



Ms Margrethe Vestager
 Commissioner for Competition
 European Commission
 Rue de la Loi
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28 November 2019

Google’s ongoing abuse of market power is harming consumers and digital companies all over Europe. Comparison shopping services call for vigorous actions against Google’s non-compliance with the European Commission’s decision in the *Google Search (Shopping)* case.

Dear Commissioner Vestager,

The undersigned founders and CEOs of 41 European comparison shopping services (“CSSS”) operating in 21 Member States welcome your appointment as Executive Vice-President in charge of digital and competition policy. As proud operators of small and medium-sized companies, we employ thousands of highly qualified digital-savvy talents and are integral participants in the innovative foundation of the digital economy of the European Union.

We are approaching you because companies like ours are endangered by Google, which is artfully avoiding compliance with the law and the decisions of authorities such as yours. Google’s continued abuse of market power is harming consumers and threatening hundreds of companies all over the EU.

In particular, with this letter the undersigned founders and CEOs, representing Europe’s industry leaders in comparison shopping services, would like to encourage you to vigorously enforce your groundbreaking *Google Search (Shopping)* decision of June 2017 (“Shopping Decision”) in order to - finally - bring Google’s condemned self-favouring to an end. While some signatories have contributed to the investigation for quite a long time, most are now raising their voices for the first time, having

become frustrated by the measures Google adopted following the Shopping Decision in order to circumvent such decision's effect.

The undersigned CSSs would like to stress that ten years after the first formal complaints from within our industry and **two years after the Shopping Decision, effective competition in the national markets for comparison shopping has not been re-established.** Contrary to the remedy imposed by the Commission, the mechanism implemented by Google to comply (the "**Compliance Mechanism**") **does not provide for equal treatment** of CSSs on Google's general Search Engine Results Pages ("SERPs"). Google continues to reserve the right to itself to provide a CSS directly on its SERPs, the *Shopping Unit*. All competing CSSs are limited to supplying individual offers to Google's "on-SERP-CSS", without this benefitting their business as a genuine CSS.

Despite participating in Google's Compliance Mechanism, the undersigned CSSs have not experienced any substantial overall increase in traffic to their websites. On the contrary, overall traffic has mostly declined and is expected to decline even further, because Google's on-SERP-CSS is increasingly satisfying user demand for comparison shopping services directly. As a result, **more and more CSSs have been or will be forced by Google to exit the market.** Hence, in your WebSummit speech of 7th November 2019 you were absolutely correct in observing that "*We may see that there is a show of rivals in the Shopping Box. We may see a pickup when it comes to clicks for merchants. But we still do not see much traffic for rival competitors when it comes to shopping comparison.*"¹

Considering the above, the signatories believe that **enforcing the Shopping Decision should be at the top of the agenda for your next mandate.** Accepting Google's current non-compliance would seal the end of competition in the CSS industry. Moreover, it would also have far-reaching consequences for the many other sectors in which self-favouring practices are distorting competition.

- **At least since the Compliance Mechanism, Google's Shopping Units constitute a CSS in themselves – which Google clearly continues to favour on its SERPs.** The Shopping Decision bans Google from favouring "*an own comparison shopping service within its general results pages*".² However, Google keeps doing exactly that - with their ever expanding number and scope of product images, price and product information as well as integrated search functions, Google's *Shopping Units* allow consumers to compare products and prices. Thus, Google's powering of *Shopping Units* fulfils all requirements of a "comparison shopping service" as defined in the Shopping Decision³. As such, whether or not the separate website, *Google Shopping Europe*, competes on equal terms with rival CSSs for placements within the *Shopping Unit* is simply irrelevant. This argument only serves to distract from the fact that a Google-owned CSS is also provided through *Shopping Units* directly within Google's SERPs. Since Google ranks and displays its *Shopping Unit* more favourably than competing CSSs in its SERPs, the identified abuse has never been terminated.

¹ Presse Conference by Commissioner Vestager on "The transformative power of technology and digitization", #WebSummit Lisbon, <https://www.youtube.com/watch?v=QGvj12gd3UU>, at 09:50-10:10.

² Shopping Decision, para. 699.

³ Shopping Decision, para. 191.

