



## **Antitrust: Commission sends Statement of Objections to Google on comparison shopping service; opens separate formal investigation on Android**

Brussels, 15 April 2015

The European Commission has sent a Statement of Objections to Google alleging the company has abused its dominant position in the markets for general internet search services in the European Economic Area (EEA) by systematically favouring its own comparison shopping product in its general search results pages. The Commission's preliminary view is that such conduct infringes EU antitrust rules because it stifles competition and harms consumers. Sending a Statement of Objections does not preclude the outcome of the investigation.

The Commission has also formally opened a separate antitrust investigation into Google's conduct as regards the mobile operating system Android. The investigation will focus on whether Google has entered into anti-competitive agreements or abused a possible dominant position in the field of operating systems, applications and services for smart mobile devices.

EU Commissioner in charge of competition policy Margrethe Vestager said: "*The Commission's objective is to apply EU antitrust rules to ensure that companies operating in Europe, wherever they may be based, do not artificially deny European consumers as wide a choice as possible or stifle innovation*".

*"In the case of Google I am concerned that the company has given an unfair advantage to its own comparison shopping service, in breach of EU antitrust rules. Google now has the opportunity to convince the Commission to the contrary. However, if the investigation confirmed our concerns, Google would have to face the legal consequences and change the way it does business in Europe."*

*"I have also launched a formal antitrust investigation of Google's conduct concerning mobile operating systems, apps and services. Smartphones, tablets and similar devices play an increasing role in many people's daily lives and I want to make sure the markets in this area can flourish without anticompetitive constraints imposed by any company."*

### **Comparison shopping**

Comparison shopping products allow consumers to search for products on online shopping websites and compare prices between different vendors. The preliminary conclusion of the Commission's investigation [opened in November 2010](#) is that Google gives systematic favourable treatment to its comparison shopping product (currently called 'Google Shopping') in its general search results pages, e.g. by showing Google Shopping more prominently on the screen. It may therefore artificially divert traffic from rival comparison shopping services and hinder their ability to compete on the market. The Commission is concerned that users do not necessarily see the most relevant results in response to queries - this is to the detriment of consumers, and stifles innovation. The Commission's preliminary view is that to remedy such conduct, Google should treat its own comparison shopping service and those of rivals in the same way. Google now has the opportunity to respond to the Commission's allegations within ten weeks and to then seek a formal hearing. The Commission considers that overall, previous commitment proposals from Google were insufficient to address its competition concerns.

Further details of the Commission's Statement of Objections on comparison shopping can be found [here](#).

### **Android**

Since 2005, Google has led development of the Android mobile operating system. Android is an open-source system, meaning that it can be freely used and developed by anyone. The majority of smartphone and tablet manufacturers use the Android operating system in combination with a range of Google's proprietary applications and services. These manufacturers enter into agreements with Google to obtain the right to install Google's applications on their Android devices. The Commission's in-depth investigation will focus on whether Google has breached EU antitrust rules by hindering the development and market access of rival mobile operating systems, applications and services to the detriment of consumers and developers of innovative services and products.

Further details of the Commission's formal investigation of Google in relation to the Android mobile operating system can be found [here](#).

## **Background**

The Commission continues its ongoing formal investigation under EU antitrust rules of other aspects of Google's behaviour in the EEA, including the favourable treatment by Google in its general search results of other specialised search services, and concerns with regard to copying of rivals' web content (known as 'scraping'), advertising exclusivity and undue restrictions on advertisers.

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## Antitrust: Commission sends Statement of Objections to Google on comparison shopping service

Brussels, 15 April 2015

The European Commission [has sent a Statement of Objections to Google](#) outlining the Commission's preliminary view that the company is abusing a dominant position, in breach of EU antitrust rules, by systematically favouring its own comparison shopping product in its general search results pages in the European Economic Area (EEA). The Commission is concerned that users do not necessarily see the most relevant results in response to queries – to the detriment of consumers and rival comparison shopping services, as well as stifling innovation.

Google has a dominant position in providing general online search services throughout the EEA, with market shares above 90% in most EEA countries.

Since 2002, Google has also been active in providing comparison shopping services, which allow consumers to search for products on online shopping websites and compare prices between different vendors. The first product it offered, "Froogle", was replaced by "Google Product Search", which in turn was replaced by its current product "Google Shopping".

The Statement of Objections outlines that the markets for general search and comparison shopping are two separate markets. In the latter market, Google faces competition from a number of alternative providers.

### ***The Commission's preliminary conclusions in the Statement of Objections***

The Statement of Objections alleges that Google treats and has treated more favourably, in its general search results pages, Google's own comparison shopping service "Google Shopping" and its predecessor service "Google Product Search" compared to rival comparison shopping services.

Google's conduct may therefore artificially divert traffic from rival comparison shopping services and hinder their ability to compete, to the detriment of consumers, as well as stifling innovation.

More specifically, the preliminary conclusions are:

- Google systematically **positions and prominently displays** its comparison shopping service in its general search results pages, **irrespective of its merits**. This conduct started in 2008.
- Google does not apply to its own comparison shopping service the **system of penalties**, which it applies to other comparison shopping services on the basis of defined parameters, and which can lead to the lowering of the rank in which they appear in Google's general search results pages.
- Froogle, Google's first comparison shopping service, did not benefit from any favourable treatment, and performed poorly.
- As a result of Google's **systematic favouring of its subsequent comparison shopping services** "Google Product Search" and "Google Shopping", both experienced **higher rates of growth**, to the detriment of rival comparison shopping services.
- Google's conduct has a **negative impact on consumers and innovation**. It means that users do not necessarily see the most relevant comparison shopping results in response to their queries, and that incentives to innovate from rivals are lowered as they know that however good their product, they will not benefit from the same prominence as Google's product.

