cetera; is that right?

2 A. No.

3 Q. No? Okay. Why don't you tell me, then.

4 A. So the meta channels are what we call price comparison  
5 channels. So Google Hotel Ads would be a part of that. Other  
6 providers would be companies like Trivago and Trip Advisor.

7 Q. Okay. And then the last one I will ask you about is SP.  
8 Do you see that?

9 A. Yes.

10 Q. That refers to strategic partners?

11 A. Yes.

12 Q. Those are Booking's strategic partners; correct?

13 A. These are partners we work with. An example could be  
14 for -- as an example, United Airlines being a partner of  
15 Booking.com.

16 Q. Now, do you see on this chart, and I'm not going to reveal  
17 any numbers because I know it's been marked confidential, there  
18 is -- there are some entries for what's called PPC nonbrand and  
19 PPC brand.

20 Do you see that?

21 A. Yes.

22 Q. That's paid search; correct?

23 A. Yes. So PPC brand is when you type in Booking.com in the  
24 search engine and that we have to pay for our trademark. And  
25 PPC nonbrand is general terms like hotels.

1 Q. And then SEO nonbrand and SEO brand would be what you  
2 described before about organic results; correct?

3 A. Correct.

4 Q. Sir, would it be fair to say, and again without getting  
5 into any numbers here, that from 2019 to 2023 Booking increased  
6 its direct channel? Correct?

7 A. Yes.

8 Q. Okay. And it actually reduced its paid search, the red and  
9 the green; correct?

10 A. As a relative percentage, yes, not in absolute terms.

11 Q. I'm just going off of -- I mean, you created this chart;  
12 right?

13 A. But you asked me -- you said it's bigger. I'm clarifying  
14 that these are relative percentages. So it means the absolute  
15 amount we're paying is actually higher.

16 Q. That's because you're paying more overall; correct?

17 A. Yes.

18 Q. But the relative percentages, the paid search is going down  
19 compared to, for example, direct search?

20 A. Correct.

21 Q. Or direct customers; correct?

22 A. Correct.

23 Q. And at least as of this chart, as of 2023, if we want to  
24 know the percentage of traffic from paid search, we would add  
25 together the PPC brand and the PPC nonbrand; is that correct?

1 A. Correct.

2 Q. Okay. Now, one of the ways Booking has succeeded in  
3 increasing its traffic from other than paid search is that  
4 Booking has industry-leading retention numbers when it comes to  
5 its users; is that correct?

6 A. Yes. The way we have increased our direct channel is that  
7 customers who have booked with us once, that we have them come  
8 back direct. I explained to you, for us to get to new  
9 customers, we rely completely on Google to get those to us.

10 Q. I wasn't asking about new customers. I was asking about  
11 customer retention, which is by definition existing customers;  
12 correct?

13 A. We have been able to increase our direct percentage,  
14 because customers are coming back to us.

15 Q. Okay. And if we look quickly at DX3136, which is the Q1  
16 2022 earnings call, 3136, at page 4 -- by the way, who is Glenn  
17 Fogel?

18 A. He is the CEO of Booking.com and the CEO and president of  
19 Booking Holdings.

20 Q. And we see at page 4, Mr. Fogel says, "In March, our unique  
21 active customers at Booking.com were within 95 percent of 2019  
22 levels, driven by strong growth in returning customers who had  
23 not made a previous booking in over a year."

24 Do you see that?

25 A. Yes.

1 Q. And that was true; correct?

2 A. Yes.

3 Q. And so when you described earlier to us that customers  
4 completely forget about Booking and start all over again on  
5 Google, that's not these people being described by Mr. Fogel,  
6 the returning customers; correct?

7 A. No, I don't think that I said "completely." I said -- but  
8 I have to look up what I said.

9 Q. Let me rephrase my question.

10 A. Yeah.

11 Q. The people being described by Mr. Fogel as these returning  
12 customers, those are not people going back to Google to find  
13 their way to you; they're coming back to you directly. Correct?

14 A. Correct.

15 Q. Another way Booking has succeeded in increasing direct  
16 traffic is increased use of its app.; correct? I think you  
17 mentioned that earlier.

18 A. Yes.

19 Q. And would you agree that the app. captures high-intensity  
20 consumers?

21 A. I'm not sure if I understand.

22 Q. Let me rephrase it, then.

23 People who come to Booking on your app. are those people  
24 looking to -- who are interested in booking a trip, from your  
25 perspective? Do they fall into that category?

1 A. Not always.

2 Q. Okay. And do you recall that some of the earnings calls --  
3 or I think all of the earnings calls from 2019 forward have  
4 discussed increasing traffic on the app. and the importance of  
5 doing that?

6 A. Yes.

7 Q. And would you agree with me that one of the particular  
8 important aspects of the app. is that younger users are more  
9 likely to use an app. on a phone? Would you agree with that?

10 A. In broad terms, yes. It depends on where you are in the  
11 world, but in U.S., I would say so, yes.

12 Q. During your direct testimony, you said that Booking is  
13 completely and utterly dependent on Google for new customers.

14 Do you remember that?

15 A. Yes.

16 Q. Okay. That's a bit of an exaggeration; correct?

17 A. No.

18 Q. Do you remember saying those same words at your deposition?

19 A. Along those lines for sure.

20 Q. In fact, you said it twice. If you want me to show you the  
21 transcript, I'm happy to.

22 A. I told you, I can't remember my breakfast from yesterday.  
23 So March 2022 is far away.

24 Q. In fact, do you recall telling us that you probably had  
25 used those actual words, "dominant" and "one-sided," in written

1       communications? Do you remember talking about that at your  
2       deposition?

3       A.    Yes.

4       Q.    In fact, you reviewed your deposition before you came in  
5       here today; right? You read it?

6       A.    I did a couple of days ago.

7       Q.    Okay. And you were asked if you could identify a single  
8       such document or e-mail where you had written those words.

9            Do you remember that?

10      A.    No.

11      Q.    No? Okay.

12            MR. SOMMER: Let me see if -- may I approach, Your  
13      Honor?

14            THE COURT: Yes.

15            MR. SOMMER: Your Honor, there's two volumes, March 8  
16      and March 9, 2022. I'm handing up two sets.

17            BY MR. SOMMER:

18      Q.    Sir, if you could turn to page 72 of the March 8, and I  
19      would ask you to read to yourself at page 72 at lines -- you can  
20      go back as far as you want, but I'm really focusing you on  
21      lines 8 through 12 --

22      A.    So page 17?

23      Q.    72. And they're numbered down the side. And I'm asking  
24      you to focus on lines 8 through 12.

25            Have you had a chance to read those lines?

1 A. Not yet.

2 Q. Okay. Just look up when you have.

3 A. I think I've read it, if I understood it.

4 Q. And the question I have is whether that refreshes your  
5 memory that you were asked about writing the words "dominant"  
6 or "one-sided" and that you could not point to a document.

7 Does it refresh your memory?

8 A. Yes.

9 Q. Do you also recall that you said at the deposition that you  
10 could do a Gmail search to find such documents?

11 Do you remember that coming up?

12 A. Yes.

13 Q. And you found no such documents; right?

14 A. I'm not sure if I've done the search.

15 Q. As you sit here today, there's not a single document that  
16 you can identify for us where you used the words "dominant"  
17 or "one-sided" to describe Booking's relationship with Google;  
18 isn't that right?

19 A. I would have to look that up, and I'm happy to do that.

20 Q. Earlier today, you used an analogy of Google controlling  
21 all the doors.

22 Do you remember that?

23 A. Yes.

24 Q. At your deposition, do you remember using a similar one,  
25 that Google controlled the only ferry to the island?

1 A. I actually used the word "bridge," I think.

2 Q. That one I'm not going to quibble with you over because I  
3 think it's sort of the same.

4 A. It's the same thing.

5 Q. It was ferry, but that's okay. I'll stick with bridge or  
6 ferry or door for these purposes.

7 Let me show you a demonstrative that we're going to put up  
8 on the screen, hopefully.

9 And by saying it's the only door, Google controls the only  
10 door or the only ferry or the only bridge, your point was that  
11 for anybody to get to Booking they've got to go through Google?  
12 That was the point; right?

13 MS. FREEBORN: Could we get a copy of the  
14 demonstrative, please?

15 MR. SOMMER: Sure.

16 BY MR. SOMMER:

17 Q. That was the point; correct?

18 A. Yes.

19 Q. Let's look at the demonstrative. What we see here is a  
20 desktop with Microsoft Edge.

21 Do you see that?

22 A. Yes.

23 Q. That's an image, okay. If we go to the next slide, some  
24 of -- back it up for a second.

25 At the very top, do you see the URL line? We're typing



1 in "Booking.com." Do you see that?

2 A. Yes.

3 Q. Let's go to the next page. And that brings you to  
4 Booking.com; correct?

5 A. Yes.

6 Q. So that's a way a user --

7 MR. KAUFMANN: Could we get these demonstratives?

8 MR. SOMMER: I'm sorry. I thought it was handed to  
9 you.

10 BY MR. SOMMER:

11 Q. Mr. Dijk, this is a way that someone could get to  
12 Booking.com without going over Google's bridge? Yes or no?

13 A. I explained also that there's a little door that sometimes  
14 opens, because this is a factual correct statement. The point  
15 is that it's kind of irrelevant because Microsoft Edge doesn't  
16 even have 10 percent market share.

17 Q. So since Microsoft is so small, it is another door. It's  
18 not a Google-controlled door, but it's a small door; fair?

19 A. Yes. And you heard me say that almost every door is either  
20 fully controlled or partially controlled by Google.

21 Q. What I heard you say, sir, again, and I don't want to  
22 quibble with you, is that there was only one bridge and only one  
23 ferry, and they were both controlled by Google.

24 That's what you told us; correct?

25 A. In quantitative terms, that's exactly what I said.

1 Q. So let make sure we have a clear record. The first image  
2 I've shown you is a bridge or a ferry that does not involve  
3 Google that could get a consumer to Booking; correct? Yes or  
4 no?

5 A. Yes, but it's a bridge that cannot carry anything. It  
6 doesn't carry a car. It doesn't carry a person. It's factually  
7 correct, but to tell it in my words is that I would gladly show  
8 up much more on Edge. It's only available on Windows machines  
9 desktop. The name of the game, you asked me that before, is  
10 actually mobile. This is kind of completely nonexistent on  
11 mobile.

12 Q. Let's go to the next slide.

13 This is a web browser with Mozilla Firefox. Are you  
14 familiar with that?

15 A. Yeah.

16 Q. Okay. And again, we could type in "Booking.com" on the  
17 URL, and you get to Booking without Google operating the ferry;  
18 correct?

19 A. It's the exact same story as Microsoft Edge.

20 Q. It's low volume is what you're saying; right?

21 A. It's irrelevant almost. The share of Google Chrome is  
22 around 80 percent worldwide. So it means there are a couple  
23 other niche browsers that almost no one uses -- when you go  
24 through a mobile phone, Safari has the default search engine  
25 with Google --

1 Q. That was my next slide.

2 Safari -- typing in on the URL on Safari doesn't involve  
3 Google even if it's the default; correct?

4 A. That's a navigational search, correct. But if you would  
5 misspell or if you would only do "booking," you would actually  
6 come out on the Google Search page when you use Safari.

7 Q. If you do a general search on Bing, that also gets you --  
8 as opposed to the URL, that also gets you to Booking without  
9 Google controlling the ferry; correct?

10 A. Yes, but I explained to you that it's very small.

11 Q. Sir, if you could answer yes or no, that would move things  
12 along. If the answer is no, tell me it's no. If it's yes, tell  
13 me it's yes. If you don't know or don't think you can answer it  
14 yes or no, tell me that. But I do want to try to move this  
15 along. Okay?

16 So I will ask my question again. If you type on the search  
17 bar in Bing, that would take you to Booking.com, a link to  
18 Booking.com that wouldn't use Google at all; correct?

19 A. Yes.

20 Q. Thank you.

21 A. I find these very obvious questions, because I gladly will  
22 explain everything, but I feel that --

23 THE COURT: Once plaintiffs' counsel gets up, they  
24 have the opportunity to ask you for clarification. So if  
25 there's clarification to be had, they can elicit it. But you

1 should answer Mr. Sommer's questions, and it will move much more  
2 smoothly.

