

Google Fined €2.42 billion in Europe for Abuse of Dominance, While Turkish Investigation Continues

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The European Competition Commission recently issued a €2.42 billion fine to Google for abusing its market dominance as a search engine by granting advantages to its own comparison shopping service. In general, Turkey tends to follow European competition law in both its substantive content, exclusions, as well as interpreting developing legal concepts. Therefore, European decisions and trends are worth keeping a close eye on, since they will likely act as indirect guides to Turkish competition law developments over the short and medium term.

In an unrelated investigation, Google is also being investigated in Turkey regarding its exclusivity agreements with original equipment manufacturers. Although the investigations are not related, they collectively represent Google's activities attracting increased scrutiny from competition regulators.

The European Commission's Decision Against Google

Google's comparison shopping platform allows consumers to compare similar products and their prices, to discover different deals from various online sellers.

However, the Commission found Google had abused its dominant position within comparison shopping service by:

- Relying on its dominance in general internet searches to boost its position as a comparison shopping platform, rather than competing based on its platform's relative merits.
- Systematically gave prominent placement to its own comparison shopping service.
- Demoted rival comparison shopping services in its search results by including several criteria in search algorithms, making its comparison shopping service much more visible to consumers within Google's search results.

Joint Report from the French and German Competition Regulators

The French (Autorité de la Concurrence) and German (Bundeskartellamt) Competition Authorities recently issued a joint report titled "Competition Law and Data". The report addressed issues related to companies like Google.

The report's introduction offers valuable insight into the feelings of local regulators, as well as their increasing sensitivity and attention to the use of data and the consequential impact on market competition dynamics.

The report states:

"The collection, processing and commercial use of data is often seen not as a competition law issue but rather as an issue which concerns data protection enforcement. However, several recent proceedings point to the fact that competition authorities have begun to look at possible competition issues arising from the possession and use of data, even if, in the end, none were ascertained in the specific cases."

Recent developments in digital markets have led to the emergence of a number of firms that achieve extremely significant turnovers based on business models which involve the collection and commercial use of (often personal) data. Some of them enjoy a very high share of users in the service sector in which they are active. The Google search engine and the Facebook social network are probably the most prominent examples. While many of the services provided by these firms are marketed as 'free', their use involves in practice making possible the collection of personal information about the users. This has spurred new discussions about the role of data in economic relationships as well as in the application of competition law to such relationships, in particular as regards the assessment of data as a factor to establish market power. It is important to note that although these questions are often examined with the examples of Google and of Facebook in mind, they are also relevant for many other industries. Indeed, the development of data collection already goes well beyond search engines, social networking or online advertising and extends today to sectors such as energy, telecommunications, insurance, banking or transport. Furthermore, in the near future, the development of connected devices should make data more and more relevant for product industries and not only for services."

European eCommerce Sector Enquiry

Also worth noting, the European Competition Commission published the results of a two-year examination of the e-commerce sector in May 2017. The examination had been conducted as part of the Digital Single Market strategy, based on EU competition rules (more).

It is likely the Turkish authorities will also consider the local e-commerce sector more closely in coming years. As with the European enquiry, issues under the spotlight in Turkey could include selective distribution, geo-blocking, price maintenance and platform bans.

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