

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.39740 — Google

(Text with EEA relevance)

(2013/C 120/09)

1. INTRODUCTION

1. According to Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽¹⁾ ('Regulation (EC) No 1/2003'), the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

2. On 13 March 2013, the Commission adopted a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003 addressed to Google Inc. ('Google').
3. In its preliminary assessment, the Commission took the view that Google engages in the following business practices that may violate Article 102 of the Treaty on the Functioning of the European Union ('TFEU') and Article 54 of the EEA Agreement:
 - the favourable treatment, within Google's horizontal Web search results, of links to Google's own vertical Web search services as compared to links to competing vertical Web search services ('first business practice') ⁽²⁾,
 - the use by Google without consent of original content from third party websites in its own vertical Web search services ('second business practice') ⁽³⁾,
 - agreements that *de jure* or *de facto* oblige websites owned by third parties (referred to in the industry as 'publishers') to obtain all or most of their online search advertisement requirements from Google ('third business practice'), and

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

⁽²⁾ Vertical Web search services are Web-based services that are by their design limited to a predefined specific categories of information on the Web. Horizontal Web search services are Web-based services that allow users to search for all information on the Web, irrespective of the nature of the information.

⁽³⁾ The preliminary assessment did not take a view as to the relationship between Google's use of original content from third party websites and intellectual property law.

- contractual restrictions on the management and transferability of online search advertising campaigns across search advertising platforms ('fourth business practice').

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

4. Google does not agree that it is engaged in the business practices described above, and with the legal analysis in the Commission's preliminary assessment. It nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's preliminary competition concerns in relation to the abovementioned business practices.
5. The key elements of the commitments are as follows:
 6. As regards the first business practice, Google will label links to Google's own vertical Web search services that are subject to a favourable placement in Google's horizontal Web search results. The label shall inform users that the links to Google's own vertical Web search services have been added by Google to provide access to its vertical Web search services, so that users do not confuse links to Google's own vertical Web search services with links to other horizontal Web search results. Where applicable, the label shall also inform users of where, in Google's horizontal Web search results, they can find links to alternative vertical Web search services.
 7. Where applicable, Google will also distinguish links to Google's own vertical Web search services from other horizontal Web search results, so that users are made aware of their different nature.
 8. Finally, where Google displays in its horizontal Web search results links to a Google vertical Web search service, as described in paragraph 6 above, that contains search advertisements or similar commercial links in more than 5 % of the instances where it is viewed by EEA users, Google will display on the horizontal Web search results page links to three relevant competing vertical Web search services. Google will make users clearly aware of the presence of these three rival links. Google will select these three competing vertical Web search services on the basis of mechanisms aimed at ensuring their relevance to the search query.
 9. As regards the second business practice, Google will offer third party websites a Web-based opt-out from the use of all content crawled from their site in Google's vertical Web search services. Upon notification of an opt-out, Google will cease displaying the content at issue in Google's vertical Web search services. The opt-out will not unduly affect the ranking of third party websites in Google's horizontal Web search results.
 10. Google will also offer eligible vertical Web search services that focus on providing product search or local search services, the possibility to mark certain categories of information in such a way that such information will not be indexed or used by Google.
 11. Finally, Google will maintain for newspaper publishers established in the EEA existing mechanisms to enable them to control, on a web page by web page basis, the display of their content in Google News.
 12. The commitments set out in paragraphs 6 to 11 above will apply irrespective of whether a Google vertical Web search service exists today or will be introduced within the period covered by the commitments.
 13. As regards the third business practice, Google commits to no longer include in its agreements with publishers any provisions or impose any unwritten obligations that would, *de jure* or *de facto*, require publishers to source their requirements for online search advertisements exclusively from Google in relation to queries from EEA users.

14. As regards the fourth business practice, Google will cease to impose any written or unwritten obligations (including in its AdWords API terms and conditions) that will prevent advertisers from porting and managing search advertising campaigns across Google's AdWords and non-Google advertising services.
15. The duration of the commitments will be five years and three months from the date on which Google receives formal notification of the Commission's decision pursuant to Article 9 of Regulation (EC) No 1/2003. Google will also appoint a trustee who will monitor its compliance with the commitments.
16. The offered commitments are published in full in English on the website of the Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

4. INVITATION TO MAKE COMMENTS

17. The Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 making binding on Google the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition.
18. In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.
19. Answers and comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed commitments, the Commission would also invite you to suggest a possible solution.
20. Observations can be sent to the Commission under reference number AT.39740 — Google either by e-mail (COMP-GOOGLE-CASES@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

European Commission
Directorate-General for Competition
Antitrust Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