3 Thank you.

4 THE WITNESS: Thank you.

5 BY MR. SOMMER:

6 Q. The same would be true with typing in a search on Yahoo! or  
7 DuckDuckGo. I understand they may be small volume, but they  
8 would get you to Booking.com without Google; correct?

9 A. No.

10 Q. Okay.

11 A. Yahoo! is powered by Google. So it means that the whole  
12 search engine is driven by Google in the U.S.

13 Q. If I go onto the Yahoo! general search engine and type in  
14 "Booking.com," is that controlled by Google?

15 A. If you go to -- not a navigational search. But if you  
16 would go to Yahoo!, you would indeed click on ads.

17 Q. If I do a navigational search on the Yahoo! general search  
18 engine, is that controlled by Google?

19 A. I would say so, yes.

20 Q. If I type in a URL in Safari "Booking.com," that brings you  
21 to Booking.com; correct?

22 A. Yes.

23 Q. And that's not controlled by Google; correct?

24 A. Correct.

25 Q. Okay. I think we have the point.

1           By the way, to the extent Booking is getting new users from  
2 Google, from Google we're talking about now, some of that is  
3 traffic that Google sends your way for free; correct?

4           A. We talked about natural search, yes.

5           Q. Just so it's clear, if someone types in the Google  
6 URL "Booking.com," you don't get charged for that; right?

7           A. Yes. If you're in Google Search, you get a search page  
8 where we have to pay --

9           Q. Not the search page, sir. Listen to the question.

10           If someone goes onto Google and goes to the URL and  
11 types --

12           A. You don't go to Google. You go to a web browser. So you  
13 either go to Chrome, Safari, or another browser. You don't go  
14 to Google. When you go to Google, it's a search page.

15           Q. In fact, we saw in your chart that we looked at a moment  
16 ago that less than [REDACTED] was -- of your traffic was paid  
17 search; correct?

18           A. I thought that was redacted.

19           Q. I'm just using a very general number, not a specific.

20           A. No, I don't think that's the agreement.

21           Q. I apologize. I don't know how we can -- it's very  
22 difficult to make a record with all these confidential  
23 documents. I'm going to try harder.

24           A. I'm happy to answer any question in the closed session.

25           Q. I will try harder.

1           THE COURT: Question and answer. Put the dialogue  
2     aside.

3           If we need a closed session, I fully realize we may need to  
4     do one, but let's continue along until it becomes necessary.

5           BY MR. SOMMER:

6     Q. Mr. Dijk, one of the reasons that Booking takes money from  
7     preferred partners so that they can appear higher is to help  
8     Booking make a profit; correct?

9     A. Yes.

10    Q. Okay. And that's one of the things Booking tries to do;  
11    right? It tries to generate revenue in order to make a profit;  
12    fair?

13    A. Yes.

14    Q. Okay. Do you recall that at your deposition you refused to  
15    answer a question because you said it was stupid?

16    A. Yes.

17    Q. Okay.

18    A. And I stand by that, by the way, if you read the full  
19    transcript.

20    Q. Do you recall what happened next after you refused to  
21    answer a question because you said it was stupid and  
22    condescending?

23           By the way, do you remember what the question was?

24    A. The question was something along the lines, does a company  
25    need to make profit? And it's kind of the same as does a human

1 being need to breathe. The answer is yes. So that's the reason  
2 I got irritated.

3 Also, counsel was actually very, I would say, aggressive.  
4 So I responded in that way.

5 Q. I'm going to read to you exactly what did happen so we all  
6 know. The question is at page 115, if you want to follow along  
7 in your transcript of the second day, which is March 9th.

8 MR. KAUFMANN: Your Honor, objection. We're going way  
9 far afield here.

10 MR. SOMMER: It goes to bias, Your Honor.

11 THE COURT: Agreed. Overruled.

12 BY MR. SOMMER:

13 Q. It's at page 115, starting at line 4, sir. Just look up  
14 when you're there. Page 115.

15 "Question: Are you saying" --

16 A. I'm sorry. Can I take a bit of time to read --

17 Q. We're going to read it together. I'm going to read it out  
18 loud. So you can follow along.

19 A. I prefer to read it, if you don't mind.

20 Q. I'm going to proceed with my examination.

21 Are you saying that --

22 THE COURT: Hang on. Let's make sure he's on the  
23 page.

24 Are you on the page?

25 THE WITNESS: 115.

1 MR. SOMMER: 115, line 4.

2 BY MR. SOMMER:

3 Q. "Question: Are you saying that a company is not entitled  
4 to do things to try to make a profit?

5 "Answer: This is a condescending and a stupid question.

6 "Question: Yes, I remember from yesterday as well, you  
7 thought my questions were condescending and stupid. I'm sorry  
8 you feel that way. But I am entitled to ask you a question.  
9 And my question is, are you saying that a company is not allowed  
10 to try to make a profit?

11 "Answer: I'm not answering that.

12 "Question: You're not going to answer that? I don't think  
13 you can do it. I asked you a question.

14 "Answer: What will you do? What will you do, Chul? I'm  
15 curious."

16 Do you remember that exchange with the Google counsel?

17 A. Yes.

18 Q. And his name was Chul. Do you remember that?

19 A. Yes.

20 Q. Let me ask you this, Mr. Dijk: Are you so bitter at your  
21 former employer that you were actually challenging Google's  
22 lawyer to a fight at your deposition?

23 A. No.

24 THE COURT: I think we can move on from that.

25 BY MR. SOMMER:



1 Q. You never answered the question that day. I would like the  
2 answer now.

3 Is a company entitled to take steps in order to make a  
4 profit?

5 A. Yes.

6 THE COURT: Mr. Sommer, it's 3:00. I'm just curious  
7 about timing.

8 MR. SOMMER: I've got about an hour to go, sir.

9 THE COURT: Let's take our break, then. It is 3:00.  
10 We will resume where we left off at 3:15.

11 Counsel?

12 MS. RAZI: If I may, Sara Razi for Booking.

13 Mr. Sommer revealed a confidential number in his  
14 cross-examination. I would ask that that number be redacted  
15 from the transcript.

16 THE COURT: We can certainly do that. Just to be  
17 clear, so there's no confusion, it was -- my understanding, it's  
18 not a specific number but a bound, but I'm happy to remove that  
19 from the public record if you think it's appropriate to do so,  
20 since it's a third-party piece of information.

21 All right. We will see everybody shortly. Thank you all  
22 very much.

23 (Recess taken from 3:00 p.m. to 3:16 p.m.)

24 (Call to order of the court.)

25 THE COURT: All right. Mr. Sommer, Mr. Dijk, keep

1 moving forward.

2 BY MR. SOMMER:

3 Q. Just a couple of follow-up questions from your testimony  
4 this morning.

5 You discussed very briefly Google's relationship with Apple  
6 as the default search engine.

7 Do you remember that?

8 A. Specifically on the Safari browser, yes.

9 Q. Okay. Now, while you were at Google, you played no role at  
10 all in negotiating that contract, did you?

11 A. Correct.

12 Q. Okay. And you were not on the internal Google team --  
13 there was actually a team -- that assessed that agreement;  
14 correct?

15 A. I was a part of a bigger team to look at the overall plan B  
16 if the deal would fall through.

17 Q. Okay. That wasn't my question.

18 You were not on the internal Google team that was assessing  
19 the relationship with Apple; correct?

20 A. Correct.

21 Q. And you never did any analysis while at Google, you, about  
22 the importance of being the default search engine, did you?

23 A. I did.

24 Q. You did an analysis of the importance of being a default  
25 search engine? You did that while at Google?

1 A. Yes.

2 Q. And what -- do you remember what that was called?

3 A. I run a growth marketing team, together with behavioral  
4 scientists, that we would look at, you know, the power of  
5 defaults and what we could do to really make sure that Google  
6 would be preferred.

7 Q. That Google would be preferred, you said?

8 A. Preferred or -- that's bad English. You know, how, for  
9 example, in the EU, you also had to choose between browsers, and  
10 then we do studies to really look at how we could make sure that  
11 Google would show up in the most advantageous way.

12 Q. In European browsers? Did I understand that?

13 A. No, that's not what I said.

14 Q. I'm sorry.

15 A. I said in Europe, there were requirements potentially to  
16 open up search engines, and then we would actually together with  
17 my team mock up the different scenarios, and we would really  
18 look at how we do the best.

19 Q. So that focus was on potential dealings in Europe. Maybe  
20 my question was an imprecise one.

21 Did you do any analysis while at Google to assess the  
22 importance of Google's relationship with Apple and being the  
23 default search engine?

24 A. I answered that already. No.

25 Q. One of the things you talked about during your direct

1 examination was this analysis -- we saw an exhibit -- of the  
2 impact of the declining SEO.

3 Do you remember that?

4 A. Yes.

5 Q. Okay. Do you know who Glenn Fogel is?

6 A. Yes.

7 Q. In 2019, was his title president, chief executive officer,  
8 and director?

9 A. Yes.

10 Q. Okay. Can you find in your binder, please, DX3167. This  
11 is the earnings call. It's dated November 19th, 2019. If we  
12 could put that up on the screen at page .006. And at the very  
13 bottom, the last five words, "just talk about your dependency  
14 on," and then it goes to the next page. "Just talk about your  
15 dependency on Google SEO, on organic search and just talk about  
16 your overall marketing mix and how that's needed to change over  
17 the last couple of years."

18 Do you see that question from one of the analysts? Very  
19 bottom of page 6, going on to the top of page 7.

20 A. Yes.

21 Q. And here's what Glenn Fogel said: "So, we said on the call  
22 that it's a small channel for us." Let me stop there for a  
23 minute.

24 What Mr. Fogel is referring to is the SEO channel; correct?

25 A. Yes.

1 Q. Okay. "It's a small channel for us. I said, yeah, we saw  
2 some headwinds and it's a small channel for us in terms of mix,  
3 so we built this company." Let me stop there for a moment.

4 "This company" is referring to Booking; correct?

5 A. It's referring to Booking Holdings. In those days, he was  
6 still the CEO of and president of Booking Holdings, not  
7 Booking.com.

8 Q. And just so the judge understands, can we agree without  
9 revealing any numbers that Booking.com represents the  
10 overwhelming majority of Booking Holdings?

11 A. Yes.

12 Q. So let me continue reading. "So we built this company,  
13 really built the company on pay-for-performance marketing." Let  
14 me stop there for a moment.

15 That's paid search; correct?

16 A. Yes.

17 Q. Let me go on. "And it's no secret that we did it with  
18 Google." Let me stop there for a moment.

19 So what the president and CEO of Booking Holdings is saying  
20 is that Booking Holdings was built with Google; correct?

21 "We did it with Google." Do you see that?

22 A. I agree with that when you say "built."

23 Q. Well, it says "built" in the line before, "we built the  
24 company." But I'll go on.

25 "And Google and us had a very good relationship together.

1 We both benefited tremendously. We continue to look, though.  
2 It's got a song going on."

3 Do you see that?

4 A. Yes.

5 Q. Okay. So at least Mr. Fogel here was expressing the view  
6 that the relationship with Google was very good and it was  
7 beneficial to Booking; correct?

8 A. Yes.

9 Q. And that the SEO was a small channel; that's how it's  
10 described?

11 A. In 2019, yes.

12 Q. Okay. Let me ask you this: You described, in talking  
13 about Google, I think your words were first it had one ad, then  
14 two ads, then three ads, then four ads, then five ads.

15 Do you remember that?

16 A. Yes.

17 Q. You know well, don't you, from your years at Google that  
18 Google has never had more than four top-side ads? Don't you  
19 know that?

20 A. We experimented with many.

21 Q. Since 2016, Google has never once had more than four  
22 top-side ads; isn't that true?

23 A. Correct.

24 Q. Let me just show you a demonstrative. By the way, the  
25 preferred partners that Booking takes money from, do you know

1       how many of those will show up on a page before you get to a  
2       nonpreferred partner?

3       A.    I don't know.

4       Q.    Okay.  Let's go to a demonstrative we put together, which  
5       is DXD13.0024.  We will go through that together.

6               Now, you may not agree with my terminology.  The red, I  
7       added.  I called it "ad."  It's designed to represent you're  
8       getting paid by a preferred partner, just so we're not quibbling  
9       over terminology.  Okay?

10      A.    My only point is, everyone pays, you know.  So --

11      Q.    I understand.  This is preferred partners.

12      A.    Yeah, but the difference is, everyone pays.  So you cannot  
13      talk about paid and nonpaid.  Everything is paid.

