



Let's play pretend!

# Satire II\*

## Grading Google's Search Antitrust Remedies In the EU Second Market Test

by [Scott Cleland](#)

[Precursor® LLC](#)\*\*

PRECURSOR

**November 12, 2013**

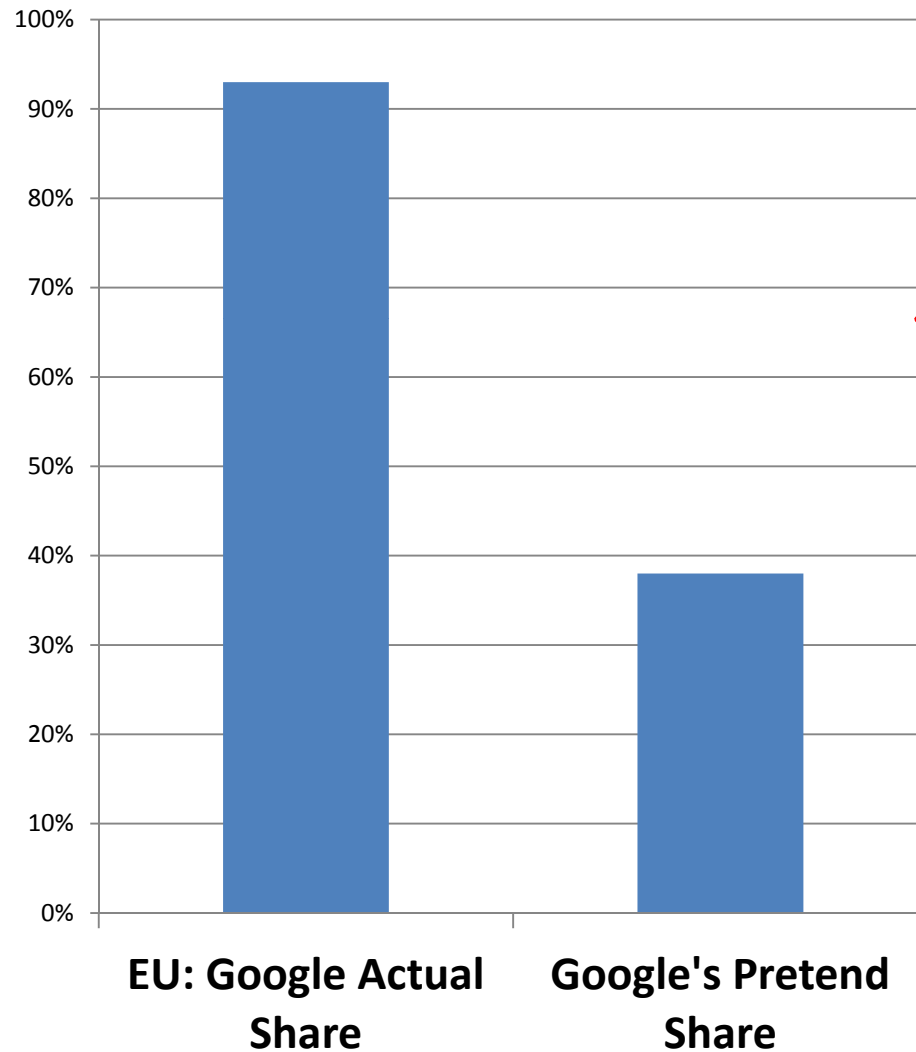
\*Satire I on Google's first remedy proposal can be found [here](#).

\*\*A research consultancy for Fortune 500 clients, some of whom are Google competitors.

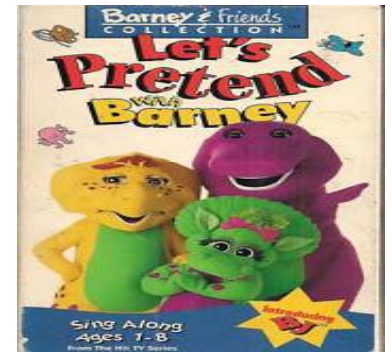
# Google: Let's Play Pretend!

If EU pretends Google doesn't have >90% market share, we can settle this!

*"...the Commission will confirm there are no grounds for further action..."* <http://tinyurl.com/o9geqm>



**F -**  
This charade  
doesn't pass  
the laugh test!



**Google: “We’ve made significant changes to address the [EU’s] concerns, greatly increasing the visibility of rival services...”**  
i.e. the color, shading and size of “rival links”

**A+ for  
Goobris!**



Google: “We’ve made the difficult decision to agree to their requirements in the interests of reaching a settlement”  
At Google we’re magnanimous in victory. If the EU wants to play pretend and pick the color and amount of our lipstick and the size of our pearls, we’ll let them. We will do anything to keep EU authorities focused on things that don’t matter.

