

Google Shopping: EU General Court upholds the €2.42 billion fine imposed on Google for favoring its own comparison shopping service

On June 27, 2017^[1], the European Commission imposed a €2.42 billion fine on Google for abusing its dominant position by favoring its own comparison shopping service over competing comparison shopping services.

Google and its parent company Alphabet appealed against this decision before the General Court of the European Union. The Court, in a recent ruling dated November 10, 2021^[2], 2021 upheld the European Commission's decision.

The practice at issue was as follows: During a product search launched on Google's search engine, the results were positioned and displayed prominently and in a more eye-catching manner when they came from Google's own comparison shopping service while the results from competing comparison shopping services appeared secondarily and as simple generic results.

The General Court of the European Union (the "Court") confirmed that this was an abuse of a dominant position.

An anticompetitive practice

The Court considered that Google departed from competition on the merits on account of specific circumstances likely to weaken competition on the market:

- the importance of the traffic generated by Google's search engine for comparison shopping services;
- the behavior of users who typically concentrate on the first results;
- the large proportion of "diverted" traffic in the traffic of comparison shopping services and the fact that

it cannot be effectively replaced.

The Court also pointed out that Google favored its own comparison shopping service over competing services, rather than a better result over another result (which is yet the initial vocation of the search engine).

Harmful effects on competition

The Court confirmed that the practice at issue hinders the maintenance of a certain degree of competition in the market or the growth of that competition.

The Court specified that this could be established merely by demonstrating that the relevant conduct was capable of restricting competition and that the European Commission was not, therefore, required to identify the actual exclusionary effects on the markets.

The Court thus confirmed the existence of an anticompetitive conduct on the market for specialized search services for comparison shopping (but not on the market for general search services, contrary to the European Commission's initial analysis).

Lack of objective justifications

The Court considered that Google had not demonstrated that the practice at issue was objectively justified.

In particular, it found that Google had not demonstrated efficiency gains that would counteract negative effects on competition.

Confirmation of the amount of the fine

The Court confirmed the amount of the €2.42 billion fine imposed on Google.

In this respect, the Court underlined the seriousness of the infringement and the fact that the conduct in question had been adopted intentionally.

The case is probably not over: The decision of the Court may still be appealed against before the Court of Justice of the European Union.

[1] Summary of the European Commission's decision dated June 27, 2017- Case AT.39740 — Google Search (Shopping): [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0112\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0112(01)&from=EN)

[2] <https://curia.europa.eu/juris/document/document.jsf?jsessionid=EE2981E6E2910FB60C7F7CEBFD2F0E7F?text=&docid=249001&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2357652>



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