

FAO: Executive Vice-President
& Commissioner for Competition
Margrethe Vestager
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by e-mail: margrethe-vestager-contact@ec.europa.eu

Re: Tech companies call upon the Commission to enforce its 2017 abuse of dominance decision by finally putting an end to Google's continuing practice of favouring its own specialised search services within general search results pages

Dear Executive Vice President Vestager,

We, the undersigned 135 companies and 30 industry associations, are writing to you as representatives of a diverse community of online services, operating across Europe. Our online services offer consumers the opportunity to find and inform themselves of the most relevant offerings online, such as those for products, accommodation, travel, or job vacancies. As search services of different sizes, each with a particular focus, we all strive to serve consumers and enable them to find and compare specific categories of information online more efficiently.

While we compete amongst ourselves for the best consumer experience, there is one common competitor that does not compete fairly – Google. We all face strong competition from Google in our respective search services markets. Google has entered each of these markets by leveraging its unassailable dominance in general Internet search – to gain a competitive head start and quickly gain market shares. Even starting out as a late entrant in each of these markets, Google has achieved a dominating scale and scope in no time. Like no service before, Google has amassed data and content relevant for competition on such markets at the expense of others – us.

Google did not achieve its position on any such market by competing on the merits. Rather, there is now global consensus¹ that Google gained unjustified advantages through preferentially treating its own services within its general search results pages by displaying various forms of grouped specialised search results (so-called “OneBoxes”). Such OneBoxes are positioned prominently above all generic search results. No competing service may compile and display equivalent boxes within Google's general search results pages, even though they could provide more relevant results than Google's service.² With this exclusive use of OneBoxes, Google

1 See U.S. House of Representatives antitrust subcommittee report, Investigation of Competition in Digital Markets, October 2020, pp. 177 et seq., pp. 381, 395, 397; United States et al. v Google LLC, U.S. District Court for the D.C., Case No. 1:20-cv-03010, Complaint of 20 October 2020, paras. 170, 175.

2 In some cases, Google allows for the participation of rival services through the paid-for or “free” inclusion of their content. However, this does not amount to equal treatment as it is Google's specialised search service alone that matches the search query; that is, Google, not the participating services, decides on the form of the grouped specialised search results that it displays and with what content from its own database these boxes are filled based on Google's own specialised search algorithms. Such matching is what constitutes a specialised search service. Thus, the OneBoxes always (only) serve as an interface of a Google-owned specialised search service, which, akin to rival specialised (meta-)search services, can include content from a variety of sources.

artificially keeps users within its own service and prevents them from visiting competing, more relevant services. The various functionalities of the interfaces that Google directly integrates in its general search results pages continue to adopt more and more of what we offer on our websites. It was bad enough that in the past such boxes simply served as “teasers” to divert users to separate websites of specialised Google services. The boxes now increasingly outright provide such specialised search services to consumers directly within Google’s general search results pages, leaving no option for avoiding them. We are now directly competing with such interfaces.

Google’s technical integration of its own specialised search services into its near monopoly general search service continues to constitute a clear abuse of dominance. The Commission’s *Google Search (Shopping)* decision of 27 June 2017 (was supposed to³) set a precedent that Google is not permitted to promote its own services within the search results pages of its dominant general search service. However, as of today, the decision did not lead to Google changing anything meaningful. In Turkey, the competition authority decisively rejected⁴ the notion that Google’s European “Compliance Mechanism” is re-establishing competition. However, in Europe, even three years after the decision, with this mechanism Google is still not complying by either ceasing the displaying of Shopping Units (as is now the case in Turkey) or allowing all competing services to serve equivalent boxes, if Google believes that such boxes are in the user’s interest.⁵ Google has also not stopped any favouring of its other specialised search services. Google has even started to engage in similar conduct in new markets. Numerous complaints have been lodged with the Commission throughout this period.⁶ In the face of the ongoing conduct, at the oral hearing of the *Google Search (Shopping)* case before the General Court, one of the judges even questioned whether Google has indeed been sufficiently deterred from repeating the conduct.⁷

While a targeted regulation of digital gatekeepers may help in the long run, the Commission should first use its existing tools to enforce the *Shopping* precedent and ensure equal treatment within Google’s general search results pages. In general terms, we welcome the current legislative initiative to regulate dominant general search engines. However, we face the imminent risk of being disintermediated by Google. Many of us may not have the strength and resources to wait until such regulation really takes effect. Moreover, if, in the pending competition investigations, the Commission accepts Google’s current conduct as “equal treatment”, this creates the risk of pre-defining and hence devaluing the meaning of any future legislative ban on self-

3 On 27 June 2017, you stated: “And today’s decision is a precedent, which can be used as a framework to analyse the legality of such conduct.” See STATEMENT/17/1806, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_1806.

4 TCA, 12 February 2020, 20-20/119-69, “[P]lacement of competing CSSs in [Shopping Units] cannot provide a solution [...] While Google can compare the offers selected by itself or competing CSSs when competitors enter this space, competing CSSs can be listed in this space with only one or a limited number of offers. [...] [I]t does not seem possible to eliminate the effects in question simply by allowing competitors to enter this space.” (translated from Turkish language), recitals (298), (310); <http://www.rekabet.gov.tr/Karar?kararId=828974ff-6cd9-4318-a9fa-ee43a21f9c07>.

5 See the empirical study of Hoppner, Google’s (Non-)Compliance with the EU Shopping Decision, September 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3700748.

6 See, for example, the letter of 23 online recruitment services sent to Commissioner Vestager on 13 August 2019, as reported at <https://www.reuters.com/article/us-eu-google-antitrust-exclusive/exclusive-googles-jobs-search-draws-antitrust-complaints-from-rivals-idUSKCN1V30IX>, and the letter of 40 vacation rental rivals and industry associations of 10 February 2020, as reported at <https://www.reuters.com/article/us-eu-alphabet-antitrust/googles-holiday-rental-service-under-fire-as-40-rivals-urge-eu-antitrust-action-idUSKBN2041XG>.

7 See <https://www.politico.eu/article/eu-judge-suggests-google-fine-should-be-higher-european-commission-preferential-treatment/>.

preferencing. Competition and innovation will continue to be stifled, simply because the necessary measures to counter the further anti-competitive expansion are not taken right now.

Action is required now. If Google were allowed to continue the anti-competitive favouring of its own specialised search services until any meaningful regulation takes effect, our services will continue to lack traffic, data and the opportunity to innovate on the merits. Until then, our businesses continue to be trapped in a vicious cycle – providing benefits to Google’s competing services while rendering our own services obsolete in the long run.

The undersigning companies urge the Commission to enforce Google’s compliance with the *Google Search (Shopping)* decision and to take all necessary measures to stop the favouring and provision of other Google services within its general search results pages.

Yours sincerely,

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