European Commission - Fact Sheet

Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service - Factsheet

Brussels, 27 June 2017

The European Commission has fined Google €2.42 billion for breaching EU antitrust rules. Google has abused its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service.

See also press release.

Breach of EU antitrust rules

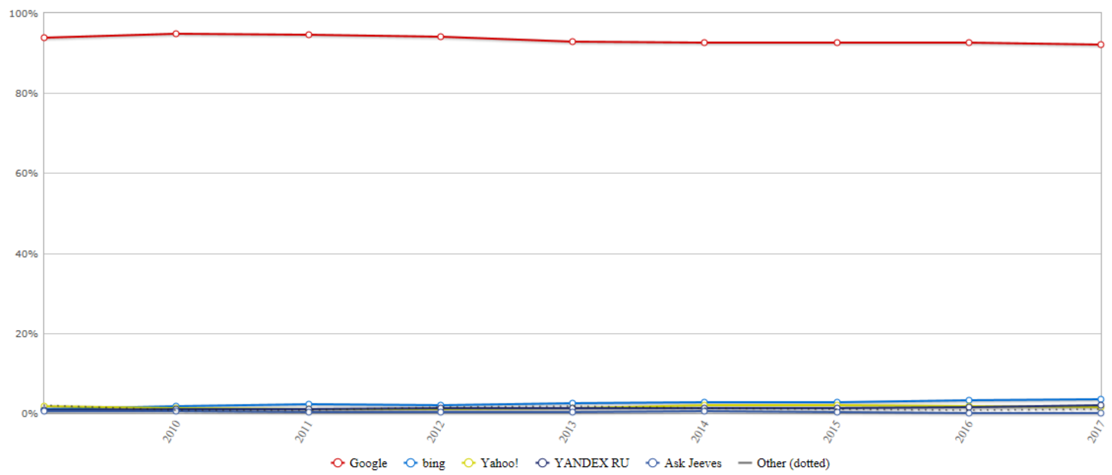
Google's practices amount to an abuse of Google's dominant position in general internet search thereby stifling competition in comparison shopping markets.

Google's market dominance

Today's Decision concluded that **Google is dominant in each national market for general internet search throughout the European Economic Area** (EEA), i.e. in all 31 EEA countries. The Commission investigated Google's market position in general internet search since 2008, and the Decision found Google to be dominant in each country since 2008, except in the Czech Republic where the Decision found Google to have been dominant since 2011. This assessment is based on the fact that Google's search engine has held very high market shares in all EEA countries, exceeding 90% in most. It has done so consistently since at least 2008, which is the period investigated by the Commission.

There are also high barriers to entry in these markets, in part because of network effects: the more consumers use a search engine, the more attractive it becomes to advertisers. The profits generated can then be used to attract even more consumers. Similarly, the data a search engine gathers about consumers can in turn be used to improve results.

Search Engine Market Share in Europe
2009 to 2017



Source: StatCounter

Google's abuse of dominance

Market dominance is, as such, not illegal under EU antitrust rules. However, dominant companies have a special responsibility not to abuse their powerful market position by restricting competition, either in the market where they are dominant or in separate markets. Otherwise, there would be a risk that a company once dominant in one market (even if this resulted from competition on the merits) would be able to use this market power to cement/further expand its dominance, or leverage it into separate markets.

Google has abused its market dominance in general internet search bygiving a separate Google product (initially called " Froogle", re-named "Google Product Search" in 2008 and "Google Shopping" in 2013) an **illegal advantage** in the separate comparison shopping market.

