



15TH ASCOLA CONFERENCE

ANNEX SESSION 2

NEW TOOLS TO OLD ISSUES?

WHAT CAN BE LEARNED FROM THE RECENT DECISIONS ON THE GOOGLE SHOPPING CASES

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25th June, 2020

AGENDA

- 1 INTRODUCTION
- 2 GOOGLE SHOPPING AROUND THE GLOBE
- 3 CONCLUSIONS

1

INTRODUCTION

Research problems & methodology



INTRODUCTION

Research problems & methodology

Tech platforms and online retail

Giants as Google and Amazon involved in the online retail business.

Google Shopping: tool to influence in this Market.

Would Google Shopping be an antitrust problem?

New mechanisms in the retail sector.

Influence of price comparison websites and search browsers in consumer behavior.

What is the difference in the analysis of EU, US and Brazil?

Commitments in the US, high fines imposed by EC and case closed by CADE.

Comparison among these different approaches.

2

GOOGLE SHOPPING AROUND THE GLOBE

Decisions in the US, EU and Brazil



GOOGLE SHOPPING ANALYSIS

FTC approach

Search bias, scraping, exclusivity: the whole lot of infractions

FTC analysis contrasted the possible harm to competition due to Google's Market power with incentives to innovation.

Conclusion: no harmful conduct.

Aftermath: commitments and case closed

Google agreed to change some of its business practices and FTC closed the case.

GOOGLE SHOPPING ANALYSIS

European Commission takes the lead



Google's dominance in the affected markets

- High market shares in both upstream and downstream markets (search browsers and price comparison websites)
- Network effects between Google's activities in both markets
- Capacity to foreclose the market downstream market (access via Google Search and bottleneck effects)

Leverage: the (truthfully contested) theory of harm

- Discussions on what would be the conduct: a new practice?
- Google would have leveraged its position in the market for search browsers to obtain advantages in the downstream market
- Again: bottleneck effects to foreclose the market

GOOGLE SHOPPING ANALYSIS

CADE's foggy assessment

▶ **Technical analysis: dismissal of the case**

Long time of analysis: 7 years within CADE's technical body (the General-Superintendence)

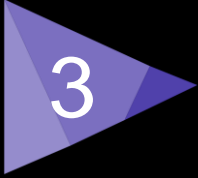
The harm to competitors would have been caused by Google's innovations. CADE protect consumers, not competitors

No effective harm to competition

▶ **Tribunal: confirmation of GS's decision**

Following GS's decision, the majority of CADE's Tribunal dismissed the case concluding that would be no harm to competition

Divergent decision: following the EC's approach, three of seven Commissioners pointed out the leverage of Google's dominant position in the upstream market (search browsers) to the downstream market (price comparison websites)



CONCLUSIONS



COMPETITION IN DIGITAL MARKETS

- *Certain intermediary agents (perhaps platforms) from different sides could have been said to reach a certain degree of dominance in their core markets, in such a way that they no longer act exclusively as mere intermediation agents, but rather become true regulators through leveraging market power.*
- *Aside from profiting from their usual and core activities, the accumulated economic power of these agents can lead them to act as true lawmakers*
- *In the Google Shopping case, data collection was able to give the dominant agent the possibility of almost foreclosing access to its competitors in an adjacent market, making leverage even more sensitive and advantageous..*

NEW ISSUES, BUT, IN FACT, THE SAME USEFUL OLD TOOLS

- *In digital markets, conducts have changed - the way of facing them must accompany this change - but this does not mean that traditional antitrust analysis tools must be abandoned*
- *More important than running in circles, authorities should direct their efforts to comprehend the changes in the competitive dynamics of each sector in the face of digitalization*
- *Although designed for other contexts, traditional antitrust tools can be replicable and perfectly employed in new contexts*

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[Google's] misconduct lasted over 10 years and denied other companies the possibility to compete on the merits and to innovate - and consumers the benefits of competition

Margrethe Vestager

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THANK YOU!

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