The Statement of Objections takes the preliminary view that in order to remedy the conduct, Google should **treat its own comparison shopping service and those of rivals in the same way**. This would not interfere with either the algorithms Google applies or how it designs its search results pages. It would, however, mean that when Google shows comparison shopping services in response to a user's query, the most relevant service or services would be selected to appear in Google's search results pages.

Sending a Statement of Objections does not prejudge the outcome of the investigation. Google now has the opportunity to respond to the Commission's allegations outlined in the Statement of Objections within ten weeks. It can also seek an oral hearing to present comments. The Commission will fully respect Google's rights of defence and carefully consider its comments before taking a decision.

The Commission has previously outlined [four concerns as regards Google's conduct](#). Today's Statement of Objections relates to the first of those concerns. In the context of that concern, the Commission continues to actively investigate Google's conduct as regards the alleged more favourable treatment of other specialised search services. The Commission also continues to actively investigate Google's conduct with regard to the other three concerns (copying of rivals' web content (known as 'scraping'), advertising exclusivity and undue restrictions on advertisers). The sending of a Statement of Objections in relation to comparison shopping does not in any way prejudice the outcome of the Commission's investigation of the other three concerns.

### ***Procedural background on antitrust investigations***

Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anticompetitive agreements and decisions of associations of undertakings. Article 102 TFEU prohibits the abuse of a dominant position which may affect trade and prevent or restrict competition. The implementation of these provisions is defined in the [Antitrust Regulation \(Council Regulation No 1/2003\)](#), which can be applied by the Commission and by the national competition authorities of EU Member States.

A statement of objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them. The addressees can examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national competition authorities. The Commission takes a final decision only after the parties have exercised their rights of defence.

There is no legal deadline for the Commission to complete antitrust inquiries into anticompetitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the rights of defence.

MEMO/15/4781

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## Antitrust: Commission opens formal investigation against Google in relation to Android mobile operating system

Brussels, 15 April 2015

The European Commission [has opened formal proceedings against Google](#) to investigate in-depth if the company's conduct in relation to its Android mobile operating system as well as applications and services for smartphones and tablets has breached EU antitrust rules. The Commission will assess if, by entering into anticompetitive agreements and/or by abusing a possible dominant position, Google has illegally hindered the development and market access of rival mobile operating systems, mobile communication applications and services in the European Economic Area (EEA). This investigation is distinct and separate from the Commission investigation into Google's behaviour in internet search.

Since 2005, Google has led the development of the Android mobile operating system. In recent years, Android has become the leading operating system for smart mobile devices in the EEA, to the extent that today, the majority of smartphones in Europe are based on Android. Other mobile operating systems include Apple's iOS (which is proprietary to Apple and runs only on iPhones and iPads) and Windows Phone (which is used on Microsoft's and other manufacturers' smartphones and tablets).

Android is an open-source mobile operating system, meaning that it can be freely used and developed by anyone. The majority of smartphone and tablet manufacturers, however, use the Android operating system in combination with a range of Google's proprietary applications and services. In order to obtain the right to install these applications and services on their Android devices, manufacturers need to enter into certain agreements with Google.

### ***The scope of the Commission's formal investigation***

Following the receipt of two complaints, as well as an initial investigation carried out by the Commission on its own initiative, the Commission has now opened a formal investigation to assess if certain conditions in Google's agreements associated with the use of Android and Google's proprietary applications and services breach EU antitrust rules.

More specifically, on the basis of the information currently available to the Commission, the investigation will at this stage focus on the following three allegations:

1. whether Google has illegally hindered the development and market access of rival mobile applications or services by requiring or incentivising smartphone and tablet manufacturers to **exclusively pre-install Google's own applications or services**;
2. whether Google has prevented smartphone and tablet manufacturers who wish to install Google's applications and services on some of their Android devices from developing and marketing **modified and potentially competing versions of Android** (so-called "Android forks") on other devices, thereby illegally hindering the development and market access of rival mobile operating systems and mobile applications or services;
3. whether Google has illegally hindered the development and market access of rival applications and services by **tying or bundling certain Google applications and services** distributed on Android devices with other Google applications, services and/or application programming interfaces of Google.

The opening of formal proceedings does not prejudice the outcome of the investigation.

### ***Procedural background***

Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anticompetitive agreements and decisions of associations of undertakings.

Article 102 TFEU prohibits the abuse of a dominant position, which may affect trade and prevent or restrict competition. The Antitrust Regulation (Council Regulation No 1/2003) sets out how the Commission and the national competition authorities apply this provision.

Article 11(6) of the Antitrust Regulation provides that once the Commission has opened proceedings the national competition authorities can no longer apply the EU competition rules to the practices concerned. Moreover, Article 16(1) of the Antitrust Regulation provides that national courts must not

take any decision, which would conflict with a decision contemplated by the Commission in the context of formally opened proceedings.

There is no legal deadline to complete inquiries into anti-competitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the rights of defence.

The Commission has informed Google and the national competition authorities that it has opened proceedings in this case.

MEMO/15/4782

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