- Google has systematically given **prominent placement** to its own comparison shopping service: Google's comparison shopping results are displayed, in a rich format, at the top of the search results, or sometimes in a reserved space on the right-hand side. They are placed above the results that Google's generic search algorithms consider most relevant. This happens whenever a consumer types a product-related query into the Google general search engine, in relation to which Google wants to show comparison shopping results. This means that Google's comparison shopping service is not subject to Google's generic search algorithms.
- On the other hand, rival comparison shopping services are subject to Google's generic search algorithms, including **demotions** (which lower a search entry's rank in Google's search results). Comparison shopping services in the EEA are prone to be demoted by at least two different algorithms, which were first applied in 2004 and 2011, respectively. Evidence shows that even the most highly ranked rival comparison shopping service appears on average only on page four of Google's search results, and others appear even further down. In practice, this means consumers very rarely see rival comparison shopping services in Google's search results.

The Commission Decision does not object to the design of Google's generic search algorithms or to demotions as such, nor to the way that Google displays or organises its search results pages (e.g. the display of a box with comparison shopping results displayed prominently in a rich, attractive format). It objects to the fact that Google has leveraged its market dominance in general internet search into a separate market, comparison shopping. Google abused its market dominance as a search engine to promote its own comparison shopping service in search results, whilst demoting those of rivals. This is not competition on the merits and is illegal under EU antitrust rules.

Thus, Google's abuse of dominance started in the respective country from the moment Google began prominently displaying its comparison shopping service, whilst demoting rival services:

- in January 2008 in Germany and the United Kingdom,
- in October 2010 in France,
- in May 2011 in Italy, the Netherlands and Spain,
- in February 2013 in the Czech Republic,
- in November 2013 in Austria, Belgium, Denmark, Norway, Poland and Sweden.

These cover all countries in the EEA in which Google currently offers its comparison shopping service.

Effect of Google's illegal practices

As explained above, Google's practices mean that its comparison shopping service appears much higher in Google's search results than rival comparison shopping services. This has had a significant impact on competition in comparison shopping markets because:

- **Appearance in Google's search results impacts on user clicks/traffic**: Real-world consumer behaviour, surveys and eye-tracking studies demonstrate that consumers generally click far more on search results at or near the top of the first search results page than on results lower down the first page, or on subsequent pages, where rival comparison shopping services were most often found after demotion.

  a) In fact, even on desktops, the ten highest-ranking generic search results on page 1 together generally receive approximately 95% of all clicks on generic search results (with the top search result receiving about 35% of all the clicks). The first result on page 2 of Google's search results receives only about 1% of all clicks. The effects on mobile devices are even more pronounced given the much smaller screen size.

  b) Furthermore, the effects cannot just be explained by the fact that the first result is more relevant because evidence also shows that moving the first result to the third rank leads to a reduction in the number of clicks by about 50%.

- **More visibility in Google's search results has increased traffic to Google's comparison shopping service, whilst demotions have decreased traffic to rival services**:

  Since the start of the abuse in each country, Google's comparison shopping service has made significant gains in traffic, whilst rival comparison shopping services have suffered a decrease in traffic from Google's search results pages on a lasting basis:

  a) For example, since the beginning of the abuse in each country, Google's comparison shopping service has increased its traffic 45-fold in the United Kingdom, 35-fold in Germany, 29-fold in the Netherlands, 17-fold in Spain and 14-fold in Italy.

  b) Traffic to rival comparison shopping websites has decreased. Whilst Google's search engine is not the only source of traffic to comparison shopping websites, due to Google's dominance as a search engine, it is an important source of traffic. The Commission found evidence of sudden drops of traffic to certain rival websites following demotions applied in Google's generic search algorithms, of 85% in the United Kingdom, 92% in Germany and 80% in France. These sudden drops could not be explained by other factors. Some competitors have adapted subsequently and managed to recover some traffic, but never fully.

This shows the impact of Google's practices both on traffic to its own comparison shopping service and to rival websites. The Commission has observed similar trends also in those countries in which the illegal practices have been implemented more recently. Its findings are further corroborated by additional information set out in the Commission Decision. This cannot be published at present without the consent of Google and other third parties, because it may contain business sensitive information.

As a result of Google's illegal practices and the distortions to competition, Google's comparison shopping service has made significant market share gains at the expense of rivals. This has deprived European consumers of the benefits of competition on the merits, namely genuine choice and innovation.