With due credit to:

# *Ripley's Believe It or Not!®*

## *Weird but true facts about Google's proposed EU Antitrust Settlement*

- 1. Google could continue the conduct the EU found illegal - diverting traffic to preference Google's content over competitors!*
- 2. The EU would pretend Google is non-dominant (i.e. <39% share), despite previously concluding Google has >90% market share!*
- 3. Google proposes the EU ignore its findings of illegality, dominance, and abuse to absolve Google of any wrongdoing or liability!*
- 4. Google proposes the EU reward it with a new third revenue stream, instead of punishing it for abusing its dominance!*
- 5. Google proposes the EU condone exclusivity in its contracts -- something no other dominant firm is allowed to do!*
- 6. Google proposes the EU ignore the law and allow Google to proactively exclude its most significant competitors from competing with Google!*

**F** for  
epic-Fail

# What's Wrong with this Picture?

## EU's Concessions to Google

1. Mimics U.S. FTC's settlement model for Google, despite different and much tougher EU competition law & much higher EU market shares in EU than U.S. (>90% vs. ~70%)
2. Permits Google to continue illegal diversion of traffic & preference-ing of Google content
3. Grants Google dominance amnesty: i.e. *"confirms that there are no grounds for further action and will close all investigations on the four competition concerns"*
4. Absolves Google of wrongdoing, protects/boosts Google's brand & market value
5. Pretends Google's >90% market share is not dominance when 39.7% is the EU threshold
6. Rewards Google with a new revenue stream instead of fining Google for wrongdoing
7. Exempts Google from standard EU legal obligations of dominant firms: i.e. *"a special responsibility not to allow its conduct to impair competition on the common market"*
8. Exempts Google from standard EU fine and behavior sanctions for dominance abuse
9. Endorses Google's self-dealing & anti-competitive discrimination to maintain and reinforce its search and search advertising dominance indefinitely
10. Permits & facilitates Google's extension of dominance to other markets without limit
11. Overlooks Google's exclusion of all its largest competitors from competing for "rival links"
12. Overlooks Google's continued practice of illegal exclusive contracts when a dominant firm
13. Overlooks Google's abuse of standard essential patents, alleged abuse of Android dominance
14. Ignores Google's non-compliance track record with other EU authorities/settlements
15. Ignores Google's EU scofflaw behavior in privacy, taxes, SEP patents, copyrights, etc.
16. Forgives Google with no sanction for misleading the EU in its first remedy offer

VS.

## Google's Concessions to EU

1. Allows three competitors to pay Google to compete
2. Lets EU choose the colors, shading & size of the three competitor links
3. Google must stop stealing competitors' reviews
4. Google must treat its ad customers like customers

S for Surrender?

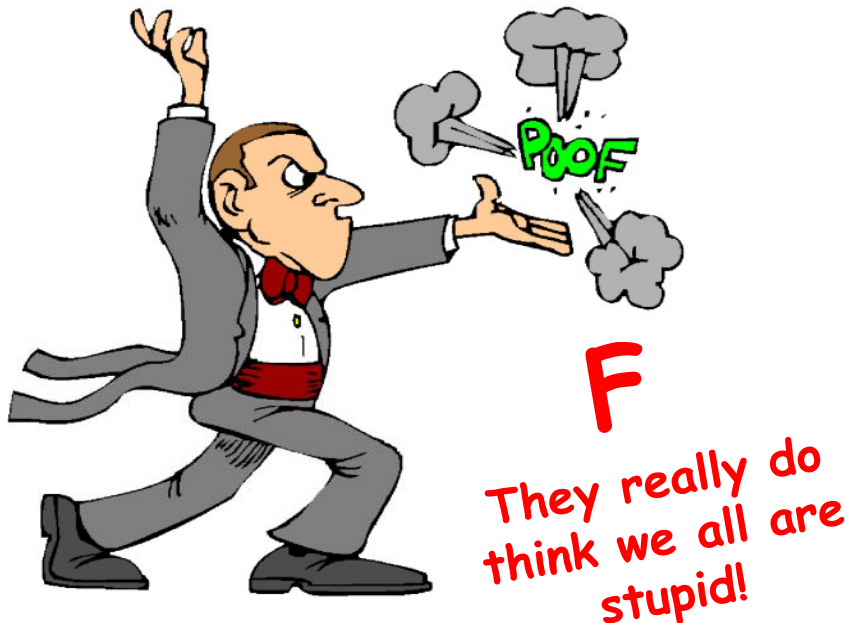


# Google's Incredible Disappearing Search Remedy II

**Google's remedy fine-print defines competition to exclude most of Google's competitors!  
This Google disappearing trick fooled the EU last time, why not see if they will fall for it again!?**

