

THE IMPLICATIONS AND IMPACT ENCOUNTERING REGULATORY POLICIES  
IN THE GLOBAL ARENA: SAME CASE, DIFFERENT OUTCOMES

GOOGLE, EUROPEAN UNION, AND THE U.S. FEDERAL TRADE COMMISSION

Racquel Brown Gaston, Esq.  
University of the District of Columbia

Mohamad Sepehri, Ph.D.  
University of the District of Columbia

Lukas Masopust, MBA  
University of the District of Columbia

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## **Abstract**

*In a global business environment many companies, especially the leaders of the industry, strive to establish a dominant market position and impose a formidable might against competitors in the field across the world. The prevailing economic power of these global business entities and their pervasive competitive strategies and practices have been scrutinized by the legal and regulatory bodies to ensure that the consumers are protected from their deceptive tactics and that fair and lawful competitive policies are adhered to. This paper examines two distinct, and yet, integrated issues regarding the implication of Google in an antitrust lawsuit.*

*While the case is clearly a legal instance of dealing with the enforcement of the law and regulations, it also underlines the nature and implications of operating in an international business milieu. The global environment exposes the international companies to various interpretation and implications of the similar laws and regulations. The laws of a nation and community are driven from the sociocultural norms, beliefs, and practices. Similarly, the interpretation and application of the rules are influenced by the cultural environment and norms. In the case for Google and alleged unfair and deceptive competitive practices, the U.S. regulators were more kind and charitable to Google than their European Union counterparts. In the United States the spirit of the “capitalism” is the prevailing drive for rendering an antitrust decision. However, for the European regulators the dynamics of social justice and parity are the prevalent factors.*

**Keywords:** Google, European Union, Antitrust Law, Federal Trade Commission, Global/International Business, Consumer Protection, Competitive Strategies and Tactics

## **Introduction**

The enterprise competition has long benefited the consumers and societies by fostering the development of better products and services at more economically competitive prices. It stimulates the pursuit of process and product innovations, leading to unimaginable technological advancements. Technological companies who are mainly responsible for many of the inventions, have become so dominant and intricately woven in the fabric of our societies, that it seems

almost impossible to separate them from everyday lives. Ultimately, the dominance would lead to market power and creation of a monopoly.

The notion and conception of a monopoly was the contention of the European Union against Google, an American giant corporation. On June 27, 2017, the European Union (EU) levied a \$2.7 billion antitrust violation against Google Corporation. This fine is the largest antitrust violation fine in history of the EU (Google Fined Record \$2.7 Billion in E.U. Antitrust Ruling, 2017). However, after reviewing the evidence brought by the EU against Google, the United States' Federal Trade Commission (whose main purpose is to ensure the fair methods of competition are carried out to maintain non-deceptive practices in commerce), voted against penalizing the giant. That ruling was likewise historical and surprising to many.

### **Background Information and the Facts**

Google is known as the most powerful and popular internet search engine in 2017. It has 40,000 search queries every second and average of 3.5 billion searches per day worldwide (Google Search Statistics, n. d.). This includes approximately 500 million European consumers over 13 European Economic Area countries. To give consumers a genuine choice, Google is expected to crawl websites on the internet comprehensively and deeply. Selected websites are indexed and ranked to place the most relevant first. This is vital because the top spot on the first page has 32.5 percent of traffic share, following with second spot 17.6 percent and third spot 11.4 percent (Lee, 2013). Hence, the businesses battle to be placed in the premiere spot of the first Google search page as 95% of Google clicks occur on the first page for those utilizing desktops.

The top generic results garnished 35% of the clicks and were stronger on mobile devices (Google hit with record EU fine over Shopping service, 2017). On the second page, however, search traffic drops by 95 percent (Lee, 2013). The most ranked rivals for Google appears on at the fourth page, making them almost impossible to be viewed by consumers seeking competition. As such, clicks on rival sites have decreased by 90% (Google hit with record EU fine over Shopping service, 2017).

