

GOOGLE 15 YEARS ON – KEY LEARNINGS, ANTITRUST CHALLENGES, AND THE ROAD AHEAD

‘LOOKING BACK AT A LONG, WINDING ROAD’

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*DISCLOSURE: BRUNSWICK, A GLOBAL ADVISORY FIRM, MAY PROVIDE LITIGATION SUPPORT TO GOOGLE IN THE US. TODAY I
WILL SPEAK ONLY ON MATTERS THAT ARE PUBLICLY AVAILABLE, SOMETIMES ADDING MY PERSONAL REFLECTIONS*



TIME DOES MATTER

- A DECADE AND A HALF IS SUBOPTIMAL FOR EVERYONE
 - DG COMP HAS IN THE PAST ALREADY ATTEMPTED TO SPEED UP ITS ANTITRUST CASES
 - IN JULY 2025, DG COMP LAUNCHED A COMPREHENSIVE PUBLIC CONSULTATION SPECIFICALLY AIMED AT REVISING EU ANTITRUST PROCEDURES TO ENHANCE SPEED AND EFFICIENCY
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TIME DOES MATTER (II)

- THE COMMISSION ACKNOWLEDGED THAT INVESTIGATIONS CURRENTLY AVERAGE FIVE YEARS IN DURATION
- CASES IN FAST-MOVING DIGITAL MARKETS OFTEN BECOMING OBSOLETE BY THE TIME DECISIONS ARE REACHED
- IN THIS CONTEXT, ALSO LET'S NOT FORGET THE 'HOLY GRAIL' OF ANTITRUST:
 - EFFECTIVE REMEDIES

THE FIRST COMPLAINTS

- IN NOVEMBER 2009 *FOUNDEM*, A UK PRICE COMPARISON WEBSITE, LODGED THE FIRST FORMAL COMPETITION COMPLAINT AGAINST GOOGLE WITH THE EUROPEAN COMMISSION
 - ALLEGING THAT GOOGLE WAS ABUSING ITS DOMINANT POSITION IN SEARCH BY SYSTEMATICALLY PENALIZING COMPETING SERVICES WHILE PROMOTING ITS OWN
- IN FEBRUARY 2010 THE COMMISSION CONFIRMED RECEIPT OF THREE ANTITRUST COMPLAINTS FROM *FOUNDEM*, *EJUSTICE.FR* (A FRENCH LEGAL SEARCH ENGINE), AND *CIAO* (OWNED BY MICROSOFT)

AND THE LONG JOURNEY BEGINS

- IN NOVEMBER 2010, THE COMMISSION FORMALLY OPENED ITS ANTITRUST INVESTIGATION INTO GOOGLE'S SEARCH PRACTICES
- THE COMMISSION WAS EXAMINING ALLEGATIONS THAT GOOGLE ABUSED ITS DOMINANT POSITION IN ONLINE SEARCH BY LOWERING THE RANK OF COMPETING SERVICES AND IMPOSING EXCLUSIVITY CONTRACTS ON ADVERTISING PARTNERS

SETTLEMENT ATTEMPTS

- BETWEEN 2012-14, SETTLEMENT ATTEMPTS WERE MADE UNDER THE DIRECTION OF COMMISSIONER JOAQUÍN ALMUNIA
- ON 21 MAY, 2012, COMMISSIONER ALMUNIA PUBLICLY OUTLINED FOUR AREAS OF CONCERN REGARDING GOOGLE'S BUSINESS PRACTICES THAT COULD CONSTITUTE ABUSES OF MARKET DOMINANCE AND
 - HE GAVE GOOGLE "A MATTER OF WEEKS" TO OFFER REMEDIES TO ADDRESS THESE CONCERNS, RATHER THAN FACE FORMAL CHARGES AND ADVERSARIAL PROCEEDINGS, THAT IS, FORMAL CHARGES IN FORM OF AN ISSUANCE OF A STATEMENT OF OBJECTIONS

THE FOUR AREAS OF CONCERN

- PREFERENTIAL DISPLAY OF GOOGLE'S OWN VERTICAL SEARCH SERVICES
- COPYING AND SCRAPING OF THIRD-PARTY CONTENT
- EXCLUSIVITY IN ADVERTISING FOR SEARCH TERMS
- RESTRICTIONS ON PORTABILITY OF ADVERTISING CONTENT

