

COMPENSATION FOR THE DAMAGES CAUSED BY GOOGLE

PRIVATE ENFORCEMENT IN THE NATIONAL COURTS

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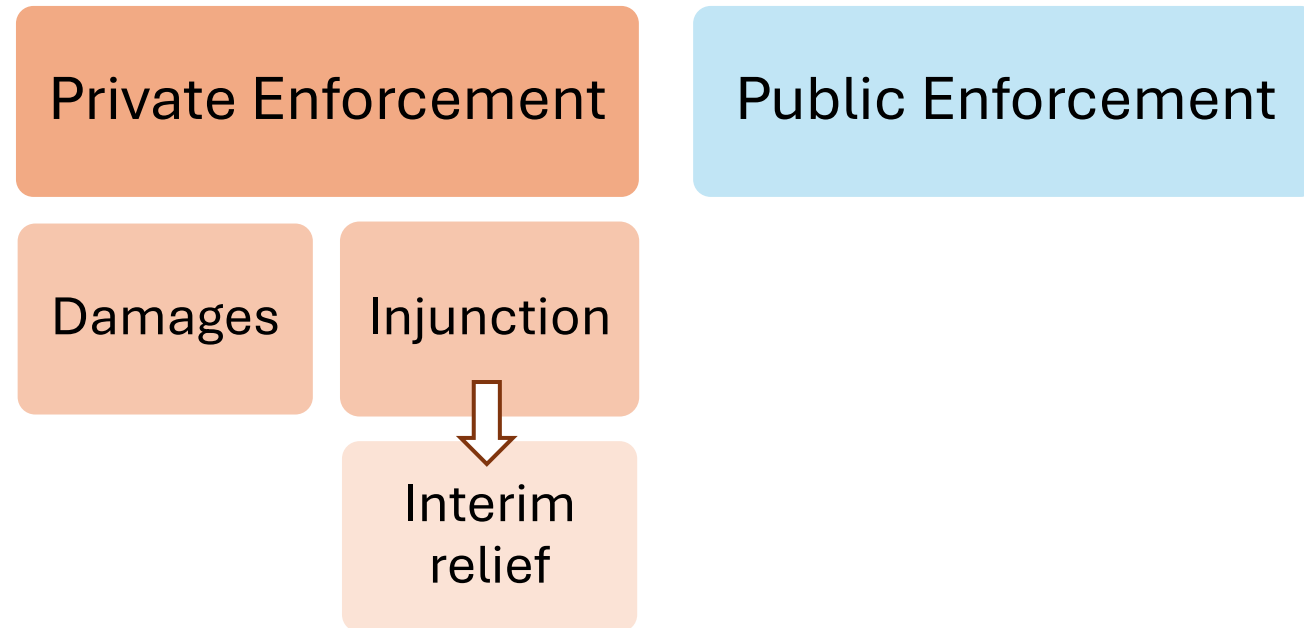
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COMPETITION, LITIGATION, REGULATION

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Enforcement of EU competition law



Pending damages lawsuits against Google across Europe

Google Search (Shopping)

- 2017 EC Decision
- Lawsuits pending in nearly every major European jurisdiction (GER, UK, FR, IT, NL, SE, PL, CZ)
- Single claimants or smaller groups
- 2025: First instance judgement in FR

Google Search (other verticals)

- Google Travel (FR)
- Weather Box (GER)
- Stand-alone cases (no decision)
- Both lawsuits partly based on DMA

Google Android

- 2018 EC Decision
- No damage claim by direct search competitor
- Two opt-out class actions in the UK (consumers and advertisers) based on price increase (only partly follow-on)

AdTech

- 2021 Decision by French Autorité de la Concurrence
- Lawsuits pending in FR, NL, UK GER
- Opt-out class actions (UK) and SPV claims (NL, GER)
- (2025 EC Decision)

Litigation against Google

JURISDICTION

- Avoid defendant-friendly jurisdictions
- Costs
- Are courts experienced?
- Duration of the proceedings?
- Predictability
- Jurisdiction for all damages (cross-border damages)
- Applicability of claimant-friendly law

- Possibility of collective redress?