**Annex 1 – Selection and Ranking of Rival Links: “II. Criteria for Inclusion in Vertical Sites Pools”** 3. b) *Purpose of site.* The applicant site must offer a Specialized Search Service on a dedicated, self-standing Internet domain or a dedicated sub-domain that is not the sub-domain of a generalist search site, without offering other services on such domain or sub-domain. Specialized Search Service is defined for this purpose as the provision of search results that (i) are restricted by design to one or a limited set of specific, pre-defined content categories and (ii) either (a) direct users to websites hosted by multiple third-party providers or (b) in the case of travel search, enable users to book services of multiple third-party providers. Specialized Search Services do not include inter alia the provision of generalist search services, merchant services, merchant-platform services, social networking services, services provided under brands that would result in confusion with such services, or services that link to a significant extent to other sub-domains or domains controlled by the service's own operator.” <http://blogs.ft.com/brusselsblog/files/2013/11/annex-v-commitment-proposal.pdf>

**Google's world's  
smartest lawyers**



**Competitors that  
Google's world's smartest lawyers  
have defined to exclude as “rival links”**

- |                    |                 |
|--------------------|-----------------|
| 1. Microsoft-Bing  | 11. Apple       |
| 2. Facebook        | 12. Excite      |
| 3. Yahoo           | 13. MyWebSearch |
| 4. Amazon          | 14. Wow.com     |
| 5. eBay            | 15. Infospace   |
| 6. China's Baidu   | 16. Dogpile     |
| 7. Russia's Yandex | 17. DuckDuckGo  |
| 8. S Korea's Naver | 18. Info.com    |
| 9. Ask.com         | 19. Lycos       |
| 10. AOL            | 20. Blekko      |

# Google's "aiming" at the Wrong Target

*"The aim of [Google's] commitment is to show rivals have visibility on the screen. Its not for us to mandate the final outcome' of what users click on."* [per an EU Official](#)

**A+ for a killer aim!**

*Google, you are supposed to not "impair competition in the common market" not impale your competitors!*