In 2008, Google launched its comparison shopping service, and more importantly, its business method, in Germany and the United Kingdom. This steered enormous traffic and thus revenue to Google's own services (Google fined record \$2.7 billion by EU, 2017). The service works as follows; once customers start typing in a search for a product, they would see at the top of the page, a box of varying selections of that product. The consumers will see pictures, prices, rankings and links to the different retailers in that box. These results are Google "sponsored" acknowledgment and are indicated on the right-hand corner of the results. Such "sponsored" acknowledgement is the indication that these group of retailers are a part of Google's shopping service network. However, based on Google's claim, these retailers are only placed on the top of the front because they are the best choice for consumers. That is categorically false. Indeed, they are advertisements paid to Google and the retailers are merely reaping the benefits their marketing (Brogan, 2017).

Advertisement placement is everything in marketing as it ties into the traffic of consumers that will come across those products, and Google knows that. Thus, the competitors' products, which are not in the shopping service, are placed as far back as the fourth page. There is a 91% chance that a Google searcher will not venture on to page two of their results, and there is only a 50% chance that they will venture beyond the third result from the first page (2017 Marketing Statistics, Trends & Data - The Ultimate List of Marketing Stats, n. d.). Therefore, a consumer would most likely be inclined to click onto the first option, which is a Google's related products and then rerouted to Google shopping site.

According to Google's legal counsel, this methodology allows for the consumers to get exactly what they search for. "Our ability to do that well isn't favoring ourselves, or any particular site or seller—it's the result of hard work and constant innovation, based on user feedback." (Google fined record \$2.7 billion by EU, 2017). This argument is flawed because it asserts that at no point the consumers may desire any products advertised on the fourth page and onward. However, if the products were among those highly desired, based on Google's innovative algorithm, they would have earned a first page placement.

It appears that the innovative algorithm formulation is linked to the profit Google can earn from a company and, in return for that, business would be given the opportunity to be wanted by consumers. This is a typical tactic of a giant corporation like Google to circumvent what the company desires the consumers to have instead of allowing them the options to decide for themselves. Google's argument is that it doesn't prevent the competitors from advertising and it does not stop consumers from scrolling to the fourth page to find products. While this is factual, the statistics show that over 90% of searchers do not move past the first page. Then, psychologically, something invisible is at play, discouraging the consumers to move beyond the first page (and Google is taking advantage of that).

In 2009, Foudem, a shopping site in the United Kingdom and a competitor of the Google shopping service, asserted its counterargument against Google. Foudem demonstrating that consumers do not purchase the company's products as they do not visit her page frequently enough because the company is not granted access to the front page, thus creating unfair competition. Consequently, Foudem led the complaint against Google after experiencing economic devastation for not being prioritized or having equal exposure to consumers (Google fined record \$2.7 billion by EU, 2017). This minimized the probability of experiencing shared profits in the market place. Unlike the United States, the culture and social norm in Europe is more geared toward equalizing the economic status among its citizens. Naturally, it was inevitable that the EU and its citizens would challenge what appears to be a dogma approach by Google.

Between 2010 to 2013, Google launched this shopping feature in France, Italy, Netherlands, Spain, Czech Republic, Austria, Belgium, Denmark, Norway, Poland and Sweden. More than 90% of users of search engine in Europe used Google. This shows unequivocally how Google is exhibiting its dominance in the global digital economy (Google fined record \$2.7 billion by EU, 2017). In the United States, more than 70% of the searchers use Google. (A Victory for Google as F.T.C. Takes No Formal Steps, 2013).

## **The United States Response to Google's Antitrust Violations**

The Federal Trade Commission under the Federal Trade Commission Act of 1914 is commissioned to:

“(a) prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce;  
(b) seek monetary redress and other relief for conduct injurious to consumers;  
(c) prescribe rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices;  
(d) gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress and the public.” (Federal Trade Commission Act Incorporating U.S SAFE WEB Act amendments of 2006, n.d.).”

