# Recent update on Competition Law: the Google Shopping judgment

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# *The Google Shopping case*

On September 10th, 2024, the Court of Justice of the European Union (CJEU) delivered its landmark judgment on the Google Shopping case. The CJEU upheld the fine imposed on Google for abusing its dominant position by favoring its own comparison shopping service on the result pages of its general search engine over its competitors. More specifically, Google displayed primarily the search results from its own comparison shopping services and promoted them in 'boxes'. On the other hand, Google displayed the search results of its competing comparison shopping services as generic results and therefore they were prone to be demoted by adjustment algorithms.

Some key takeaways from the judgment are outlined below:

- The CJEU emphasized that, in the present case, the abusive conduct was not refusal of access. The practices at issue were 'active' in the sense that they constituted positive acts of discrimination towards the competing comparison shopping services of Google. Those practices constituted a leveraging abuse from a dominated market which resulted from the favouring positioning of Google's comparison shopping services in the general search results page along with the demotion of results from competing services. The CJEU noted that the *Bronner* conditions do not apply since access to infrastructure was allowed. Google, gave access to its general search service and to its general result pages, but that access was subject to discriminatory conditions.

- Furthermore, the CJEU stated that the conduct at issue fell outside the scope of competition on the merits. A conduct may be characterized as abusive also where it has been proven to have the actual or potential effect of impeding potentially competing undertakings at an earlier stage, through barriers to entry. The context in which the conduct of a dominant firm is implemented, the market or markets in question, are considered relevant. The favourable positioning of Google's results in its general results pages than those from its competing comparison shopping services and the demotion of results from the competing comparison shopping services enabled the practices to be placed in the context of those two markets and were capable of demonstrating potential exclusionary effects on the specialized comparison shopping services market and the success of Google's comparison shopping service on that market since the implementation of those practices were due not to the merits of that service but to those practices in conjunction with the specific circumstances.

- Finally, the judgment reaffirmed that the objective of Article 102 TFEU is not to ensure that competitors less efficient than the dominant firm remain on the market. The assessment of whether a conduct is capable of foreclosing an as-efficient competitor is relevant when the dominant undertaking submits that its conduct was not capable of producing the alleged foreclosure effects. The Commission needs to apply the as-efficient competitor test when it is relevant.

According to Commissioner Vestager, the Google Shopping case will pave the way for further regulatory actions, including the Digital Markets Act of the EU. We are looking forward to seeing how this judgment will shape antitrust actions against big tech companies.



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