The Commission Decision concerns the effect of Google's practices on comparison shopping markets. These offer a different service to merchant platforms, such as *Amazon* and *eBay*. Comparison shopping services offer a tool for consumers to compare products and prices online and find deals from online retailers of all types. By contrast, they do not offer the possibility for products to be bought on their site, which is precisely the aim of merchant platforms. Google's own commercial behaviour reflects these differences - merchant platforms are eligible to appear in Google Shopping whereas rival comparison shopping services are not.

Nevertheless, the Commission Decision also outlines that Google's conduct would in any event have been abusive, even if comparison shopping services and merchant platforms were considered to be part of the same market: comparison shopping services would be the closest competitors in such a broader market and Google's practices have significantly distorted competition between Google's product and comparison shopping services.

Fine

The Commission's fine of €2 424 495 000 takes account of the duration and gravity of the infringement. In accordance with the Commission's 2006 Guidelines on fines (see press release and MEMO), the fine has been calculated on the basis of the value of Google's revenue from its comparison shopping service in the 13 EEA countries concerned.

Under the Decision, Google must stop its illegal practices concerning its own comparison shopping service within 90 days, and refrain from any measure that has the same or an equivalent object or effect.

In particular, Google has to respect the simple **principle of equal treatment** in its search results for its own comparison shopping product and rival comparison shopping products. Google has to apply the same processes and methods to position and display rival comparison shopping services in Google's search results pages as it gives to its own comparison shopping service.

It is Google's sole responsibility to ensure compliance and it is for Google to explain how it intends to do so. Regardless of which option Google chooses, the Commission will monitor Google's compliance closely and Google is under an obligation to keep the Commission informed of its actions (initially within 60 days of the Decision, followed by periodic reports).

Non-compliance would be the subject of a separate case where Google would have the opportunity to comment. If the Commission were to decide that Google had failed to comply with its obligations under the decision, it would be subject to a daily penalty payment of up to 5% of the average daily worldwide turnover of Alphabet, Google's parent, with any payment backdated to when the non-compliance started.

Case history and procedure

The Commission opened proceedings in this case in November 2010. This followed a number of complaints by European and US competitors that Google had breached EU antitrust rules. After an initial investigation, Google sought to address the Commission's concerns by offering legally binding commitments. Google proposed three sets of commitments (the third was submitted in February 2014). However, the feedback the Commission received from third parties showed that they were not effective to address the Commission's competition concerns in full. Google did not submit a revised proposal.

The case therefore has a specific history. Since various attempts to reach a conclusion by means of commitments failed, from November 2014, the Commission services started to update the information in the files. This led to two Statements of Objections, in April 2015 and July 2016, setting out the Commission's preliminary conclusions and a range of additional evidence.

Google's rights of defence were respected throughout the Commission's investigation – it was granted the opportunity to respond to both Statements of Objections on the basis of full access to the non-confidential Commission file as well as access to a range of confidential business and traffic data that was granted to Google's advisors in so-called "data rooms". Google also had the right to an oral hearing before the Commission services and the competition authorities of the Member States after each Statement of Objections, which it chose not to exercise.

Other cases

The Commission has already come to the preliminary conclusion that Google has abused a dominant position in two other cases, which are still being investigated. These concern:

1) the Android operating system, where the Commission is concerned that Google has stifled choice and innovation in a range of mobile apps and services by pursuing an overall strategy on mobile devices to protect and expand its dominant position in general internet search; and

2) AdSense, where the Commission is concerned that Google has reduced choice by preventing third-party websites from sourcing search ads from Google's competitors.

The Commission also continues to examine Google's treatment in its search results of other specialised Google search services. Today's Decision is a precedent which establishes the framework for the assessment of the legality of this type of conduct. At the same time, it does not replace the need for a case-specific analysis to account for the specific characteristics of each market.

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