- Possible Google defendant entities:
 - Google LLC
 - Google Ireland Ltd.
 - National Google entities

Assertion of mass-claims

- Relevant for claimants with individual small to mid-sized damage volume
- Usually supported by litigation funder
- Different national regimes in European jurisdictions

Joint claim

- Claimants remain parties
- Claimants control the lawsuit

Special Purpose Vehicle (SPV)

- Assignment of the claims to the SPV acting as plaintiff
- SPV may have certain control over the claims (strategy, settlements, etc.)

Class actions

- Opt-in class actions
- Opt-out class actions

Jurisdiction

EU FRAMEWORK

Bruxelles Ia Regulation

- Applicable on defendants domiciled (Art. 63) in the EU
→ jurisdiction of US-based defendants determined under national law
- Art. 4(1): Court where the defendant is domiciled
- Art. 7(2): Court where the infringement took effect
 - place where the market was affected
 - “initial damage”

Art. 7(2): Cross-border damages

- ECJ, C-68/93 – *Sheville* (1995): “Mosaic theory”
- ECJ, C-352/13 – *CDC* (2015):
 - Claimant’s registered office
 - possibility to assert total damage
- ECJ, C-27/17 – *FlyLAL* (2018):
 - “Main market affected” = place where affected party conducts the main part of its sales activities
- ECJ, C-451/18 – *Tibor-Trans* (2019):
 - market affected by the conduct
 - place where the damage occurred, provided it occurred in the affected market
- ECJ, C-30/20 – *Volvo* (2021):
 - Trucks cartel: place where the affected contract was concluded
 - If several transactions lead to different jurisdictions (national context): claimant’s place of domicile

Jurisdiction

EU FRAMEWORK – JOINDER OF DEFENDANTS

Bruxelles Ia Regulation

- Art. 8(1): “anchor defendant”
 - Court of the domicile of one of the defendants
 - claims against the defendants are “closely connected”

ECJ, C-882/19 – *Sumal* (2021)

- Liability of the “*single economic unit*” for a cartel infringement: subsidiary can be directly sued for damage caused by the infringement
 - *organisational link* between responsible (parent) entity and subsidiary (e.g. 100% ownership)
 - *specific link* between economic activity of the subsidiary and the infringement (e.g. sales, marketing, production)
- ➔ back office?