14      Q.    Assume for a moment that in the red arrow it  
15      says "preferred partner."  Okay?

16      A.    Yes.

17      Q.    We see to the right, next to the name of the hotel, we see  
18      that yellow thumb-up I refer to; right?

19      A.    Yes.

20      Q.    So let's move this forward.  And in terms of preferred  
21      partners, that's three.  Keep going.  Four, five, six, seven.  
22      Keep going.  Eight, nine, ten.

23               Now, again, I don't want to quibble over the word  
24      "organic."

25      A.    I will quibble between ad and organic because it's not

1 correct.

2 Q. I was going to say, I'm going to change my word "organic,"  
3 because I know you've made it clear everyone pays. But where  
4 the green arrow, this would be the first one that's not a  
5 preferred partner, correct, after nine preferred partners?

6 A. Correct.

7 Q. Okay. Now, you mentioned Bing in your direct testimony as  
8 well; correct? You mentioned Bing a few times; right?

9 A. Yes.

10 Q. Do you know how many top-side ads Bing has before you get  
11 to organic results?

12 A. I would have to look it up.

13 Q. Okay. So here's the same search, "hotels in Waikiki," that  
14 we just looked at for Booking.com. Do you see there are five  
15 ads before you get to the first organic result? Do you see  
16 that?

17 A. Yes.

18 Q. And now let's look for the same search -- hold on. Just  
19 one second. I'm getting the signal from the team.

20 Oh, okay. Let's scroll it forward. It's not five. It's  
21 more. Six, seven, eight. Okay. Stop it there.

22 So it's actually eight before we get to the first organic  
23 result; correct?

24 A. Yes.

25 Q. Okay. Now let's go forward for the same search on



1 Google, "hotels in Waikiki." And we see four, and we get to --  
2 the next one is an organic result.

3 Do you see that?

4 A. Yes.

5 Q. So your testimony to the judge twice this morning about how  
6 Google puts five ads on top before you get to any organic  
7 results was incorrect, wasn't it?

8 A. Based on the search results now, yes.

9 Q. But you've known since 2016, because you were an employee  
10 at Google, that there are only four top-side ads, didn't you?

11 A. Yes.

12 Q. You knew that?

13 A. Yes.

14 Q. Okay. Let me turn to a different aspect of Booking's  
15 relationship with Google that we just touched on. Let's go to  
16 DX31 -- wait. We may have just done that. Hold on.

17 3157. This is the earnings call of March 12, 2019. And  
18 let's go to page 13. Let me just make sure you have the number,  
19 sir. 3157, page 13.

20 A. It's not in my binder, but I can --

21 THE COURT: It may be in the sleeve there.

22 MR. SOMMER: May I approach, Your Honor? I think  
23 maybe it didn't get punched.

24 THE WITNESS: Yes.

25 BY MR. SOMMER:

1 Q. Thank you. And page -- sorry. Page 15 -- 13 -- excuse me,  
2 13. No, 15, .015. Tell me when you're there.

3 A. Yes.

4 Q. Are you ready?

5 A. Yes.

6 Q. Okay. So this is Mr. Fogel again at the top of the page,  
7 and he describes the following about his relationship --  
8 Booking's relationship with Google. "So we've had a wonderful  
9 relationship with Google since as long as I've been at the  
10 company. I've been now with us for almost 20 years."

11 Do you see that?

12 A. Yes.

13 Q. He goes on to say, "The interesting thing is that Google  
14 continues to make changes, and we continue to benefit from these  
15 changes." Let me stop there for a moment.

16 You described some changes that Google made in your direct  
17 testimony this morning; correct?

18 A. Yes.

19 Q. What Mr. Fogel is describing is that in response to  
20 Google's changes Booking has benefited.

21 Do you see that?

22 A. Yes.

23 Q. Let me go on. "Historically, we've worked very closely  
24 together with them as they made changes. Many times, Google has  
25 tested out new things with us first to see what the results

1       could be."

2               Do you see that?

3       A.    Yes.

4       Q.    Collaborative effort; right?

5       A.    Yes.

6       Q.    Okay.  "We believe we will continue to have this very good  
7       relationship going forward."

8               Let me just skip to the next paragraph for a moment where  
9       it says -- beginning of the next paragraph.  "I believe in the  
10       long run we will continue to have a good relationship" with  
11       them.  "We will continue to get the benefits, the ROIs that we  
12       want to see."

13              Do you see that?

14       A.    Yes.

15       Q.    Okay.  Now, a moment ago -- you can take that down.  A  
16       moment ago, we read -- no, let's go there, DX3186, which is the  
17       transcript of the September 10, 2019, call, and let's go to  
18       page -- hold on one second.  I think it's page stamped -- page  
19       005.

20              THE COURT:  It may not be in the binder, 3186.

21              MR. SOMMER:  3186 is not in the binder.  Was that the  
22       one we just looked at a moment ago that wasn't punched?

23              THE COURT:  That was 3157.

24              MR. SOMMER:  Let's go by the screen, then, 3186, and I  
25       will distribute it at the next break.

1 BY MR. SOMMER:

2 Q. David Ian Goulden, do you know who he is?

3 A. Yes.

4 Q. He was the chief financial officer and executive vice  
5 president for Booking Holdings; correct?

6 A. Yes.

7 Q. Let's take a look at what he said in the paragraph  
8 starting "sure," but the second sentence. It's being  
9 highlighted. "So we work very closely with Google and we do  
10 very well in both AdWords and Google Hotel Ads. And we believe  
11 that we take great advantage of all the optimization features  
12 that Google offers in these products, because they're  
13 sophisticated products, and we also work with them well and  
14 optimize your placement and your ROIs."

15 Do you see that?

16 A. Yes.

17 Q. And that was a true statement; correct?

18 A. Yes.

19 Q. Let me shift gears again.

20 By the way, before I do, are you aware of Mr. Fogel or  
21 Mr. Goulden ever issuing a statement in any of the earnings  
22 calls, in any 10-K, in any regulatory filing, or in any publicly  
23 consumable source that Booking's relationship with Google was  
24 one of one-sidedness and dominance?

25 A. No.

1 Q. Now, we just saw a moment ago, sir, the acronym "ROI."  
2 Did you see that in a couple of those statements?

3 A. Yes.

4 Q. And that is return on investment; right?

5 A. Yes.

6 Q. Do you recall being interviewed by a publication called  
7 Marketing Trends on June 21st of this year? Did I get it wrong?

8 A. No, but I do a lot of interviews. Probably, yes.

9 Q. Okay. We have a short clip from that video, which I will  
10 play to you, and maybe it will refresh your recollection. It's  
11 very brief. And it's marked as DX3160.

12 (Video played.)

13 BY MR. SOMMER:

14 Q. So first question, do you remember giving that interview?

15 A. Yes. It's Variety -- it doesn't matter, but it's picked up  
16 by other publications.

17 Q. Ready?

18 A. Yes.

19 Q. Do you remember giving that interview?

20 A. Yes.

21 Q. And the statements you made were true?

22 A. Yes.

23 Q. And so the way Booking determines its ad spend is driven by  
24 the key thing, which is ROI; correct?

25 A. Yes.

1 Q. And would you agree, in your experience, that even beyond  
2 Booking.com, for marketers making decisions about where to  
3 invest their advertising dollars, return on investment is the  
4 key thing? Do you agree with that?

5 A. Yes.

6 Q. In fact, you gave another interview -- let me just get this  
7 one out. This one is a little earlier. So you might not  
8 remember this one. But this was at the Skift Forum Europe 2020.  
9 That was on June 30th, 2020.

10 Do you remember that one?

11 A. Yes.

12 Q. You do remember that one. Okay. Rather than teeing it up,  
13 let me just read a part from that. "Well, we manage, you know,  
14 our marketing budget to very strict ROIs."

15 MR. KAUFMANN: Your Honor, he's just introducing prior  
16 testimony or statements. It has no relevance within this  
17 context.

18 THE COURT: How many more of these do you have?

19 MR. SOMMER: I can rephrase it. I can rephrase.

20 BY MR. SOMMER:

21 Q. In 2020, was it your view that Booking would manage its  
22 budget to very strict ROIs?

23 A. Yes.

24 Q. Okay. And would you agree that that was something Booking  
25 was obsessed about?

1 A. I probably would have said that, yeah.

2 Q. I like the word "obsessed," because we heard it from a  
3 witness yesterday that also said ROI is an obsession with  
4 marketing people.

5 That has always been your view; correct?

6 A. Yes.

7 Q. And in looking at ROI, would you agree that the key job of  
8 a marketer is to figure out how we should spend and in what  
9 channels? Would you agree with that?

10 A. Yes.

11 Q. And would you also agree that when it comes to picking  
12 channels, you're very agnostic? Would you agree with that?

13 A. Yes.

14 Q. And by agnostic, what that means is you will go to whatever  
15 channel is generating the best ROI; correct?

16 A. Yes. And volume, I would add that --

17 Q. Thank you.

18 A. -- because a very small channel might have a huge ROI, but  
19 it's kind of irrelevant, if you know what I mean.

20 Q. Okay. So I think we navigated that one. You also used the  
21 word "optimized" in the context of ROI.

22 Do you remember that?

23 A. Yes.

24 Q. And by optimize, do you mean that you're trying to optimize  
25 the ROI for a particular channel against other channels? Is

1 that what you mean by "optimize"?

2 A. Or you're trying to optimize within channels.

3 Q. Okay. And among channels; correct?

4 A. Among channels, too.

5 Q. Okay. If you have to pay more, does ROI go down?

6 A. It depends.

7 Q. Because there are other factors that could impact that; is  
8 that right?

9 A. Yes.

10 Q. But if we were to say keeping everything else equal, if  
11 price goes up, then ROI would go down; correct?

12 A. The interesting thing that nothing really stays equal, I  
13 would say, in this space. But yes, yeah.

14 Q. In a hypothetical example, you would say yes?

15 A. Yes.

16 Q. Okay. Now, I think I heard you say this morning that  
17 Google is raising prices. Did I hear that, or did I mishear,  
18 that Google has been raising prices? Did I mishear that?

19 A. I'd have to look it up. I think I've said that costs have  
20 increased. I don't think -- because it's an auction model, so  
21 it means that it's a model where people bid towards each other.  
22 So it means that the notion of raising prices probably doesn't  
23 apply.

24 Q. Let's -- thank you for that. Let's turn in your binder  
25 to -- are the 10-Ks in this binder? I just need one of them. I



1 will hand it out, the 2022.

2 You know that Booking Holdings files a 10-K with the United  
3 States Securities and Exchange Commission every year; correct?

4 A. Yes.

5 Q. And you're also aware that top executives from Booking  
6 certify the results and the statements in the 10-K; correct?

7 A. Yes.

8 Q. And do you play a role in preparing them at all?

9 A. Not a 10-K.

10 MR. SOMMER: Your Honor, at this time, I would offer  
11 into evidence DX3114, which is the 2022 10-K.

12 This is admitted?

13 THE COURT: I haven't said it, but any objection?

14 MR. KAUFMANN: No objection.

15 THE COURT: Then it will be admitted.

16 (Exhibit DX3114 received into evidence.)

17 BY MR. SOMMER:

18 Q. By the way, before I jump into this document, just a couple  
19 last questions on ROI.

20 Is it accurate to say that Booking has a target ROI with  
21 its ads on Google?

22 A. Yes.

23 Q. And is it also accurate to say that it will adjust its ad  
24 spend on those ads to achieve its ROI goals?

25 A. Provided the volume is coming in.

1 Q. Okay. And would it also be accurate to say that Booking  
2 has met its ROI goals on its ads with Google?

3 A. I think they could have been much better, but yes.

4 Q. I appreciate that. Thank you.

5 I want to point out a couple of things in this 10-K, most  
6 recent 10-K. Just give me one second. Sorry. Too much paper.

7 You know what, sir? I'm going to come back to that so I  
8 don't waste time. Oh, I think I found it.

9 At page 40, do you see where it says -- and I will try to  
10 direct you there -- "in recent years, we observed periods of  
11 stable or increasing ROI"?

12 THE COURT: Hang on, Mr. Sommer. I'm not sure he's at  
13 the page, and if you can blow up whatever is up on the screen so  
14 we have it.