One does not have to look further to see that Google's method is a direct violation of not only the Federal Trade Commission Act of 1914, but also the Sherman Act (15 U.S. Code Chapter 1 - Monopolies and Combinations in Restraint Of Trade, N.D.), and the Clayton Act, (15 U.S. Code § 12 – Definitions, n. d.), which specifically aim to protect commerce from unlawful restraints. This is extremely harmful to fostering economic competition, and it suppresses innovation which is contrary to the spirit and the intent behind these antitrust statutes.

In 2012, the Federal Trade Commission Bureau of Competition concluded from its investigation and Google's own admission that Google, manipulated search results in favor of its services over competitors (Mullins, Winkler & Kendall, 2015). This is evidence of unfair methods of competition and deceptive acts, disclosing Google's abusive and monopoly power, blocking and impeding the internet users and rivals. Another way in which Google's conduct harmed consumers and businesses was through the restriction of its advertisers from working with search engines that were deemed to be rivals. According to the Federal Trade Commission's findings, the technology giant's “conduct has resulted—and will result—in real harm to consumers and to innovation in the online search and advertising markets.” (Mullins, Winkler & Kenndall, 2015). Another clear misconduct was Google's abuse of their dominance in the market when it threatened to remove websites from its search engines unless these sites allowed Google to use their content in its specialized results (Mullins, Winkler & Kenndall, 2015).

With these findings, the agency's bureau of competition recommended that legal action be taken against the tech giant, but the economic bureau recommended against it. The Federal Trade Commission with competing recommendations voted not to move forward against Google. The reasons were many. The most crucial appeared to have been a lengthy legal battle which would be tough to win due to the voluminous amount of resources required at the expense of other enforcements (Mullins, Winkler & Kenndall, 2015). However, this may not be true. To

assert that the United States government would not pursue a case that it can win on prima facie evidence because the other party has the resources to fight back, thus weakening the United States is inhibitive at best to all those who make efforts to obey the law. It sends a wrong message that violation of the laws intended to protect consumers apply only to those who cannot afford taking the United States to court. In another word, if you can afford to take on and challenge the United States in court, you may only get a reprimand or an inconsequential settlement deal to the benefit of the corporation. The commission had the challenging task in proving that Google's changes to its algorithm was purposeful in being malicious to its competitors. Although, Google's business methods landed its competitors beyond the first page, which are hardly visited by consumers (A Victory for Google as F.T.C. Takes No Formal Steps, 2013).

Another reason that alluded by the Federal Trade Commission was the fact that Google's limitless resources would have most certainly created a battle for the ages. Moreover, the agency was already battling Amazon, Apple and Google over in-app purchases. Instead, both the agency and the Google came to an agreement. The agency would end its investigation and in turn Google promised to end its practices that were deemed problematic (Mullins, Winkler & Kenn dall, 2015). Google agreed to allow websites to remove content from search results (Mullins, Winkler & Kenn dall, 2015), and to refrain from taking its rivals reviews and other content from their sites and posing them as if they were Google's and misleading the consumers of their results in their specialized search results (A Victory for Google as FTC Takes No Formal Steps, 2013).

After the agreement in 2013, the Federal Trade Commission announced its decision that "after an investigation of nearly two years, that the company had not violated antitrust or anti-competition statutes in the way it arranges its web search results." (A Victory for Google as F.T.C. Takes No Formal Steps, 2013). Furthermore, Jon Leibowitz, the chairman of the commission, added "while not everything Google did was beneficial, on balance we did not believe that the evidence supported an F.T.C. challenge to this aspect of Google's business under American law." Moreover, the rationale continued, "Google's business practices improved its search results for the benefit of users and that "any negative impact on actual or perceived competitors was incidental to that purpose." (A Victory for Google as F.T.C. Takes No Formal Steps, 2013).

