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Judgement in case C-48/22P Google and Alphabet v. the EU commission

ECJ confirms Google fine

The European Court of Justice (ECJ) has confirmed the fine of €2.4 billion imposed on Google for abusing its dominant position by favouring its own price comparison service. At the same time, the ECJ rejected the appeals of Google and Alphabet.

Background

In 2017, the EU commission imposed a €2.4 billion fine on Google for abusing its dominant position in several national markets for online search services by favouring its own price comparison service over those of its competitors. As the General Court of the European Union essentially upheld this decision, Google and Alphabet appealed to the Court of Justice. The ECJ dismissed the appeal, thereby confirming the judgement of the General Court.

The case

In its decision dated 27 June 2017, the commission found that Google had prioritised the results of its own price comparison service over those of competing price comparison services on its general search results page in 13 European Economic Area countries Google presented the search results of its own price comparison service at the top and highlighted them in “boxes” with attractive images and text information. The search results

of competing price comparison services, on the other hand, only appeared in a subordinate position in the form of blue links and could therefore—unlike the results of Google’s own price comparison service—be downgraded by the ranking algorithms on Google’s general search results pages.

The commission found that Google had abused its dominant position in the markets for general online search services and for special product search services and therefore imposed a fine of



€2,424,495,000, for which Alphabet, as Google's sole shareholder, is jointly and severally liable for €523,518,000.

EU commission's decision challenged

Google and Alphabet challenged the commission's decision before the General Court of the European Union. In its judgement of 10 November 2021, the Court essentially dismissed the action and, in particular, upheld the fine.

However, the Court did not consider it proven that Google's conduct had even potentially anti-competitive effects on the market for general search services. It therefore annulled the decision to the extent that the commission had also found an infringement of the prohibition of abuse of a dominant position in relation to that market.

Google and Alphabet subsequently lodged an appeal with the ECJ, seeking to have the judgement of the General Court set aside in so far as it dismissed

their action and to have the commission's decision annulled.

ECJ: Abusive exploitation

In its judgement of 10 September 2024, the ECJ dismissed the appeal, upholding the judgement of the General Court. The Court pointed out that EU law does not sanction the existence per se of a dominant position, but only the abusive exploitation thereof.

Specifically, the law sanctions any conduct of undertakings in a dominant position that has the effect of hindering competition on merits and is thus likely to

cause direct harm to other undertakings or consumers. Such conduct includes any practice which, on a market where the degree of competition is already weakened precisely because of the presence of one or more undertakings in a dominant position, hinders the maintenance or development of competition through the use of means other than those governing normal competition between undertakings.

The Court added that it could not be regarded as a general rule that a dominant undertaking which treats its own products or services more favourably than those of its competitors engages in conduct which departs from competition on the merits, irrespective of the circumstances of the case. In the present case, however, the General Court had rightly found that, in view of the characteristics of the market and the specific circumstances of the case, Google's conduct was discriminatory and did not reflect competition on merits.

Note

Appeals on points of law only may be brought before the Court of Justice against judgements and orders of the General Court. In principle, an appeal does not have suspensory effect. If the appeal is admissible and well founded, the Court of Justice will set aside the judgement of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself decide the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Source: ECJ press release of 10 September 2024

The judgement

Judgement of the European Court of Justice in case C-48/22 P | Google and Alphabet v. commission (Google Shopping)