15 MR. SOMMER: Sorry.

16 THE COURT: That's okay.

17 BY MR. SOMMER:

18 Q. Page 40, second paragraph down. It's on the screen. "In  
19 recent years, we observed periods of stable or increasing ROIs."

20 Do you see that?

21 A. Yes.

22 Q. Okay. So that means either -- that means that the ROIs  
23 have either stayed level or your ROIs have gone up in recent  
24 years; correct?

25 A. Yes.

1 Q. And on the same page -- actually, it's not the same page.  
2 That's enough for that. Let me move on. Next relationship with  
3 Google issue.

4 Would you agree that Booking is a competitor of Google?

5 A. I would agree that Google is a competitor, not necessarily  
6 with Google Search and Google Hotel Ads.

7 Q. Let me make sure I understood it. Is Booking a competitor  
8 with Google in any regard?

9 A. There were products like Book on Google that were directly  
10 competing with Booking.com, yes.

11 Q. So today, is Booking a competitor with Google?

12 A. If you look at Google Search and Google Hotel Ads, I would  
13 not qualify these as competitors. Google Travel, depending on  
14 the vertical where you're in, I would call out as a competitor.

15 Q. There's a confidential document. We looked at it briefly a  
16 moment ago. PSX94. I think it was toward the back of the  
17 binder. We're not going to put that up on the screen. Just  
18 tell me when you're there so I can guide you.

19 A. PS --

20 Q. PSX94.

21 A. Which binder?

22 Q. Not the 10-K binder. Tell me when you're there, sir.

23 A. Yes.

24 Q. And could you look at the first page?

25 A. Yes.

1 Q. And do you see where there's a reference to Google and  
2 competitor?

3 A. Yes.

4 Q. Okay. I'm going to give counsel a moment to let me know if  
5 they object to that word right before "competitor" being said.

6 MS. RAZI: No objection.

7 MR. SOMMER: Thank you.

8 BY MR. SOMMER:

9 Q. What is written there, sir, is "Google is a serious  
10 competitor."

11 That's what's written there; correct?

12 A. Yes.

13 Q. And do you know the year of that document?

14 A. No. January 2020, I can see it.

15 Q. Thank you. Let's go back -- may I approach one more time?  
16 I'm going to give you back the 2022 10-K. I'm going to take it  
17 out of the binder. Can you turn to page 3. Excuse me. Page 4.  
18 Let's put that up on the screen, page 4, please. All right.  
19 It's .006 is page 4.

20 Do you see the section called "competition" on that page?  
21 Sir, to help you, the preprinted number is 4 and then the .006  
22 at the bottom.

23 Are you with me?

24 A. Yes.

25 Q. Do you see the "competition" section there from the most

1 recent 10-K?

2 A. Yes.

3 Q. And what it says is, "We compete globally with both online  
4 and traditional travel and restaurant reservation and related  
5 services. The markets for the services we offer are intensely  
6 competitive, constantly evolving, and subject to rapid change,  
7 and current and new competitors can and do launch new services  
8 at a relatively low cost. Some of our current and potential  
9 competitors, such as," and then we see Google.

10 Do you see that?

11 A. Yes.

12 Q. And let's just go to --

13 A. Let me also clarify here very clearly. This is a Booking  
14 Holdings statement. I'm talking here on the basis of  
15 Booking.com. If you would look at this with the eyes of Kayak,  
16 one of our sister brands, clearly, Google is a very serious  
17 competitor. Google Search Ads and Google Hotel Ads is not a  
18 competitor to Booking.com. So to clarify this to you that you  
19 understand that.

20 Q. Thank you. And if you go a little further in the same  
21 paragraph, it says, "For example, Google's online travel  
22 offerings have grown rapidly in this area by linking travel  
23 search services to its dominant search functionality through  
24 flight, hotel, and alternative accommodations meta-search  
25 products, and by integrating its hotel meta-search products and

1 restaurant information and reservation products in its Google  
2 Maps app."

3 Do you see that?

4 A. Yeah.

5 Q. Do any of those aspects compete with Booking.com? Is it  
6 your testimony that none of that competes with Booking.com?

7 A. Yes. We've written this down, yeah.

8 Q. Huh? I'm sorry.

9 A. Yes.

10 Q. Yes, it does compete with Booking.com, or yes, it does not  
11 compete with Booking.com? Let me try one more time.

12 These examples of Google given here that we just read  
13 together here, do those various areas of Google's business  
14 compete with Booking.com?

15 A. I think I explained it already to you.

16 Q. I'm just trying to follow up to see if your view is none of  
17 this competes with Booking.com.

18 A. How could it be my view? It's written down here. This is  
19 a 10-K statement. Of course, it's truthful.

20 So I explain to you that Google Search Ads and Google Hotel  
21 Ads are not directly competition for Booking.com. There have  
22 been many other areas where Google is actually a competitor to  
23 Booking.com, especially also to Booking Holdings, especially  
24 when you talk about a company like Kayak.

25 Q. I think I understand.

1           Are you aware, sir, if we pulled up the binder I dropped on  
2 the ground there and looked at the 10-Ks for 2021, 2020, '19,  
3 '18, '17, that we would see a similar "competition" section as  
4 this, noting the intense competition in this field and that  
5 Google is a competitor? Would you dispute that?

6           A. No.

7           Q. Now, Booking faces competition from other platforms as  
8 well; right?

9           A. Yes.

10          Q. As we just read, new services can be -- withdrawn.

11           If we look at that same 10-K, at page 11, which is stamped  
12 .013, just look up when you're there, and let's blow up the  
13 bottom portion of the page. Okay.

14           Do you see the bullet points at the bottom? The first one  
15 is "online travel reservation services."

16          A. Yes.

17          Q. And that, for example, would be something like Expedia;  
18 correct?

19          A. Correct.

20          Q. Okay. And that's one of Booking.com's competitors;  
21 correct?

22          A. Yes.

23          Q. And then the next one is "online accommodation search  
24 and/or reservation services that are focused primarily on  
25 alternative accommodations."

1           That would be like Airbnb and Vrbo; correct?

2       A.    Correct.

3       Q.    And Booking.com competes with them here in the United  
4       States; correct?

5       A.    Correct.

6       Q.    And we see "travel service providers." That would be like  
7       airlines or the car rental companies; right?

8       A.    Yes.

9       Q.    If we go to the next page, we will ask you about one more  
10       bullet point at the top. "Large online companies, including  
11       search, social networking, and marketplace companies."

12           Do you see that?

13       A.    Yes.

14       Q.    And that would be, for example, Google, Facebook, Amazon?  
15       That would fall into that category; correct?

16       A.    Correct.

17       Q.    Now, if we look at page 17 of the 10-K, and highlight the  
18       middle paragraph beginning "furthermore." Look up when you're  
19       there. It's .019.

20           Are you there?

21       A.    Yes.

22       Q.    And this is talking about, you know, other potential  
23       competitive pressures; right? We see that in the first line.

24           Do you see that?

25       A.    I'm reading the paragraph.



1 Q. Sure.

2 A. Yes.

3 Q. And one of the competitive pressures identified here is  
4 machine learning, AI.

5 Do you see that?

6 A. Yes.

7 Q. And what that's referring to specifically at this time was  
8 Chat -- the launch of or the release of ChatGPT; correct?

9 A. It doesn't get mentioned there.

10 Q. I'm sorry?

11 A. It doesn't get mentioned.

12 Q. I'm asking if that's your understanding of what is being  
13 referred to here. Let me ask a different question.

14 A. No, I don't think so. I don't think it has anything --  
15 ChatGPT is a part of that, but there's general machine learning  
16 notion. Also, this is December 2022. So I really have to look  
17 it up, but I really don't think that ChatGPT was a thing then.

18 Q. Fair enough.

19 A. Yeah.

20 Q. The point here of this paragraph is you never really know  
21 where that next competitive threat or new technology may come  
22 from, and that is a threat not only to your business but to any  
23 business; fair?

24 A. Yes.

25 Q. And as we saw before, your industry is an intensely

1 competitive industry; correct?

2 A. Yes.

3 Q. And would you say that is true of the digital advertising  
4 industry as a whole, intensely competitive?

5 A. If -- no.

6 Q. Okay. From your perspective, sir, is Google one of your  
7 largest competitors, looking into the future?

8 A. I don't know.

9 THE COURT: Mr. Sommer, could I interrupt for a  
10 moment?

11 Could I ask you to clarify one thing for me. I should know  
12 this. But the difference between a Kayak and a Booking is that  
13 a Kayak is essentially a price comparison website, and in order  
14 to complete the booking, it links you to the original site  
15 itself?

16 THE WITNESS: Correct.

17 THE COURT: Whereas, on Booking.com, you can actually  
18 complete the reservation --

19 THE WITNESS: Pay, many occasions, yes.

20 THE COURT: -- on the site?

21 THE WITNESS: Yeah.

22 THE COURT: So does Booking consider Airbnb a  
23 competitor because Booking also offers people's private homes  
24 for reservations, or is it that you believe hotels and people's  
25 private homes for accommodations are competitors? Maybe it's

1 both.

2 THE WITNESS: No, so it's really because we're also a  
3 very big vacation rental provider. So in U.S., we're probably a  
4 distant third. In Europe, we're probably a little bit bigger  
5 than Airbnb in the specific vacation rental space. So if you  
6 look for a home in Italy, I can recommend you use Booking.

7 THE COURT: Okay. I'd like to use that search right  
8 now.

9 THE WITNESS: Yes, exactly.

10 But clearly, we see -- I see Airbnb as a significant  
11 competitor.

12 THE COURT: Understood. I just wasn't sure whether it  
13 was because of what you've just described or because you viewed  
14 hotel accommodations as direct competitors with vacation  
15 rentals.

16 BY MR. SOMMER:

17 Q. Last topic, sir. You described through your direct  
18 testimony, I'll put it in this way, some of the challenges that  
19 Google has imposed on Booking; fair?

20 A. Yes.

21 Q. Okay. I want to turn, then, to the final part. That's  
22 Booking's performance, how it's doing, so we can see for  
23 ourselves how those challenges have impacted Booking.

24 So you're aware, sir, that the 10-K for Booking Holdings  
25 reports revenue on a consolidated basis; correct? So it's all

1 the companies combined; right?

2 A. Yes.

3 Q. And again, I'm going to respect the numbers. So let me do  
4 it this way: In your binder, if you can find DX3156. We're not  
5 going to put this up anywhere. 3156.

6 And just so -- once you're there, I'll describe what it is.  
7 This is one page from your deposition on March 8th, and it's  
8 from page 56 of that day of the deposition.

9 Do you see, sir, at line 13, you identified the percentage  
10 of Booking.com revenue to Booking Holdings? Do you see that?

11 A. Yes.

12 Q. Is that still true today, approximately?

13 A. Approximately.

14 Q. And you go on at the bottom, at page 20, you identify --  
15 since Booking is all over the world, you identify the percentage  
16 of revenue that's in the U.S.

17 Do you see that at line 25?

18 A. Yes.

19 Q. Is that accurate today still?

20 A. Directionally.

21 MR. SOMMER: Okay. Your Honor, in order to avoid any  
22 confidentiality issues, I'm going to offer DX3156, I guess,  
23 under seal. Does that make sense?

24 MR. KAUFMANN: No objection.

25 THE COURT: These are not numbers reflected in a 10-K

1 or other public filing?

2 MR. SOMMER: Those two numbers I looked for in 10-Ks  
3 and didn't see them. So I was trying to be sensitive.

4 THE WITNESS: The only caveat I want to give with  
5 these numbers, this is the middle of the Corona epidemic. So  
6 those numbers were slightly skewed. You can imagine that Kayak  
7 and flights, when people were grounded, et cetera, et cetera.  
8 So those numbers would look a little different if we looked at  
9 it now.

10 BY MR. SOMMER:

11 Q. We're going to look at a broader spectrum of numbers in a  
12 second.

13 Would you agree that Booking has had a relationship with  
14 Google since 2005, give or take a year or two?

15 A. Yes.

16 Q. Okay. And let me put up on the screen -- these are all  
17 public numbers from your 10-Ks -- a demonstrative, which is --  
18 hold on. 42? Thank you.

19 And as I said, these are all public numbers. And let's --  
20 these are from the 10-Ks. Let's just start with the comment you  
21 just made.