### **The European Union's Adjudication to Google's Antitrust Violations**

EU Competition Commissioner, Margrethe Vestager, believes that the notion that Google's business practices benefit the users could not be any more further from the truth. Consequently, after a seven-year investigation, the EU commissioner has concluded that Google has breached EU antitrust laws and will thus face 2.42 billion Euros or 2.7 billion dollars in fines. The priorities and advantages Google search gives to products in its shopping services, by

giving them prominent placement, is illegal. This is especially true for Google to be a dominant consumer search in the market. (Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service., n. d.). Not only does Google receive payment from consumers by receiving their data, whenever they engage in a search, it also receives billions of dollars each time consumers click on businesses that are apart of Google's comparison shopping service.

Consumers unassumingly believe that they are benefitting from competition, while Google demotes its competitors by placing them further down on the searches. Such practices deny the rivals from fair competition and innovation (Google hit with record EU fine over Shopping service, 2017). The EU's levy against Google amounts to 3% of its 2016 worldwide revenue (The Woman Behind Google's \$2.7 Billion Fine, 2017). This at least doubles the record of 1.06 billion Euros posed on the American chipmaker company, Intel. If Google fails to alter its practices within 90 days, then the fine will be levied against its parent company, Alphabet at a rate of 5% of all its global revenue (The Woman Behind Google's \$2.7 Billion Fine, 2017). The impact is already being felt as stocks fell for Alphabet after the dissemination of this news.

The cultural norms and values may have played a role in the decision for the EU to discipline Google. As the commissioner explained, in the Danish culture (as she represents), many started out on an equal footing. However, with taxes and redistribution, everyone tends to move closer regarding equality (The Woman Behind Google's \$2.7 Billion Fine, 2017). Such mindset had a direct impact on the moral turpitude being considered in this case. If the EU allowed Google to continue its dominance in such a way where it shuns other competitors, then it would be a sharp contrast to the principle formed by the culture in their everyday society.

The ramifications in terms of precedence of a giant company growing in grandeur while the smaller businesses struggle and vanish quietly away is appalling to say the least to those in the EU. America, on the other hand, strives for the spirit of capitalism. Therefore, companies being crushed every day for the benefit of another with greater dominance is also cultural and part of the norm. So is the desire for and ambitions of the small businesses to become great. Unlike the United States, there is no political ramifications or otherwise for a regulator in EU to hold giant companies accountable for breaching the rules. In fact, such a victory may maintain confidence of EU citizens in their regulators.

### **Discussions and Implications**

The different ways of life and values create diverse viewpoints and outlooks on the same problem, yielding to uncommon results. It is undisputed that Google practices created unfavorable and undesirable competitive environment. Deception appears to be prevalent when Google gives preference to those in its comparison-shopping service, causing rival companies to be pushed down in their placement during web searches. The issue, of course, is not whether this

was done, but whether two contrasting jurisdictions, where Google has market dominance, are willing to set the tone for unacceptable practices, after discovering a breach of antitrust violations.

As evident, the EU is clear in its intent to hold any company, great or small, accountable for deceptive practices in competition, while the United States turns a blind eye. Evidently, it is due to lack of resources when the enforcement issues are pending. The Google Case is yet another example of the government choosing big business over every day ordinary citizens as well as vulnerable companies. It sends the message that money and power are more expedient than the enforcement of three statutes that were created to prevent the same conduct employed by Google against the consumers who relied on these search engines.

Decisions are made by choice. When the choice is eliminated, then others would ultimately redirect and influence how and what one may ponder in making a decision. More importantly, the Federal Trade Commission's decision has established a precedence in favor of the likes of Google. Ironically, Google should appreciate the attempt for regulators to curb its monopolistic practices. If the regulators had not curbed the monopoly style practices of one of the complainants, Microsoft, Google would not have had the opportunity to emerge as a formidable enterprise. The antitrust laws in both Europe and the United States lend the way for consumers and societies to benefit from Google's innovations, due to healthy and fair competition. It is an atrocity that we may not see the works of other great minds blossom due to greed and the need to dominate the digital market place at the expense of the next big thing.

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