



Press and Information

General Court of the European Union
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Judgment in Case T-612/17
Google and Alphabet v Commission (Google Shopping)

The General Court largely dismisses Google's action against the decision of the Commission finding that Google abused its dominant position by favouring its own comparison shopping service over competing comparison shopping services

The General Court upholds the fine of €2.42 billion imposed on Google

By decision of 27 June 2017, the Commission found that Google had abused its dominant position on the market for online general search services in 13 countries in the European Economic Area,¹ by favouring its own comparison shopping service, a specialised search service, over competing comparison shopping services. The Commission found that the results of product searches made using Google's general search engine were positioned and displayed in a more eye-catching manner when the results came from Google's own comparison shopping service than when they came from competing comparison shopping services. Moreover, the latter results, which appeared as simple generic results (displayed in the form of blue links), were accordingly, unlike results from Google's comparison shopping service, prone to being demoted by adjustment algorithms in Google's general results pages.

In respect of that infringement, the Commission imposed a pecuniary penalty on Google of €2 424 495 000, of which €523 518 000 jointly and severally with Alphabet, its parent company.

Google and Alphabet brought an action against the Commission's decision before the General Court of the European Union.

By its judgment today, the General Court **dismisses for the most part the action brought by the two companies, and upholds the fine imposed by the Commission.**

*I. The General Court recognises **the anticompetitive nature** of the practice at issue*

First of all, the General Court considers that an undertaking's dominant position alone, even one on the scale of Google's, is not a ground of criticism of the undertaking concerned, even if it is planning to expand into a neighbouring market. However, the General Court finds that, **by favouring its own comparison shopping service on its general results pages through more favourable display and positioning, while relegating the results from competing comparison services in those pages by means of ranking algorithms, Google departed from competition on the merits.** On account of three specific circumstances, namely (i) the importance of the traffic generated by Google's general search engine for comparison shopping services; (ii) the behaviour of users, who typically concentrate on the first few results; and (iii) the large proportion of 'diverted' traffic in the traffic of comparison shopping services and the fact that it cannot be effectively replaced, the practice at issue was liable to lead to a weakening of competition on the market.

The General Court also notes that, given the universal vocation of Google's general search engine, which is designed to index results containing any possible content, the promotion on Google's results pages of only one type of specialised result, namely its own, involves a certain form of abnormality. A general search engine is infrastructure that is, in principle, open, the rationale and

¹ Belgium, Czech Republic, Denmark, Germany, Spain, France, Italy, Netherlands, Austria, Poland, Sweden, United Kingdom and Norway.

value of which lie in its capacity to be open to results from external (third-party) sources and to display those sources, which enrich and enhance the credibility of the search engine.

Next, the General Court considers that the present case relates to the conditions of supply by Google of its general search service by means of access to general results pages for competing comparison shopping services. It states, in that respect, that the general results page has characteristics akin to those of an essential facility inasmuch as there is currently no actual or potential substitute available that would enable it to be replaced in an economically viable manner on the market. However, the General Court confirms that not every practice relating to access to such a facility necessarily means that it must be assessed in the light of the conditions applicable to the refusal to supply set out in the judgment in *Bronner*,² on which Google relied in support of its arguments. In that context, the General Court considers that the practice at issue is based not on a refusal to supply but on a difference in treatment by Google for the sole benefit of its own comparison service, and therefore that the judgment in *Bronner* is not applicable in this case.

Lastly, the General Court finds that Google's differentiated treatment is based on the origin of the results, that is, whether they come from its own comparison shopping service or from competing services. The General Court thus rules that, in reality, **Google favours its own comparison shopping service over competing services, rather than a better result over another result.** The General Court notes that even if the results from competing comparison shopping services were more relevant, they could never receive the same treatment as results from Google's comparison shopping service in terms of their positioning or their display. While Google did subsequently enable competing comparison shopping services to enhance the quality of the display of their results by appearing in its 'boxes' in return for payment, the General Court notes that that service depended on the comparison shopping services changing their business model and ceasing to be Google's direct competitors, becoming its customers instead.