22 We see a precipitous drop there in 2020, going into 2021;  
23 correct?

24 A. Yeah.

25 Q. That was the pandemic?

1 A. Yes.

2 Q. People were not doing much traveling and going out to  
3 restaurants in that time; right?

4 A. Correct.

5 Q. But other than that unfortunate event, Booking has been on  
6 a steady trajectory up; correct?

7 A. Yes.

8 Q. In fact, if we try to factor out the pandemic, we could  
9 draw a line, and it looks like a pretty continuing trend of  
10 increased revenue; correct?

11 A. Yes.

12 MR. SOMMER: Okay. Your Honor, I will offer DXD13.00,  
13 the prior one, 43, pursuant to FRE 1006.

14 MR. KAUFMANN: Your Honor, we haven't had opportunity  
15 to review these or to assess them.

16 MR. SOMMER: Subject to their review.

17 THE COURT: Okay. Subject to review, it certainly  
18 would qualify.

19 (Exhibit DXD13.0043 received into evidence.)

20 BY MR. SOMMER:

21 Q. Can we agree in 2022 revenue surpassed prepandemic levels?  
22 Correct?

23 A. Yes.

24 Q. Again, just to be clear, while this chart is showing  
25 Booking Holdings, if we made a separate chart for Booking.com,

1 it would look pretty much the same; correct?

2 A. Correct.

3 Q. All right. Let's go to the next demonstrative, which is  
4 DX3133. I'm not sure. Let's see it when it comes up.

5 This is the gross bookings. One of the things that Booking  
6 measures in terms of its performance is something called gross  
7 bookings; correct?

8 A. Yes.

9 Q. This chart, again taken from the 10-K, shows gross bookings  
10 from 2006 to 2022. We see the same pandemic influence drop;  
11 correct?

12 A. Yes.

13 Q. Again, other than that, it's a pretty positive trajectory;  
14 correct?

15 A. Yes. I'm very proud of it.

16 MR. SOMMER: Your Honor, under the same caveat, we  
17 offer DXD13.09044 in evidence under FRE 1006.

18 MR. KAUFMANN: The same reservation.

19 THE COURT: Okay.

20 (Exhibit DXD13.09044 received into evidence.)

21 BY MR. SOMMER:

22 Q. Let's go to the next one, which is stock price chart. We  
23 took this from various sources on the Internet, but let me see  
24 if you would agree with it.

25 From January 2006 -- and again, I've chosen that starting

1 time because that's when the relationship with Google started.

2 Do you recall, if you have any memory at all, that the stock  
3 price was \$22.32?

4 A. I wish. No.

5 Q. You wish you had bought it then?

6 A. Exactly.

7 Q. But you know today that at least as of September 2023 the  
8 stock price was over \$3,100; correct?

9 A. Yes.

10 Q. So by each of these measures that we've just looked at,  
11 revenue, Booking's stock price, Booking.com and Booking Holdings  
12 have seen remarkable growth and success from 2006 to the  
13 present; would you agree?

14 A. Yes.

15 Q. Would you also agree that this type of meteoric growth  
16 would not have been possible without the traffic Google has sent  
17 to Booking since 2006?

18 A. Yes.

19 Q. Let me ask you to turn to DX3169. This has been marked  
20 confidential.

21 A. DX -- could you repeat?

22 Q. 3169. The top e-mail is dated December 14, 2020. Are you  
23 on that one?

24 A. Yes.

25 Q. Without putting it on the screen, I want to draw you



1 halfway down the page. You write an e-mail to David Goulden.

2 Do you see that?

3 A. Yes.

4 Q. Do you see the third sentence, which starts with the  
5 words "we have"?

6 A. Yes.

7 Q. Okay. I'm going to give counsel for Booking a moment to  
8 object if they want to. I want to read the first 13 words of  
9 that sentence, starting with "we have."

10 MS. RAZI: No objection.

11 MR. SOMMER: Thank you.

12 BY MR. SOMMER:

13 Q. All right. Let me read it. What you wrote is, "We have  
14 grown big in past years on the back of Google Search."

15 That's what you wrote; right?

16 A. Yes.

17 Q. And that was true?

18 A. Yes. I could have added a sentence that we're fully  
19 reliant on Google, you know. I could have done that.

20 Q. Thank you.

21 A. Clearly, we have become very successful. I'm very proud of  
22 that.

23 Q. Thank you.

24 A. But --

25 Q. Let me ask you this: In the years you've been at the

1 company, the four and a half years, has anyone sent a thank you  
2 note to Google that you're aware of?

3 THE COURT: All right, Counsel.

4 MR. SOMMER: Sorry, Judge.

5 THE COURT: Are we done?

6 THE WITNESS: Also, it's starting to be very clear.  
7 You're intimating --

8 THE COURT: Let's get through this.

9 BY MR. SOMMER:

10 Q. Last four final questions.

11 Would you agree that the cost per click that Google charges  
12 Booking has remained quite stable during your tenure at Booking?

13 A. Cost per click is not an ROI measure. If you show -- so  
14 you're factually correct, but it means that if you show many  
15 more ads and you get clicks that don't convert as well, it  
16 doesn't mean anything for us.

17 Q. Let me put my question to you again, and maybe you can  
18 answer my question.

19 Would you agree that the cost per click that Google charges  
20 Booking has remained quite stable during your tenure at Booking?

21 A. I have to look it up, but yes.

22 Q. Is it a yes, or you have to look it up?

23 A. No, but the interesting thing is, we don't really look at  
24 cost per click, because it's about conversions and ROI.

25 Q. Do you have your March 9th transcript there -- your

1 deposition transcript in front of you there, the March 9th one?

2 May I assist the witness?

3 THE COURT: Sure.

4 BY MR. SOMMER:

5 Q. If you could turn to page 107, at line 11 to 13.

6 A. Yes.

7 Q. Just look up when you've had a chance to read that.

8 A. Yes.

9 Q. Does that refresh your recollection, sir, that you told us  
10 under oath that the cost per click has remained quite stable in  
11 the past years?

12 A. Yes.

13 Q. Would you agree that Booking has -- I already asked that  
14 one. Never mind.

15 And would you agree that the decline of SEO, which you took  
16 us through that chart earlier, fewer organic results, that that  
17 has not materially impacted Booking? Would you agree with that?

18 A. No.

19 Q. You would not agree with that?

20 Can you, in the same depo transcript, turn to page 126 --  
21 127, I'm sorry, lines 2 through 7.

22 Do you remember being asked this question and giving this  
23 answer:

24 "Question: Is it fair to -- is it fair to say that this,  
25 whatever was happening with search engine optimization, that

1 your competitors may have seen a decline, but you, Booking.com,  
2 weren't as impacted?

3 "Answer: Right."

4 Do you remember being asked that question and giving that  
5 answer?

6 MR. KAUFMANN: Your Honor, objection. I don't think  
7 that's impeaching in any way. It's a different question and a  
8 different answer.

9 THE COURT: You have to forgive me. I wasn't on the  
10 same page.

11 MR. SOMMER: I'll rephrase.

12 THE COURT: Can you send me to the right page?

13 MR. SOMMER: 127, lines 2 through 7.

14 THE COURT: I'm sorry. This is which date?

15 MR. SOMMER: March 9th.

16 THE COURT: I'm on the wrong one. Sorry. Okay.

17 BY MR. SOMMER:

18 Q. Last question, sir -- last two questions.

19 It is Booking that decides what to bid in Google's ad  
20 auctions; correct?

21 A. Yes.

22 Q. Okay. And Booking makes that bid in the auction based on  
23 its own determination of what its ROI objective is; correct?

24 A. Correct.

25 MR. SOMMER: If I could have one moment, Judge.

1 Nothing further. Thank you, sir.

2 THE COURT: Thank you, Mr. Sommer.

3 Mr. Kaufmann, redirect?

4 MR. SOMMER: Your Honor, I was handed a note that I  
5 neglected to offer the stock chart, which under the same ground  
6 rules they can check it, but I did want to make that offer.

7 MR. KAUFMANN: I believe the stock chart were  
8 different sources and different information. That may require  
9 someone else to verify. The others were from 10-Ks.

10 THE COURT: Take a look and let me know. But I think  
11 the general proposition is it's not in dispute.

12 REDIRECT EXAMINATION

13 BY MR. KAUFMANN:

14 Q. Mr. Dijk, you were just asked some questions about cost per  
15 click and stability of cost per click, and I believe that you  
16 were suggesting that those might not be the best metric to  
17 assess what was going on, and I was wondering how ROI or other  
18 metrics might be more relevant.

19 A. So cost per click is a metric, but clearly, if you have to  
20 pay for many more clicks that you normally would get for free,  
21 that's one thing, or you would have to pay for search queries  
22 that normally would not be commercial queries.

23 So it means that there's something that we call audience  
24 quality. So imagine that ads are shown on search queries, where  
25 before that, you know, no ads were shown. The cost per click

1 might be the same, but it means that we're getting less quality  
2 of customers who have not the kind of conversion that we see in  
3 the clicks that we used to have before.

4 Sorry. It's a bit complicated, but I hope I've explained  
5 it.

6 MR. KAUFMANN: If I could ask your counsel to look at  
7 DX3169.

8 MR. SOMMER: That's a confidential document. I just  
9 read from it, I believe.

10 MR. KAUFMANN: I'm asking for Mr. Dijk's counsel,  
11 counsel for Booking.com to look at that.

12 And the sentence that Mr. Sommer read, he just read the  
13 first few words. I would like to read all the way to the comma,  
14 if that's okay with you.

15 MS. RAZI: Yes.

16 BY MR. KAUFMANN:

17 Q. Mr. Dijk, if you would turn to DX3169.

18 A. Yes.

19 Q. That sentence that Mr. Sommer asked you about is, "We have  
20 grown big in the past years on the back of Google Search." And  
21 then there's a but. It says, "But with Google Search not  
22 growing that fast anymore."

23 And could you explain to us what the reference is to Google  
24 Search not growing as fast anymore?

25 A. So you see that Google grew really quickly in the past 25

1 years, but that the number of times that people are searching is  
2 kind of leveling off. So we track the number of travel searches  
3 per year, and you see that this is not really growing anymore.  
4 People are using increasingly different media.

5 And this is very pronounced in other parts in the world.  
6 For example, people are spending more time on other media and  
7 not necessarily searching as much anymore.

8 Q. When you're talking about return on investment, you're  
9 talking about -- that we've seen in your 10-Ks and reported,  
10 that's return on investment for all of the advertising that  
11 Booking Holdings does?

12 A. Correct.

13 Q. Okay. And while you've been able to manage that return on  
14 investment well, could that return on investment have been  
15 better?

16 MR. SOMMER: Objection; speculation.

17 THE COURT: It's overruled. Go ahead.

18 THE WITNESS: Yes.

19 BY MR. KAUFMANN:

20 Q. And what types of things would you have looked for to get  
21 better return on investment for your advertising spend?

22 A. Clearly, as a company always trying to improve and become  
23 better, and we think that we could have grown faster, could have  
24 achieved more, you know, on -- when we would have had kind of  
25 better ROIs.

1 Q. Mr. Sommer asked you about direct traffic. Do you remember  
2 those questions about --

3 A. Yeah.

4 Q. -- direct traffic?

5 And you've been able to grow direct traffic at Booking.com.  
6 And what has been the investment that you've had to make in  
7 order to grow that direct traffic?

8 A. So the key thing clearly is to attract new customers and do  
9 that at a certain rate and be able to turn them into more loyal  
10 customers.

11 So as a company, we're maturing, and I'm very proud that  
12 we've been able to increase direct, but it's also a function of  
13 us becoming more mature, because we have more customers and are  
14 able to retain them better, and we have introduced programs for  
15 people to really come back to us direct, like our Genius  
16 program.

17 THE COURT: Sorry. What program?

18 THE WITNESS: Genius program. It's our loyalty  
19 program, like -- I probably shouldn't say it, like Marriott  
20 Bonvoy or hotel loyalty programs.

21 BY MR. KAUFMANN:

22 Q. Right. Okay. And what has been the cost to Booking.com in  
23 general terms in terms of securing the direct traffic growth?

24 A. Well, to get to direct growth, we have to invest a lot in  
25 new customer acquisition, and the moment we stop that, you know,



1 it will be very difficult to, you know, build our loyal customer  
2 base.

3 In financial service and in our business, we call it  
4 speedboating. You have to start -- you have to be on the  
5 speedboat and have to be going, because otherwise, it will be  
6 very difficult to grow a more loyal customer base.

