

EU Fines Google €4.34 billion for Alleged Abuse of Dominant Position of Android Mobile System and Apps

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On July 18, 2018, the European Commission (Commission) imposed a fine on Google LLC for the alleged abuse of a dominant market position pertaining to Android mobile devices.¹ Google and its parent company, Alphabet Inc. (Alphabet), were fined €4.34 billion, the largest fine ever imposed on a single undertaking by the Commission. The fine was calculated on the basis of Google's revenue from search advertising services on Android devices in the European Economic Area (EEA) and amounts to approximately 4.5 percent of Alphabet's consolidated worldwide turnover.

Commission's Decision

The Commission alleges that Google is dominant in three different markets: general internet search services, licensable smart mobile OSs and app stores for the Android mobile OS. When defining the relevant market, the Commission rejected the argument that Apple's IOS or Blackberry's OS are part of the OS markets because they are not available for license by third-party device manufacturers.

The Commission's allegations relate to three practices.

First, the Commission alleges that Google has illegally tied its Google Search app and the Google Chrome browser with its Google Play Store in its contracts with device manufacturers. According to the Commission, by tying the search app and the mobile browser with its "must-have" app, Google ensured that the former were pre-installed on practically all Android devices sold in the EEA. The Commission rejected Google's argument that the tying of the products was necessary to allow Google to monetize its investment in Android, which is offered free of charge.

Secondly, the Commission alleges that Google granted financial incentives to some of the largest device manufacturers and mobile network operators subject to the condition that those customers exclusively pre-install Google Search on their entire portfolio of Android devices. The Commission rejected Google's argument that such exclusivity payments were necessary to persuade device manufacturers and mobile network operators to use the Android ecosystem on their devices.

Thirdly, Google was alleged to have abused its dominant position by entering into agreements with device manufacturers that prevented them from using Android forks, *i.e.*, alternative versions of the Android OS. According to the Commission, this reduced the opportunity and incentives to develop devices running on Android forks and, hence, competitors' opportunity to develop apps and (general search) services that could be pre-installed on such devices. The Commission did not accept Google's arguments that these restrictions aimed at preventing a "fragmentation" of the Android ecosystem and were therefore objectively justified.

Implications

In addition to the record-breaking fine, the decision requires Google to stop these practices within 90 days or face penalty payments of up to 5 percent of Alphabet's average daily worldwide turnover. The Commission has not imposed detailed remedies and has

¹ Case AT.40099 — Google Android.

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acknowledged that Google is entitled to put in place a reasonable, fair and objective system to ensure that Android devices using its apps and services function correctly. It will remain to be seen what the Commission will consider satisfactory as it monitors compliance with the decision. Google has two months

to appeal the decision before the General Court of the European Union, with a further appeal available on points of law to the Court of Justice. Court proceedings can take several years, and so it may take a significant amount of time before the points in the decision and contested by Google are finally resolved.

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