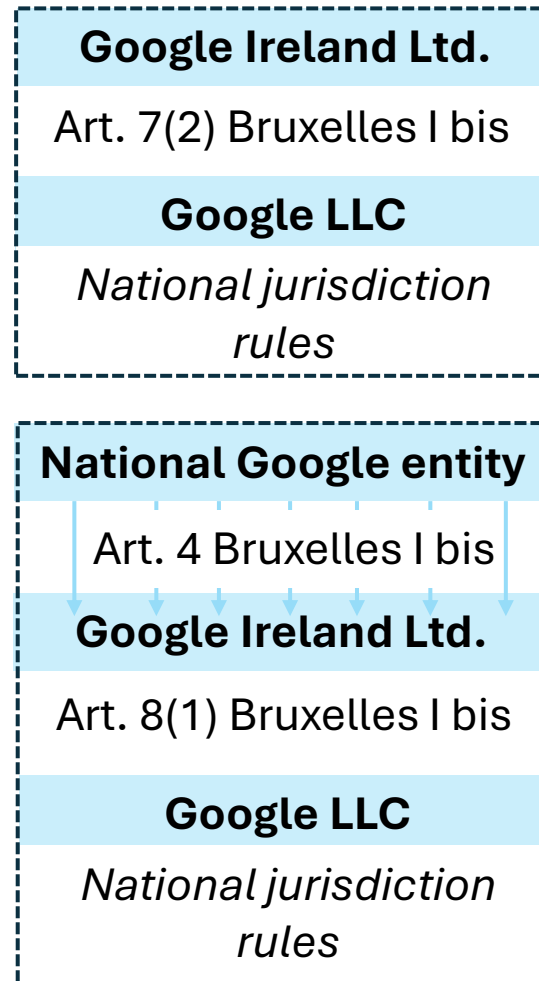
National Google entities

- Google Netherlands B.V. (Google Shopping)
- Google Germany GmbH (Google Shopping)

Jurisdiction and Applicable Law

LITIGATION AGAINST GOOGLE

- Single claimant
- Domicile of claimant located in market affected by the infringement
- Several claimants or claims joint through a SPV
- Claimed damages occurred in several markets



Applicable law: Rome II Regulation

- Art. 6(3)(a): Place where the market is affected
 - Cross-border damages: “Mosaic theory”
- Art. 6(3)(b): Choice of the law of the seized court

Single defendant:

- Court of the domicile of the defendant
- Market where the court is located must be affected by the infringement

Multiple defendants:

- Court has jurisdiction over all claims
- Market where the court is located must be affected by the infringement

Assertion of damages

FOLLOW-ON AND STAND-ALONE CLAIMS

Binding effect of Decisions

- **Key factual and legal findings** of the competition authority's decision, i.e. findings that are essential to establish the abuse:
 - market definitions
 - market dominance
 - relevant conduct
 - theory of harm
 - period of infringement
 - parties involved
- **NOT:**
 - individual harm
 - causal link
 - “non-relevant” findings

Binding effect on remedies?

- EC, AT.39740, Google Search (Shopping):

Article 1
[...]
The infringement is continuing [...] as at the date of adoption of this Decision.

➔ Reversal of the burden of proof?

Assertion of damages

QUANTIFICATION

Damage estimation

- Depends on the applicable national law (Art. 17 CDD)
- No statutory presumption of harm in abuse of dominance cases
- Claimant must establish a **counterfactual**: What would the claimant's situation have been without the infringement?
- Various economic models:
 - Before-after comparison
 - Market share analysis
 - Market comparison method



Problems:

- Long-term abuses
- Disruption of market structure
- Must the counterfactual be the defendant's „most opportune“ scenario?



Economic expert opinion

Facilitations for claimants

- 100% precision impossible and not required
- Courts usually have a certain discretion to estimate
- **German cartel damages law:**
 - Claimants may base damage calculation on the defendant's profits
 - Defendant may not invoke the so-called “defense of alternative legal behaviour”
 - Defendant may not invoke passing-on defense when unlikely that lower market level will assert damages

Timing

STATUTE OF LIMITATION

Cartel Damages Directive

- **5 year** limitation period
- Limitation only period starts:
 - behaviour has ended
 - Claimant has knowledge that the behaviour constitutes an infringement
 - Claimant has knowledge of the damage
 - Claimant has knowledge of the infringer
- Limitation period must be suspended/interrupted during investigation proceedings
- Transposition into national law: 27 Dec 2016

European Court of Justice: Claims before transposition of CDD

- ECJ, C-605/21 – *Heureka*:
- *Effet utile*: limitation period for damages claims related to Art. 101, 102 TFEU cannot begin before:
 - infringement has ended
 - Claimant has knowledge of the “*information necessary for bringing its action for damages*”
 - = infringement of competition law, the existence of harm, the causal link between that harm and that infringement, and the identity of the infringer
- ECJ, C-605/21 – *Heureka* (2024): “*publication of the summary of the Commission decision in the Official Journal of the European Union*”
- ECJ, C-21/24 – *Nissan* (2025):
 - decision must be final and information arising from the final decision must be public
 - In case of a decision of the Spanish Competition Authority: publication of the final judgment confirming the decision

THANK YOU

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