7 Q. So I want to return to the relationship with Google and  
8 Booking.com. I believe you said that Booking.com spends a very  
9 large sum annually with Google. I think you mentioned that in  
10 court before.

11 Because of that, do you have to work with Google in terms  
12 of your relationship and how you're going to spend that money  
13 with Google?

14 A. Yeah. And also for clarity purposes, we do have a very  
15 good relationship. I worked myself 11 years at Google. I had  
16 the best professional time of my life. I made friends for life.  
17 I left in very high standing. And we have a very good personal  
18 relationship. I know most of the senior people very, very well  
19 and deeply respect them. So there's no issues with that, and I  
20 would characterize that as a very good relationship.

21 But this relationship is -- clearly, one-sided is a word  
22 that can be added to a good relationship.

23 MR. KAUFMANN: Thank you.

24 No further questions, Your Honor.

25 THE COURT: All right. Let me just make sure. To the

1 extent either side wants to put into the record anything that's  
2 confidential -- it's either in evidence already, or do we need  
3 to have a very brief closed session in order to elicit any  
4 confidential information?

5 MR. KAUFMANN: From the plaintiff states' perspective,  
6 Your Honor, we have gotten all the information in. There have  
7 been times when Mr. Dijk has not been able to testify, but the  
8 document is in evidence.

9 THE COURT: As long as the evidence is in and the  
10 record has been made.

11 MR. SOMMER: For Google, we have no need for a closed  
12 session.

13 THE COURT: Terrific. Thank you.

14 Mr. Dijk, thank you very much for being here. Thank you  
15 for your time and testimony.

16 You can just leave that there.

17 THE WITNESS: Thank you.

18 MS. MADDOX: Good afternoon, Your Honor. Claire  
19 Maddox for the United States.

20 May we proceed?

21 THE COURT: You may.

22 MS. MADDOX: Your Honor, the United States calls  
23 Professor Kinshuk Jerath.

24 KINSHUK JERATH, WITNESS FOR THE PLAINTIFFS, SWORN

25 THE COURT: Professor Jerath, welcome.

1 THE WITNESS: Thank you for your flexibility in  
2 accommodating my situation in the last two weeks.

3 THE COURT: Not to worry. We are happy to have you  
4 here. I am sorry for your loss.

5 MS. MADDUX: Your Honor, I have a few comments before  
6 we begin.

7 For the Court's reference, our intention is to do Professor  
8 Jerath's entire presentation in open court. There are a few  
9 redactions in the slide deck that we'll be handing up, but the  
10 paper copy will have red boxes, as has been the practice.

11 As with previous experts, at the conclusion of Professor  
12 Jerath's examination, I'm going to move to enter the deck into  
13 evidence to complete the testimony of what he would have been  
14 able to say in an open session.

15 And to the extent the underlying exhibits are not already  
16 in evidence, we believe we can address admissibility questions  
17 and request that the deck be provisionally admitted.

18 MR. SOMMER: Until we see the deck --

19 THE COURT: Right. That's why we will wait until the  
20 end.

21 MS. MADDUX: As Your Honor may recall and just  
22 referenced, the original intention was to call Professor Jerath  
23 before some of the other ads witnesses. So my intention is not  
24 to retread ground that's already been covered there. To the  
25 extent that it's needed or helpful to set the stage for

1 Professor Jerath's testimony, I may call back to some of those  
2 concepts. But again, the intention is to minimize overlap of  
3 previous witnesses.

4 THE COURT: Okay. I appreciate that.

5 MS. MADDOX: And similarly, Professor Jerath's slide  
6 deck may have some slides with details that we may just cover at  
7 a higher level. We may use them for reference in the event Your  
8 Honor has any questions or follow-up.

9 THE COURT: Okay. Thank you.

10 DIRECT EXAMINATION

11 BY MS. MADDOX:

12 Q. Good morning, Professor Jerath.

13 A. Good afternoon.

14 Q. Could you please state and spell your name for the record.

15 A. My name is Kinshuk Jerath. First name is K-i-n-s-h-u-k.  
16 And my second name is Jerath, J-e-r-a-t-h.

17 Q. And what is your academic training?

18 A. So, I have a bachelor of technology degree in computer  
19 science and engineering from Indian Institute of Technology  
20 Bombay.

21 After that, I started a Ph.D. at the Wharton School at  
22 University of Pennsylvania. I finished that Ph.D. in 2008. The  
23 degree is in operations and information management, and my  
24 dissertation was in marketing.

25 THE COURT: I'm sorry. Say that last part again.

1 THE WITNESS: My dissertation was in marketing.

2 BY MS. MADDOX:

3 Q. What positions have you held since obtaining your Ph.D.?

4 A. So in 2008, I joined as an assistant professor of marketing  
5 at the Tepper School of Business at Carnegie Mellon University.  
6 I was there for five years. Then I joined Columbia Business  
7 School in 2013, and I was tenured there in 2016. And now I'm a  
8 full professor in marketing there with an endowed chair.

9 Q. Have you held any administrative or service roles at  
10 Columbia Business School?

11 A. Yes. Currently, I'm the chair of the marketing division at  
12 the school, and also, I'm an advisor in digital marketing to the  
13 media and technology program.

14 Q. What courses have you taught at Columbia Business School?

15 A. I've taught a number of courses. Most important and  
16 primarily, I teach the course on digital marketing. So that's  
17 sort of the flagship course on digital marketing at Columbia. I  
18 developed that course. I've been teaching it for the last many  
19 years. And now other faculty also teach that course.

20 Besides that, I've taught courses in retailing. I've  
21 taught courses in customer management and some other courses in  
22 marketing, like the foundational core course in marketing.

23 And these are mainly to MBA students.

24 Q. Your digital marketing course, what does that cover?

25 A. So it covers all the important topics in digital marketing.

1 Really start with the purchase funnel, which is the way  
2 consumers make purchases, and then the next step we take is talk  
3 about different kinds of ad channels, like display advertising,  
4 search advertising, social media influence on marketing, look at  
5 return metrics like return on investment, ROI, how to measure  
6 that, attribution, how to build campaigns, manage campaigns,  
7 optimize campaigns.

8 Q. Have you engaged in any research?

9 A. Yes. I've been engaging in research for the last 15 to 20  
10 years.

11 Q. And have you published any peer-reviewed articles?

12 A. Yes. In the last ten years, I've published more than 20  
13 peer-reviewed articles in the top marketing journals.

14 Q. And what were the subject matters of those peer-reviewed  
15 articles?

16 A. The main subject matter has been digital marketing, a lot  
17 on search advertising, as well as other types of advertising and  
18 display. Also, I've published on retailing, customer  
19 management, kind of a marked general interest in marketing  
20 topics.

21 Q. Have you ever received any awards or other recognition?

22 A. Yes, I have. I've received various awards. So there's an  
23 institute called MSI, Marketing Science Institute. It's an  
24 institute that brings together practitioners and academics. And  
25 they nominated me as a scholar in their opening class of

1 scholars -- MSI Scholar is the title -- in 2018.

2 And also, my papers have been nominated for and received  
3 various best paper awards.

4 Q. Are you involved in any academic journals?

5 A. Yes. Besides publishing in journals, I'm also on the  
6 editorial boards of and in the senior editorial positions at  
7 multiple marketing and management journals, like Journal of  
8 Marketing Research, which is the flagship marketing journal,  
9 Marketing Science, another very prominent one, Management  
10 Science, Quantitative Marketing and Economics, and some others.

11 Q. Are you involved in any industry associations?

12 A. Yes. Besides MSI, which is Marketing Science Institute  
13 that I just told you about, I'm also involved in other  
14 associations, like one such as ARF, which is the Advertising  
15 Research Foundation. That is another association that brings  
16 together academics and practitioners.

17 Q. Have you ever had any speaking engagements or presented  
18 papers?

19 A. Yes. In the last ten years, I've had more than 80 invited  
20 or peer-reviewed speaking engagements.

21 Q. Have you ever done any consulting?

22 A. Yes. I've consulted for several companies, starting all  
23 the way from small start-ups to large companies in many  
24 different kinds of industries, and mostly this consulting has  
25 been around digital marketing areas.

1 Q. How do you stay current on issues in digital marketing?

2 A. So I -- the way to stay current is really through my  
3 research and teaching. I'm teaching again at Columbia Business  
4 School a number of MBA students who are very sharp. So to teach  
5 them, you always stay current. I mean, again -- so the research  
6 brings me -- we always stay current based on the research and  
7 also talking to practitioners through all these associations and  
8 reading industry reports regularly and so forth.

9 Q. Have you been recognized by any court as an expert in  
10 digital marketing or online advertising?

11 A. Yes, I have been.

12 MS. MADDOX: Your Honor, at this point, we would like  
13 to offer Professor Jerath as an expert in digital marketing.

14 MR. SOMMER: No objection.

15 THE COURT: So we will recognize Professor Jerath as  
16 an expert in digital marketing.

17 BY MS. MADDOX:

18 Q. Professor Jerath, have you prepared a slide presentation to  
19 assist with your testimony?

20 A. Yes, we have.

21 MS. MADDOX: Your Honor, may we present Professor  
22 Jerath with his slide presentation?

23 THE COURT: Sure.

24 MS. MADDOX: May I approach?

25 BY MS. MADDOX:



1 Q. Professor Jerath, did the United States give you a  
2 particular assignment with regards to this case?

3 A. Yes. So my assignment was to describe certain digital  
4 advertising products in the United States, the characteristics  
5 and users of these products, primarily from an advertiser point  
6 of view.

7 In addition to that, I was also asked to review reports  
8 submitted by Google's experts and respond to those.

9 MS. MADDOX: Your Honor, for the record, the slide  
10 presentation has been marked as UPXD103.

11 BY MS. MADDOX:

12 Q. Professor Jerath, how did you carry out that assignment?

13 A. I drew upon my knowledge in research and teaching and other  
14 industry interactions. I also did an extensive study of many  
15 documents that were produced in the case.

16 While starting this assignment, I had certain perspectives  
17 and views on these issues, and my study helped me confirm those,  
18 and I'm offering those as my opinions.

19 Q. Can we turn to the second slide, please. Thank you.

20 Does this slide give an overview of your testimony today?

21 A. Yes, it does.

22 Q. Would you please summarize your high-level conclusions?

23 A. Yes. I'm offering the four opinions. At a high level, the  
24 first one is that general search text ads, or text ads for  
25 short, are a distinct product category of advertising; second,

1 that search ads more broadly, so this includes text ads as well  
2 as other kinds of search ads, so search ads more broadly are a  
3 distinct product category of advertising.

4 The third opinion I'm offering is that effectively  
5 providing text ads and other search ads requires significant  
6 resources, and advertisers have few alternatives apart from  
7 Google for these ads.

8 And the fourth opinion is that Google harms advertisers  
9 through its withholding of information and through its control  
10 of the ad auction.

11 Q. Before we dive into your opinions, let's step back and get  
12 an overview of the advertising industry generally.

13 Can you give us a sense of the size of the advertising  
14 industry?

15 A. Yes, please, could we go to the next slide.

16 So this plot gives a sense of the size of the advertising  
17 industry. This is total media ad spend in the U.S. in 2021 in  
18 billions. And we can see that the digital industry -- digital  
19 ad spending was about \$211 billion in 2021.

20 Q. The second bar here is labeled -- let's see.

21 The categories of advertising here under "digital," how  
22 would you describe those?

23 A. You mean from TV downwards?

24 Q. Yes.

25 A. Yeah, so that would be traditional advertising. It

1 includes TV, newspaper, print. So newspaper and magazines fall  
2 into print, radio, and out-of-home, which you think of as  
3 billboards. So these are traditional media that have been  
4 existing for like many decades now. This is traditional  
5 advertising.

6 Q. And I see that eMarketer is the source of the data on this  
7 slide. Does eMarketer give a further breakdown of digital  
8 advertising spend?

9 A. Yes, please go to the next step.

10 So as per standard industry practice, eMarketer has broken  
11 down the digital ad spend into display and search. You can see  
12 that these are primary categories, and there are some others,  
13 like lead generation and so on. And search specifically is  
14 about \$86 billion, again in the U.S. in 2021.

15 Q. Can you briefly describe display ads?

16 A. So display ads are basically banner ads and also video ads  
17 on websites and apps. on desktop and mobile phones.