- **Less than 5% of all users clicking on a *Shopping Unit* end up on the website of a competing CSS. Thus, Google is satisfying more than 95% of the demand for comparison shopping.** In previous statements, the Commission assumed that the Compliance Mechanism increased the traffic of competing CSSs. This was concluded from the fact that by summer 2019, around 75% of *Shopping Units* included at least one offer of a rival CSS and “around 40% of clicks on product results [went] to competitors of Google”⁴. Yet, as the Commission seems to have realised in the meantime, these statistics are highly misleading - real-life data shows that less than 5% of all clicks in a *Shopping Unit* lead the user to the website of a rival CSS. All other clicks lead the user directly to a website of a merchant. **Clicks to merchants, however, do not increase the traffic to competing CSSs**, but are the result of users consuming Google’s on-SERP-CSS. These clicks are therefore attributable to Google alone. When participating in the Compliance Mechanism, competing CSSs act as mere intermediation services for placing merchants’ paid product results in the *Shopping Unit*. The Shopping Decision rightly identified this as a different business.⁵ This is also why the alleged number of 600 companies⁶ that currently participate in the Compliance Mechanism says nothing about its impact on competition in the relevant market for CSSs. As an **independent study** of published on 26 November 2019⁷ shows: “Now, 48,9% of all the Product Listing Ads (PLAs) displayed on Google Shopping [= Shopping Units] are placed via external providers. However, the majority of these externally sourced ads are from digital marketing agencies. 35.1% of all ads are currently from marketing agencies and **only 13.8% come from genuine comparison-shopping services that can be considered real rivals to Google Shopping.**”⁸ The remaining 51.1% come directly from Google Shopping Europe. We represent those 13.8% of genuine competitors.
- **The sporadically introduced “toggle” to switch to Comparison Shopping Ads has brought no improvement.** In some statements, the Commission indicated that the option introduced by Google in some *Shopping Units* to switch between Product Listing Ads (that lead users directly to merchants) and Comparison Shopping Ads (that lead users to the websites of a CSS) was to have improved the situation. We have not been able to observe any such effect. Not least due to the inferior positioning and design of Comparison Shopping Ads, it is barely surprising that, even in those few countries in which they have been rolled out, they did not increase traffic to websites of CSSs. Likewise, they do not provide users with any valuable choice whatsoever. They are simply meaningless to them – and us.

⁴ Statement by Commissioner Vestager on Commission decision to fine Google € 1.49 billion for abusive practices in online advertising, Brussels, 20 March 2019, http://europa.eu/rapid/press-release_STATEMENT-19-1774_en.htm.

⁵ Shopping Decision, para. 439 “*competing [CSSs] are not eligible to participate in Google Shopping, unless they change their business model by [...] acting as intermediaries for placing merchants’ paid product results in the Shopping Unit*”.

⁶ Oliver Bethell, Director, Google EMEA Competition, Advanced Competition Law Conference, Brussels, 25th November 2019.

⁷ Searchmetrics Study: Google Shopping 2019, available at <https://www.searchmetrics.com/>

⁸ Searchmetrics, Press Release, 26 November 2019, New study: Competition is increasing in Google Shopping, but will this satisfy EU regulators?, <https://www.searchmetrics.com/news-and-events/google-shopping-study-2019/> (emphasise taken from the original)

Consumers are paying the price for Google's non-compliance

Following the Shopping Decision, more competing CSSs had to leave the market, since they could no longer be found by users in Google's SERPs. However, it is not just competitors who are suffering from Google's non-compliance. A study by Grant Thornton⁹ showed that ultimately consumers are paying the price - in some markets, prices of products displayed in Google's *Shopping Unit* were more than 30% higher than the prices for the same products found on the websites of competing CSSs. On average users paid 13.7% more when conveyed to merchants through the *Shopping Unit*.

Accepting the Compliance Mechanism will reduce competition and harm consumers in many sectors

Accepting Google's current Compliance Mechanism as a sufficient remedy to the infringement would have devastating consequences. The Commission would allow Google to further entrench its market position gained from its infringement of competition law, which lasted over ten years. To make matters worse, by selling the current revenue-enhancing mechanism as a "remedy" to the abuse identified in the Shopping Decision, Google can put all the blame for any further decline of competition and resulting higher advertising and product prices on the Commission.¹⁰ If Google were allowed to turn a "remedy" into a profit-maximising new revenue scheme, which helps no one but Google itself, this would send a worrying signal.

For the reasons set out above, we **call for the Commission to now formally address Google's non-compliance**. Google has had two years to present a workable compliance mechanism. The data shows that it has failed to do so. It is now upon the Commission to enforce its decision and finally bring the identified abuse to an end. If you feel the need to gather more data, the signatories would be quite happy to provide it as quickly as possible. It will show that, overall, traffic from Google to genuine CSSs (as defined in the Shopping Decision) is continuing to decline and no improvement has been made.

Yours faithfully

(in alphabetical order)

⁹ Grant Thornton, Google Shopping-EU-Benchmark Study, 13 May 2019, available at https://www.idealo.de/unternehmen/wp-content/uploads/sites/33/2019/05/Google-Shopping-EU-benchmark-study_13.5.2019.pdf.

¹⁰ See, to this effect, Oliver Bethell, Director, Google EMEA Competition, Protecting Consumers' Freedom in the Digital Era, BEUC workshop, 2 October 2019 "*You look at a theory such as favoring. We have a very good idea of what that means in Shopping. We have thought that out, we have talked to regulators about it a lot. We are very clear about the understanding of the conceptual framework, the evidence that will be brought into that discussion. So too in other areas of vertical search*".

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