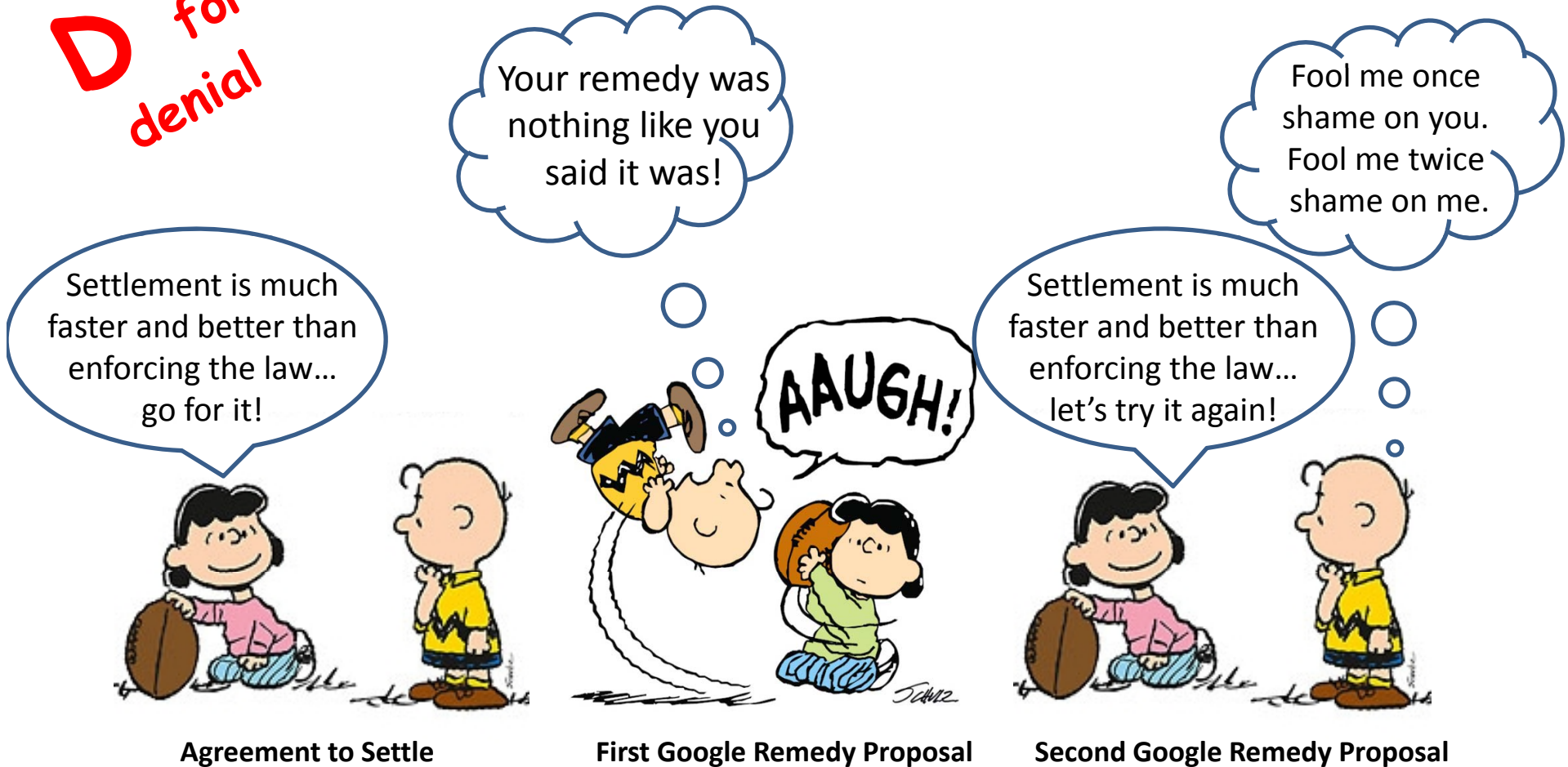
*We're just innovating.*



With Due credit to Charles Shulz' Peanuts

# Google Promises to not Mislead the EU this Time! *Our Second Remedy Proposal Won't be Like the First One*

**D** for denial





# Google: “Trust but don’t Verify”

**F** for  
fox ethics

*You can trust me this time. There’s no way we’d try and mislead you again after you caught us red-handed the last time with our clever definitions... And no one else needs to test my count of how of many competitive eggs, clicks or chicks live because it wouldn’t be in our interest to eat them all!*



# Google's "Don't be evil" Remedy Review & Monitoring Plan

***"See no evil."***

*The public can't be allowed to see our proposed remedies!*



***"Speak no evil."***

*The monitor needs a gag order after this, no one should ever know what we really did!*



***"Hear no evil."***

*Don't listen to competitors, they don't know anything!*



**E** for expected

# Is it Game Over for EU Online Competition?

*“I think that the settlement route remains the best choice,”* EU Official

## Does EU Settle for Googolopoly?

**D+** for  
Dominance!



*Google: Ha ha! Total victory!  
Our GET OUT OF JAIL FREE card means:  
the EU plays our game, by our rules,  
with no admission of wrongdoing or  
liability, & the EU pretends Google's  
>90% share is not dominance so there  
can be no abuses and no need  
to stop EU-illegal behavior!*

**Has the EU learned it can trust Google to:**

**Not abuse its dominance & treat competitors fairly?**

**Obey the EU's privacy & data protection laws?**

**Pay their EU taxes on revenue earned in Europe?**

**Respect EU copyrights & patents?**



# **Conclusion: Stop Pretending -- Issue a Statement of Objections**

**Simply require a standard dominance non-discrimination duty, i.e.**  
**The Golden Rule: Google treats others' content as it treats its own**

**How's it in the interests of EU competition and justice to set the precedent of:**

1. Pretending the largest, most abusive, and fastest-spreading dominant firm in EU history, which has "well above 90%" share per the EU, is not officially a dominant firm in the EU?
2. Legitimizing, absolving and entrenching such a dominant firm that recently has been found anti-competitive in two different EU investigations (search & SEP patents) and is in the process of being investigated for Android abuses?
3. Overlooking the broad anti-competitive and destructive effects of Google's EU scofflaw behavior in: flouting EU privacy and data protection laws and authorities; taking EU competitors' copyrighted content without permission or payment; and evading EU tax laws to pay virtually no taxes on revenues earned in the EU?
4. Granting de facto carte blanche to leverage its search and search advertising dominance to divert traffic and preference Google content, products and services over all others?
5. Treating Google differently than other dominance abusing firms? If Google should not be subject to prosecution of abuse of dominance, what firm would?

**Why pretend Google is not a dominant firm with >90% share? That is not true, fair or just.**

**Why pretend a make-believe settlement, is better than fact-based, real law enforcement?**

**Why pretend EU consumers and competitors won't be hurt by an unfettered >90% dominant, abusive, and rapidly spreading Googleopoly?**