18 Q. And the Court has heard testimony about text ads and other  
19 types of search ads. To orient our discussion, can you very  
20 briefly describe those ad types?

21 A. Yes, please, could you go to the next slide.

22 So this is --

23 THE COURT: I'm sorry to interrupt. Will you be  
24 defining "lead generation" in a moment? I didn't want to jump  
25 ahead.

1 MS. MADDOX: That's quite all right. Actually, that  
2 was not a question I had.

3 So please, Professor Jerath.

4 THE COURT: Can you define what "lead generation" is?

5 THE WITNESS: So lead generation, you can think of it  
6 as, suppose Dell launches a new laptop, and it would -- can give  
7 this laptop to some people to review, some experts to review.  
8 And they would write reviews and also have a link there.

9 So suppose I go and read that review and I click on that  
10 link and go to the Dell website. Then that's called a lead, and  
11 the reviewer would then be paid directly for that.

12 So that's one example of lead generation.

13 You can think of credit card. If you want to go out and  
14 buy a credit card or get a new credit card, you can go to like  
15 [nerdwallet.com](http://nerdwallet.com) and search, and then you click from there.

16 So that's called lead generation, also sometimes called  
17 affiliate marketing.

18 THE COURT: Thank you.

19 THE WITNESS: Sure.

20 BY MS. MADDOX:

21 Q. As I mentioned, the Court has heard testimony about types  
22 of search ads. Can you very briefly describe those ad types?

23 A. Yes. So this slide describes that, and I know, Your Honor,  
24 that you've heard testimony on this. So I will be very quick.

25 The red rectangle contains text ads. Again, the query here

1 is "best gaming laptops." These are all results in response to  
2 that. So the red rectangle has text ads. You can see they're  
3 mainly text. The blue one is organic listings. So that's not  
4 an ad. And the results on top are shopping ads, which I put  
5 under "other search ads" in this case.

6 Q. Are shopping ads sometimes referred to as PLAs, or product  
7 listing ads, or product ads?

8 A. Yes.

9 Q. Can you give us examples of search ads -- of other search  
10 ads that are not text ads?

11 A. Sure. Please go to the next slide.

12 So this contains some examples. These are sponsored  
13 product ads on Amazon on the left, and hotel ads or, more  
14 generally, travel ads on a website like Expedia.

15 Q. And I've heard you use the term "marketing" and the  
16 term "advertising."

17 How do you use those terms?

18 A. So by advertising, I'm referring to firms paying owners of  
19 other media to insert their messages into that media, like TV  
20 display, search, all of these.

21 Marketing is a broader category. It includes advertising,  
22 but it also includes other activities that firms do to pursue  
23 consumers, but they don't involve like direct payment. So  
24 search engine optimization would be a marketing activity,  
25 because it can't pay the search engine to ensure your result,

1 but you do things in the background to do it.

2 E-mail typically would be. So sometimes it involves  
3 creation of media, because the firm would create the e-mail and  
4 then send them to people.

5 So those I'm calling marketing.

6 Q. And with that overview, I would like to lay out some  
7 foundational concepts.

8 When you teach your students about digital marketing, where  
9 do you start?

10 A. So when I teach about digital marketing, I start with the  
11 idea of the consumer purchase funnel. So this slide shows the  
12 consumer purchase funnel. Yeah, so this is where I start.

13 Q. Okay. And the Court has heard testimony regarding the  
14 funnel already. Can you briefly state why you start with the  
15 consumer purchase funnel?

16 A. What advertisers and marketers want to do is to influence  
17 and persuade consumers to purchase their products. So it is  
18 good to know of the process of how consumers make a purchase.  
19 And the consumer purchase funnel is a conceptual model of how  
20 consumers make purchases.

21 Q. Can you explain in a sentence or two -- and I know that's  
22 condensing a lot of information you teach in your class. Can  
23 you explain in a sentence or two what the consumer purchase  
24 funnel is?

25 A. Sure. So you can look at the graphic on the left here.

1 It's actually a slide from my teaching slides. The idea of a  
2 funnel is, a consumer purchase doesn't happen immediately. It's  
3 a gradual process typically and it's a stage-wise process.

4 So you first make the consumer aware of your product. Then  
5 you get them interested in your product. Then you increase the  
6 desire in them that they want your product. And after that,  
7 hopefully, they will take the purchase action. So those are the  
8 stages.

9 Also, the top two stages are often called top funnel, so  
10 where there's an interest. Desire and action are often called  
11 bottom funnel. And sometimes interest and desire are grouped  
12 together as mid-funnel.

13 Q. What is the principal idea behind having these stages?

14 A. The principal idea behind these stages is almost  
15 tautological. Right? The idea is that, look, you can't  
16 purchase something unless you desire it, and you can't desire  
17 something unless you're interested in it, and you can't be  
18 interested in something unless you are aware of it.

19 So that's really the idea of having these stages.

20 Q. Why do you use the term "funnel"?

21 A. So that brings us to point 2 on the top of the slide.  
22 Point 1 was stages. So point 2 is the successive narrowing.

23 So this is an empirical generalization. This is just  
24 saying that look, you make a lot of people aware, but only some  
25 of them get interested, and only some others -- and some of them

1 get desirous of the product and even fuel purchase. So you get  
2 this inverted triangle shape, and that's why it's called the  
3 funnel.

4 Q. Does the funnel require a linear path through the stages  
5 that you identified?

6 A. Not necessarily. Consumers can skip stages in some cases.  
7 Consumers can be at a stage and then go back to another stage.  
8 Let's say they forget about a product. So they can go back, up  
9 and down. It doesn't have to be linear.

10 Q. And does the funnel apply only to products?

11 A. It applies to products and services.

12 Q. Can the funnel vary from the one you use here on slide 6 of  
13 UPXD103?

14 A. Yes. There are different versions of the funnel that  
15 exist. Different practitioners, different academics, they can  
16 use slightly different versions. I know, for example, Google in  
17 some internal documents has used a three-stage funnel. So there  
18 can be variations.

19 Q. Do different funnel variations depict different ideas?

20 A. They depict the same ideas, the same fundamental ideas,  
21 which are the number 1 and number 2 ideas over there, that there  
22 are stages, and then there is successive narrowing over stages.

23 Q. How, if at all, are funnel concepts helpful to advertisers?

24 A. So the funnel helps advertisers again think through the  
25 purchase process, and then for different stages of the funnel



1 that consumers may be in, advertisers can think of the goals  
2 that they need to meet for their campaigns and also sort of  
3 align which channels of advertising they would want to use to  
4 meet those goals.

5 Q. Have you ever heard anyone refer to the consumer purchase  
6 funnel as an outdated model?

7 A. Some people say that. But even those people, when they  
8 talk about advertiser goals and what -- consumer stages, they're  
9 very much talking the language of the funnel: Awareness,  
10 conversion, and so forth.

11 So I would say that rather than calling it outdated, I  
12 would call it timeless. These are -- again, these are timeless  
13 concepts that advertisers use. And even now, in my experience,  
14 many or most of the advertisers, they use the funnel ideas.

15 On the academic side, there is a lot of research going on  
16 on the funnel. Like even just last week, I came across a  
17 research paper published in a top management journal which was  
18 studying the congruence between the funnel and how modern -- how  
19 consumers purchase in this modern environment.

20 THE COURT: Would you -- there's been some suggestion  
21 that these stages, while helpful concepts, in reality really  
22 have blurred over time and, in particular, blurred with respect  
23 to digital marketing.

24 Would you agree with that assessment?

25 THE WITNESS: No, I don't agree. So digital

1 marketing -- so the funnel has been around for more than 100  
2 years since it was first proposed. And what digital has done is  
3 only added a few more channels. Right?

4 So that doesn't undo the funnel idea. Like I said, it's a  
5 timeless idea. Yes, there's better tracking of consumers, but  
6 that doesn't mean that the funnel concept is not useful. Right?

7 Right now, a new channel of media that's coming up is  
8 virtual reality. And so maybe advertisers will reach out to  
9 consumers through virtual reality channels also. That doesn't  
10 mean that now the funnel, we need a new model of consumer  
11 purchasing.

12 So over time over the last 100 years -- so when TV was not  
13 there, I mean, we didn't talk about it in the context of the  
14 funnel, but then TV is there, so we do talk about it. Now there  
15 are more channels and Internet, so we talk that. Again, what  
16 Internet has done is that it's helped trackability.

17 But as I just mentioned, Your Honor, like, the funnel idea  
18 is a solid, timeless idea, and even last week, as I said, there  
19 was this new paper that I saw that was really studying this  
20 congruence between okay, if this is the click string that we  
21 have for a consumer online, how do we map that back to funnel  
22 stages, because that really helps with this.

23 It's a -- again, it's a simple idea, but it's a very useful  
24 idea. And I think it has stayed the test of time because it is  
25 a simple idea, and you can reduce very complicated things back

1 to this sort of simple framework, which then helps thinking. So  
2 thinking, again, with consumer goals, what campaign goals, and  
3 things like budget allocation and so forth.

4 THE COURT: Just one more question, and this is  
5 perhaps not relevant to anything other than my own curiosity,  
6 which is: Pre-Internet and the marketing revolution that was  
7 brought on by the Internet, what would be a type of advertising  
8 that would be bottom funnel?

9 THE WITNESS: That's a very good question. So I  
10 think --

11 THE COURT: I've been at this for four weeks.

12 THE WITNESS: So truly speaking, there was -- it was  
13 difficult to find the channel that would very nicely target  
14 bottom funnel. So what advertisers would do -- let's think of  
15 TV ads. You can think of -- think of a car, for example. And  
16 I'm sure you've been exposed to this. So there are brand ads.  
17 Like they show a nice car driving on some beautiful scenic  
18 highway or whatever. So that's a branding ad for a car.

19 But you probably also saw ads where, you know, there's like  
20 the local dealership and this guy shouting in the mic, Come and  
21 get it today or whatever, and we have \$3,000 off. So that kind  
22 of ad was meant for bottom funnel.

23 So the sort of the high-experience ad, you can say, is for  
24 okay, you start liking the brand, BMW or whatever. The guy  
25 shouting in the mic is like for people who already know.

1 They're sort of in the bottom of the funnel. This will be the  
2 call to action. So that is one kind of ad channel.

3 What search has really done, and we will discuss this more,  
4 is that because of consumer goals, it tells somebody that look,  
5 I want information on this right now. So then you know that,  
6 oh, this person is interested, and so they are in the bottom of  
7 the funnel, because they're clearly aware and interested.  
8 That's why they searched. So now they have traversed the top of  
9 the funnel, and now they're sort of in the middle to bottom of  
10 the funnel, and so we can send them ads there.

11 The other thing I would say is that this is not an  
12 advertising channel but more of a marketing channel, as I  
13 explained a few minutes back the difference.

14 But pre-Internet, a very important lower funnel marketing  
15 channel was salespeople, because you could talk to a  
16 salesperson, they could ask you a couple of questions and figure  
17 out where you are in the funnel. And if you already have done  
18 your research on the product -- let's say you want to buy a  
19 washing machine. You've done your research, and you know I've  
20 got to give them the deal. Versus if you just walk in to Macy's  
21 or whatever, Home Depot, and you say, oh, tell me something  
22 about washing machines, you know, my machine is not working so  
23 well. So then they will figure out, oh, this person is in the  
24 upper funnel.

25 So it's much more like personalized in that sense.

1 I hope that --

2 THE COURT: That does. It seems to me one other  
3 example is Yellow Pages.

4 THE WITNESS: Yeah, absolutely. So Yellow Pages, it's  
5 great that you bring that up, Your Honor. Yellow Pages is  
6 something that search as an offering has totally demolished  
7 Yellow Pages as a market. But otherwise, yes, Yellow Pages was  
8 that where the idea was the consumer who is ready to buy  
9 something, you know, they'll open up the Yellow Pages and figure  
10 out.

11 In fact, I give the example of Yellow Pages in my class as  
12 sort of a channel that's been replaced by search and is  
13 basically nonexistent.

14 THE COURT: I'm sure your students don't know what a  
15 Yellow Pages is.

16 Sorry, Counsel. Thank you.

17 MS. MADDOX: No, you're quite all right. Thank you,  
18 Your Honor.

19 BY MS. MADDOX:

20 Q. Professor Jerath, what characteristics do advertisers  
21 consider when they're building out their ad strategies and  
22 campaigns?

