



## EU Google decision gives 'guiding principles' to comply with antitrust order

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### IN BRIEF

An EU decision against Google gave the search engine "guiding principles" and details of "different potential scenarios" to help it comply with the antitrust order, a senior European Commission official has said. The decision didn't merely order the Internet giant to stop giving preference to its own shopping services, the official who led the case said.

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The decision didn't merely order the Internet giant to stop giving preference to its own shopping services, Nicholas Banasevic, who led the case said.

In June, the commission fined Google 2.42 billion euros (\$2.86 billion), saying it was abusing its power in the general search market to squeeze out rivals in the separate price-comparison market. The EU regulator ordered the company to apply "the same processes and methods" to display rival comparison shopping services as it gives its own.

The decision, which hasn't yet been published, provides details on "different potential scenarios" regarding "processes and methods" that Google could use to comply with the antitrust order, Banasevic said at an event\* today.

"It doesn't just say that [Google] must cease and desist," he said. "The decision does have more guiding principles on what this might mean in different possible scenarios, but it is for Google to choose the method that it applies as long as it abides by this core principle."

EU investigators gave the company until Sep. 28 to change its conduct or face further fines. The company proposed an auction system to give rival price-comparison services the chance to appear more prominently in a shopping box on its search page.

The auction system means that price-comparison services such as Kelkoo or Idealo can bid for inclusion on the platform, under the same terms as Google's own shopping services.

– Plain leveraging case –

Banasevic said that the Google decision is a "plain and simple leveraging case" and that there was no need to apply another "label" to it, including abuses such as "refusal to supply" rivals or turn it into an "essential facility" case.

A "leveraging" case refers to a company "using its dominance in one market to artificially advantage its own products in an adjacent market," the official said.

But in its appeal to an EU court, Google is arguing that the commission treated its search engine as an "essential facility" – such as a port or railroad – for which a rival must have access to compete (see here). The legal standard to prove that a dominant company's products or services are essential to allow competition is quite high.

The commission would have to meet three criteria to see its case upheld in court: First, Google's product is indispensable; second, a competitor is removed from the market; third, there is no "objective justification" for failing to supply its rivals.

Banasevic said the Google case is "a very detailed effects-based decision" that doesn't have a "specific label." The regulator collected evidence from 800 companies, analyzed traffic from close to 400 websites and studied data that was equivalent to 1.7 billion search queries, he said.

Jorge Padilla, head of economic consultancy Compass Lexecon Europe, agreed with Banasevic. He said the "access remedy" that's implicit with Google's proposed auction system doesn't mean the search engine provided an essential facility or that the breach amounted to a refusal to supply.

The important point is that Google would have invested in its general search engine "without trying to secure rents in the vertical search engines." That's because Google hadn't started its own comparison shopping service until after others were already in the market, he said.

"Whether we classify it as refusal to deal, to leverage or tying, it doesn't matter. The risk of undermining ex ante incentives isn't present here," Padilla said. "We can feel comfortable that [the decision] doesn't depart from existing case law."

*\* "CMS EU Competition Conference," Brussels, Oct. 19, 2017*

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