THE FAILED SETTLEMENT

- IN APRIL 2013 THE COMMISSION BEGAN A MARKET TEST OF GOOGLE'S PROPOSED COMMITMENTS UNDER ARTICLE 9 OF THE ANTITRUST REGULATION
- IN OCTOBER 2013 GOOGLE SUBMITTED REVISED SETTLEMENT PROPOSALS
- IN FEBRUARY 2014 GOOGLE REACHED A TENTATIVE SETTLEMENT AGREEMENT WITH COMMISSIONER ALMUNIA. THE PROPOSED SETTLEMENT WOULD HAVE REQUIRED GOOGLE TO DISPLAY COMPETITOR RESULTS ALONGSIDE ITS OWN SERVICES, BUT AVOIDED ANY FINE OR FINDING OF WRONGDOING
- BETWEEN MAY-SEPTEMBER 2014, THE SETTLEMENT FACED INTENSE CRITICISM FROM COMPLAINANTS, POLITICIANS, AND MARKET PARTICIPANTS
 - ALMUNIA'S TERM AS COMPETITION COMMISSIONER ENDED IN SEPTEMBER 2014 WITHOUT FINALIZING THE SETTLEMENT, EFFECTIVELY ENDING THE ARTICLE 9 SETTLEMENT ATTEMPTS

NEW COMMISSIONER, NEW APPROACH

- IN NOVEMBER 2014, MARGRETHE VESTAGER BECAME THE NEW EU COMPETITION COMMISSIONER AND INDICATED SHE WOULD REVIEW THE GOOGLE CASE FROM THE BEGINNING
- IN APRIL 15, 2015, VESTAGER ISSUED A STATEMENT OF OBJECTIONS TO REGARDING GOOGLE'S COMPARISON SHOPPING SERVICE, ABANDONING THE SETTLEMENT APPROACH AND PURSUING A FORMAL INFRINGEMENT PROCEDURE
 - PROS AND CONS OF ARTICLE 7 AND ARTICLE 9
- IN JULY 14, 2016, THE COMMISSION ISSUED A SUPPLEMENTARY STATEMENT OF OBJECTIONS WITH ADDITIONAL EVIDENCE STRENGTHENING THE CHARGES AGAINST GOOGLE

“STRATEGIC NARROWING”

- WHILE ALMUNIA IDENTIFIED FOUR BROAD AREAS OF CONCERN ACROSS GOOGLE'S ENTIRE BUSINESS, VESTAGER DELIBERATELY NARROWED THE 2015 STATEMENT OF OBJECTIONS TO FOCUS EXCLUSIVELY ON COMPARISON SHOPPING SERVICES
- WHAT HAPPENED TO THE OTHER THREE AREAS OF ALMUNIA'S CONCERN?
 - EC MATERIALS EXPLICITLY STATE THAT THE OTHER THREE AREAS REMAINED UNDER INVESTIGATION BUT WERE NOT INCLUDED IN THE 2015 SO

THE END OF THE ROAD

- **COMPARISON SHOPPING** (2015 SO → 2017 DECISION) RESULTED IN THE €2.42 BILLION FINE FOR SELF-PREFERENCING, UPHOLD THROUGH ALL APPEALS UNTIL THE SEPTEMBER 2024 CJEU JUDGMENT
- **ANDROID** (APRIL 2015 SEPARATE INVESTIGATION) RESULTED IN A SEPARATE €4.34 BILLION FINE (REDUCED TO €4.125 BILLION ON APPEAL) FOR CONDUCT RELATED TO MOBILE OPERATING SYSTEMS
- SCRAPING AND ADVERTISING EXCLUSIVITY, THESE CONCERNS EVOLVED INTO THE SEPARATE **ADSENSE** CASE, WHICH RESULTED IN €1.49 BILLION FINE IN 2019. HOWEVER, THE GENERAL COURT ANNULLED THIS FINE IN SEPTEMBER 2024, FINDING THE COMMISSION FAILED TO ADEQUATELY DEMONSTRATE COMPETITIVE HARM

ACADEMIC SUPPORT

- GOOGLE'S DEFENSES TO THE GOOGLE SHOPPING CASE RECEIVED SUBSTANTIAL SUPPORT FROM PARTS OF THE ACADEMIC COMMUNITY—ESPECIALLY THOSE CONCERNED WITH THE LIMITS OF ARTICLE 102 TFEU AND THE RISKS OF OVER-ENFORCEMENT IN DIGITAL MARKETS
 - EQUAL TREATMENT VS. COMPETITION ON THE MERITS
 - PRODUCT DESIGN AND CONSUMER WELFARE: "PRODUCT IMPROVEMENT IS NOT ABUSE"
 - OVERBROAD MARKET DEFINITION AND LACK OF COMPETITIVE HARM
 - CAUSATION AND COUNTERFACTUAL ANALYSIS
 - REMEDIES AND PROPORTIONALITY

The image features a light gray background with a subtle radial gradient. In the top-left and bottom-right corners, there are clusters of realistic water droplets of various sizes, rendered with soft shadows and highlights. A faint, circular, embossed-like pattern is visible in the upper center of the slide.

THANK YOU FOR YOUR ATTENTION