23 A. Please, could you go to the next slide.

24 So these are two primary characteristics that advertisers  
25 consider when they're thinking of ad channels. So on the left

1 is targeting, and on the right is which funnel goal or goals is  
2 that ad channel most suited and effective for.

3 Q. What do you mean by targeting?

4 A. So targeting, when a company produces a product, they have  
5 kind of a certain kind of people in mind that this product will  
6 resonate most with these people. Targeting refers to the effort  
7 that their ads should go to these people. The relevant people  
8 should see the ad. That's what ad targeting is.

9 Q. And what does it mean for targeting to be based on inferred  
10 intent from signals, as you have here on slide 7?

11 A. So targeting inferred intent, inferred intent from signals  
12 means that advertisers look for signals in data from consumers  
13 based on which they could figure out, oh, this person wants this  
14 or is interested in the following.

15 So what are these signals? They are data signals, as I  
16 said. So they could be expected audience composition. If I  
17 know the demographics of someone, that could tell me something  
18 about what they're generally interested in.

19 Behavioral profiles like past online behavior and recent  
20 online behavior, that's another signal. And then context, like  
21 what am I doing at this moment, that could also inform what are  
22 the signals.

23 I just want to say that many of these signals, like these  
24 data signals on the Internet, they can be useful certainly, but  
25 they are also sometimes low information. They're temporally

1 distant. Like if I saw a car website a week back, then it's not  
2 really clear if I'm interested in that right now or something  
3 else. So there's temporal distance. And that's why I have the  
4 starred point that these inferences from signals can be limited  
5 in accuracy.

6 Q. What does it mean for targeting to be based on declared  
7 intent in realtime, as you have here on slide 7?

8 A. So I think I can explain this with the context of a search  
9 query, and I also did a few minutes ago. When a consumer types  
10 a query in a search engine, they're literally telling the search  
11 engine at this time, Tell me about this. Right? Tell me more  
12 about this. I want more information about this. So that's  
13 declared intent in realtime. I'm telling you. Or I could, for  
14 example, tell the salesperson, right, as I said, the other kind  
15 of channel. So that's declared intent in realtime.

16 Q. Why not say declared intent from signals?

17 A. So I'm not putting the word "signals" here because a  
18 specification of a query is basically a statement of an intent,  
19 and there's nothing left to infer. And therefore, I'm not using  
20 the word "signal" here.

21 Q. I'd like to look on the right side of slide 7 here. How  
22 does this second characteristic factor into your consideration  
23 of which advertising channels align with different stages of a  
24 funnel?

25 A. So again, a different advertising channel, and we discussed

1 this, align with different stages of the funnel. I think the  
2 key phrase here is "most suited and effective," that advertisers  
3 are spending billions of dollars, tens of billions of dollars on  
4 advertising every year. And they have campaigns, and campaigns  
5 have goals.

6 So advertisers really want to figure out and understand  
7 like for this goal, which channel -- for meeting this particular  
8 goal of the campaign, which channel is most suited and most  
9 effective.

10 Q. Where do the ad channels that you discussed a few moments  
11 ago, where do they fall along these two characteristics?

12 A. Yes, please, could you go to the next slide.

13 So let's look at the top row, which talks about traditional  
14 display and social media. In terms of targeting, these channels  
15 work with inferred intent from signals, and in terms of the  
16 funnel goals, they align -- they're most suited and effective  
17 for top funnel and to some extent mid-funnel goal, top funnel  
18 goal being awareness and interest.

19 And going to the second row, that's search ads, so text ads  
20 and other search ads. The targeting here is declared intent  
21 based on the query we just discussed. And the -- this channel,  
22 search ads are most suited and effective for bottom funnel goals  
23 and to some extent for mid-funnel goals.

24 Q. Can traditional display or social advertising reach  
25 consumers in other parts of the funnel?



1 A. Yes, they can reach consumers in other parts of the funnel,  
2 but they're most suited and effective for top funnel goals.

3 THE COURT: Would you include -- social media has some  
4 search capability, and people now can use it to search for  
5 products, services.

6 Do you include that in your search ads definition?

7 THE WITNESS: So in my search ads definition, anything  
8 that is in response to a query is an -- so the way I think about  
9 it is that anything in -- an ad shown in response to a search is  
10 a search ad, whatever it is, including social media.

11 I just want to sort of highlight the fact that search ads  
12 on social media are very small in percentage of ads on social  
13 media. So the vast majority of advertising on social media is  
14 display. It's awareness generation. It's not search.

15 There's a reason for that. This is -- obviously, I've been  
16 studying this for a long time. The reason is that -- think  
17 about why you go to a search engine. You go to a search engine  
18 to leave it as soon as possible and go to the right place.

19 Why do you go to Facebook or why do people go to Facebook?  
20 Why do people go to Instagram? Why do people go to TikTok?  
21 They don't go to one of these websites to leave that website.  
22 They go to that website to interact with friends, to enjoy the  
23 videos, enjoy the photos and stuff. So they're not in the mode  
24 to go somewhere else. And therefore, they're much less  
25 responsive to search ads which would take them out of that

1 experience.

2 But the -- the display ads are not taking them out of that  
3 experience. Video ads are not -- they're sort of adding to that  
4 experience, or you could say maybe they're aligned sometimes,  
5 but it varies whether you're on the same website or on the same  
6 app. or whatever.

7 So yes, there is some search advertising on Facebook, for  
8 example, but it's very, very small. It's not really a big  
9 phenomenon at all.

10 THE COURT: All right.

11 Counsel, before we continue, why don't we wrap up for the  
12 day, because I actually have a 5:00 hearing as well.

13 So we'll wrap up for the day, Professor Jerath. We'll  
14 continue tomorrow at 9:30. I'll ask you, please, to not discuss  
15 your testimony with anyone overnight. And we look forward to  
16 seeing you tomorrow.

17 Don't wait for me, everyone. I just have one thing I want  
18 to mention to everybody -- and Professor Jerath, you're welcome  
19 to step down.

20 I just had one quick housekeeping heads-up I wanted to let  
21 everybody know about in terms of not so much our scheduling but  
22 the courthouse scheduling.

23 Next Monday at 10:00 a.m., there is a hearing in U.S. v.  
24 Trump. And so I will just remind you again on Friday, but you  
25 may need a little extra time to get into the courthouse that

1 morning. All right?

2 Anything else before we adjourn?

3 MR. DINTZER: Yes, Your Honor. Can we have a minute?

4 THE COURT: Sure.

5 MR. DINTZER: So two things related. The first is  
6 that Professor Whinston will be coming back next Monday. That's  
7 the plan. So we wanted to give the Court a heads-up on reading  
8 the summary and the like.

9 THE COURT: Okay.

10 MR. DINTZER: The second thing is, after Professor  
11 Whinston and after the current witness, we'll have one more fact  
12 witness for the DOJ plaintiffs that will come down the road on  
13 the 24th. So we're pretty close to done.

14 What we would like and the ask for the Court is this: We  
15 have not had an update from Google about their witness list  
16 since September 5th, which is fine. That was what was called  
17 for. But what we have now is we have seen ten Google employees  
18 or former employees already in our case. They have 14 fact  
19 witnesses. I believe all of them are Google employees. So what  
20 we're looking at now, of course, is, until they tell us  
21 otherwise, having to prepare for all 14. A lot of them are  
22 overlapping.

23 So what we would ask the Court -- we've asked them, and  
24 they've refused. We'd ask the Court to ask them to update that  
25 list, pull off anybody who they're not going to call or tell us

1 to downgrade anybody who they're unlikely to call so that we can  
2 efficiently prepare for who they plan to call.

3 THE COURT: Okay. Does that mean we are still sort of  
4 on track for finishing up the 24th/25th from the plaintiffs'  
5 side?

6 MR. SALLET: Yeah. We have two experts that week.  
7 There is one Google employee who has been pushed back to that  
8 week, Krueger.

9 MR. SCHMIDTLEIN: Yes.

10 MR. SALLET: So we're still looking, probably 26th  
11 we'll be done, and there's a fourth witness that week,  
12 Mr. James. So there's four witnesses remaining in the  
13 plaintiffs' case for that week.

14 THE COURT: All right.

15 MR. SCHMIDTLEIN: Your Honor put in place every  
16 Wednesday evening, the party whose case we're in, you have to  
17 disclose your witnesses for the following week. And once we get  
18 to a point where -- and we have asked them -- we will actually  
19 be bringing a witness next Wednesday. Pursuant to the  
20 conversation we had about some of the scheduling issues and us  
21 sort of being pushed back, we do have a witness who we're going  
22 to bring and we're going to put on on direct next Wednesday  
23 before we officially sort of start our case, because we do have  
24 a witness for the 26th that needs to go on on the 26th. So  
25 hopefully, they are going to be done then.

1           Once our case is up or once we're officially into our case,  
2           on that Wednesday, we will make our disclosures.

3           THE COURT: I guess the question is whether you  
4           have -- your current thinking is whether you have pared back  
5           your intention with respect to number. I guess you haven't  
6           disclosed order, but presumably, you've disclosed some witness  
7           list.

8           MR. SCHMIDTLEIN: We did originally on September 5th  
9           actually disclose the order. That is now getting rejumbled,  
10          because we've got availability issues. And until we see all of  
11          their experts testify fully, we have not made any decisions  
12          about sort of finally dropping witnesses. But once we've got, I  
13          think, Professor Whinston done, even though I know we have the  
14          final witness will come after that, I imagine next week we're  
15          going to be in a position to make some better judgments about  
16          where we are on certain witnesses, even though they won't be  
17          final.

18          THE COURT: Okay. Mr. Dintzer?

19          MR. DINTZER: Yes, Your Honor. To quote  
20          Mr. Schmidtlein, we've been at this for three years. They've  
21          had civil discovery on all of our people. And we only have two  
22          witnesses left after this one: Professor Whinston, who is  
23          already started, and then a fact witness from Amazon.

24          So if at this point, having put on ten Google employees,  
25          and I believe five or six of them they informed us they wanted

1 to direct -- I can get the Court the exact number -- if they  
2 don't know which witnesses they are absolutely not going to call  
3 or unlikely to call, then we would ask the Court to ask them to  
4 go back and sharpen their pencil and think about it and give us  
5 something that resembles -- I mean, we've been moving along.  
6 We've got a lot more information on the table. They can give us  
7 something that's more reliable so we don't have to have 14  
8 people preparing 14 outlines that may result in I don't know how  
9 many witnesses.

10 So we would ask the Court to ask them to do that.

11 THE COURT: Okay. Well, I think I will do that. I'm  
12 not sure I need to do it today. We're still a couple weeks off  
13 before we see the second Google witness. Presumably, you  
14 already know who is coming next week out of order. So you know  
15 who that person is.

16 And then I think once -- Mr. Schmidtlein has represented  
17 that once we're done with Professor Whinston they will be in a  
18 position to provide additional information. I think that  
19 will -- since we still have days of testimony from the States  
20 expected, I think we will be in a better position to get a final  
21 or close to final assessment.

22 MR. SCHMIDTLEIN: Just in fairness here, they have in  
23 mid-trial dropped several witnesses, witnesses who our people  
24 had been prepared and ready to take, and for whatever reason, we  
25 got very late notification that these witnesses were not going

1 to be called.

2 So we will be happy, again as soon as Professor Whinston is  
3 done, to be in a position to re-evaluate and provide some  
4 updates.

5 THE COURT: All right. That sounds like it will be  
6 Monday or Tuesday of next week.

7 MR. DINTZER: Thank you, Your Honor.

8 THE COURT: Okay. All right. Anything else?

9 MR. DINTZER: Not from the DOJ plaintiffs, Your Honor.

10 MR. SALLET: Not from the States, Your Honor.

11 MR. SCHMIDTLEIN: No, Your Honor.

12 THE COURT: Okay. So I guess one question is, is it  
13 the expectation that we'll finish with Dr. Jerath tomorrow, and  
14 then is there a fact witness available after that?

15 MR. SALLET: No, Your Honor, for the reasons we've  
16 discussed.

17 THE COURT: I wanted to confirm that's the present  
18 thinking.

19 All right. I don't have anything, and so we will see  
20 everybody in the morning.

21 (Proceedings adjourned at 5:06 p.m.)  
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Sara A. Wick, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Sara A. Wick

October 12, 2023

SIGNATURE OF COURT REPORTER

DATE



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