*II. The Commission correctly found **harmful effects on competition***

The General Court rejects the arguments put forward by Google in challenging the passages of the contested decision relating to the **consequences of the practice at issue for traffic.** The General Court points out that those arguments take account only of the impact of the display of results from Google's comparison shopping service, without taking into account the impact of the poor placement of results from competing comparison shopping services in the generic results. Yet **the Commission had called into question the combined effects of those two aspects,** relying in that respect on numerous factors, including specific traffic data and the correlation between the visibility of a result and the traffic to the website from which that result comes, to establish the link between Google's conduct and the overall decrease in traffic from its general results pages to competing comparison shopping services and the significant increase in traffic for its own comparison shopping service.

As regards the **effects of the practice at issue on competition,** the General Court recalls that an abuse of a dominant position exists where the dominant undertaking, through recourse to methods different from those governing normal competition, hinders the maintenance of the degree of competition in the market or the growth of that competition, and that that may be established merely by demonstrating that its conduct is capable of restricting competition. Accordingly, while the Commission was required to analyse all the relevant circumstances, including Google's arguments in relation to the actual evolution of the markets, it was not required to identify actual exclusionary effects on the markets. In that context the General Court notes that, in this case, after having measured the actual effects of the conduct concerned on comparison shopping services' traffic from Google's general results pages, the Commission had a sufficient basis for showing as it did that that traffic accounted for a large share of their total traffic, that that share could not be effectively replaced by other sources of traffic, such as advertising (AdWords) or mobile applications, and that the potential outcome was the disappearance of comparison shopping services, less innovation on their market and less choice for consumers, characteristic features of a weakening of competition.

² Judgment of the Court of Justice of 26 November 1998, *Bronner* (C-7/97), see also [PR 72/98](#).

The General Court also rejects Google's argument that competition on the market for comparison shopping services remains strong because of the presence **of merchant platforms** on that market. The General Court confirms the Commission's assessment that **those platforms are not on the same market**. Although both categories of website offer product search functions, they do not do so under the same conditions, and users, whether internet users or online sellers, do not use them in the same way but do so, if at all, on a complementary basis. The General Court therefore endorses the Commission's view that there is little competitive pressure on Google from merchant platforms. It makes clear that even if merchant platforms had been in the same market as comparison shopping services, the anticompetitive effect identified would have been sufficient for Google's conduct to be characterised as abusive because, in all the countries concerned, a not insignificant share of that market, that of comparison shopping services, would have been affected. The General Court **therefore confirms the Commission's analysis in respect of the market for specialised search services for comparison shopping**.

However, the General Court considers that the Commission did not establish that Google's conduct had had – even potential – anticompetitive effects on the **market for general search services** and therefore annuls the finding of an infringement in respect of that market alone.

III. The General Court rules out any objective justifications for Google's conduct

In further disputing that its conduct was abusive, Google relied, first, on the allegedly pro-competitive characteristics of its conduct, in the sense that it is said to have improved the quality of its search service and counterbalanced the exclusionary effect linked to the practice at issue, and, secondly, on technical constraints preventing Google from providing the equal treatment sought by the Commission.

The General Court rejects those arguments. It finds, first, that while the algorithms for the ranking of generic results or the criteria for the positioning and display of Google's specialised product results may, as such, represent pro-competitive service improvements, that does not justify the practice at issue, namely, the unequal treatment of results from Google's comparison shopping service and results from competing comparison shopping services. The General Court considers, secondly, that **Google has not demonstrated efficiency gains linked to that practice that would counteract its negative effects on competition**.

IV. Following a fresh assessment of the infringement, the General Court confirms the amount of the penalty

Finally, the General Court rejects Google's arguments that no penalty should have been imposed on it. In particular, the imposition of a penalty on Google was precluded neither by the fact that the type of conduct in question had been analysed for the first time by the Commission in the light of competition rules, nor by the fact that the Commission had, at one stage in the procedure, indicated that it could not require Google to make certain modifications to its practices or that it had been willing to try to resolve the case by means of commitments to be given by Google.

Furthermore, having made its own assessment of the facts with a view to determining the level of the penalty, the General Court finds, first, that the annulment in part of the contested decision, limited to the market for general search services, has no impact on the amount of the fine, since the Commission did not take the value of sales on that market into consideration in order to determine the basic amount of the fine. Secondly, the General Court emphasises the particularly serious nature of the infringement and, while it takes account of the fact that the abuse has not been demonstrated on the market for general search services, it also takes into consideration the fact that the conduct in question was adopted intentionally, not negligently. The General Court concludes its analysis by finding that **the amount of the pecuniary penalty imposed on Google must be confirmed**.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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