

**Summary of Commission Decision****of 18 July 2018****relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement****(Case AT.40099 — Google Android)***(notified under document C(2018) 4761)***(Only the English text is authentic)**

(2019/C 402/08)

*On 18 July 2018, the Commission adopted a decision relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003<sup>(1)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.*

**1. Introduction**

- (1) The Decision establishes that conduct by Google LLC ('Google') with regard to certain conditions in agreements associated with the use of Google's smart mobile operating system, Android, and certain proprietary mobile applications ('app's) and services, constitutes a single and continuous infringement of Article 102 of the Treaty on the Functioning of the European Union ('TFEU') and Article 54 of the EEA Agreement.
- (2) This Decision also establishes that Google's conduct constitutes four separate infringements of Article 102 TFEU and Article 54 of the EEA Agreement, each of which is also part of the single and continuous infringement.
- (3) The Decision orders Google and its parent company Alphabet Inc. ('Alphabet') to bring the infringement effectively to an end, and imposes a fine on Google and Alphabet for the abusive conduct for the period 1 January 2011 to date.
- (4) On 6 July 2018 and 17 July 2018, the Advisory Committee on Restrictive Practices and Dominant Positions issued favourable opinions on the Decision pursuant to Article 7 of Regulation (EC) No 1/2003 and on the fine imposed on Google and Alphabet.

**2. Market definition**

- (5) The Decision concludes that the relevant product markets for the purpose of this case are:
  - (a) the worldwide market (excluding China) for the licensing of smart mobile operating systems ('OS's);
  - (b) the worldwide market (excluding China) for Android app stores;
  - (c) the national markets for general search services; and
  - (d) the worldwide market for non OS-specific mobile web browsers.

**3. Dominance**

- (6) The Decision concludes that since 2011, Google holds a dominant position in: (i) the worldwide market (excluding China) for the licensing of smart mobile OSs; (ii) the worldwide market (excluding China) for Android app stores; and (iii) each of the national markets for general search services in the EEA.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1

- (7) The conclusion that Google holds a dominant position in the worldwide market (excluding China) for the licensing of smart mobile OSs is based on Google's market share, the existence of barriers to entry and expansion, the lack of countervailing buyer power and the insufficient indirect constraint from non-licensable smart mobile OSs (such as Apple's iOS).
- (8) The conclusion that Google holds a dominant position in the worldwide market (excluding China) for Android app stores is based on Google's market share, the quantity and popularity of apps available on the Google Play Store, the automatic update functionalities of the Play Store, the fact that the only way for original equipment manufacturers ('OEM's) to obtain Google Play Services is to obtain the Play Store, the existence of barriers to entry and expansion, the lack of countervailing buyer power of OEMs and the insufficient constraint from app stores for non-licensable smart mobile OSs (such as Apple's AppStore).
- (9) The conclusion that Google holds a dominant position in each of the national markets for general search services in the EEA is based on Google's market shares, the existence of barriers to entry and expansion, the infrequency of user multi-homing and the existence of brand effects and the lack of countervailing buyer power.

#### 4. Abuse of a dominant position

##### *Tying of the Google Search app*

- (10) Since at least 1 January 2011, Google has tied the Google Search app with the Play Store. The Commission concludes that this conduct constitutes an abuse of Google's dominant position in the worldwide market (excluding China) for Android app stores.
- (11) First, the Decision demonstrates that: (i) the Play Store and the Google Search app are distinct products; (ii) Google is dominant in the market for the tying product (worldwide market (excluding China) for Android app stores); and (iii) the tying product (Play Store) cannot be obtained without the tied product (the Google Search app).
- (12) Second, the Decision concludes that the tying of the Google Search app with the Play Store is capable of restricting competition. This is because: (i) the tying provides Google with a significant competitive advantage that competing general search service providers cannot offset; and (ii) the tying helps to maintain and strengthen Google's dominant position in each national market for general search services, increases barriers to entry, deters innovation and tends to harm, directly or indirectly, consumers.
- (13) Third, the Decision concludes that Google has not demonstrated the existence of any objective justification for the tying of the Google Search app with the Play Store.

##### *Tying of Google Chrome*

- (14) Since 1 August 2012, Google has tied Google Chrome with the Play Store and the Google Search app. The Commission concludes that this conduct constitutes an abuse of Google's dominant position in the worldwide market (excluding China) for Android app stores and the national markets for general search services.
- (15) First, the Decision demonstrates that: (i) Google Chrome is a distinct product from the Play Store and the Google Search app; (ii) Google is dominant in the markets for the tying products (worldwide market (excluding China) for Android app stores and national markets for general search services); and (iii) the tying products (the Play Store and the Google Search app) cannot be obtained without the tied product (Google Chrome).

- (16) Second, the Decision concludes that the tying of Google Chrome with the Play Store and the Google Search app is capable of restricting competition. This is because: (i) the tying provides Google with a significant advantage that competing non OS-specific mobile browsers cannot offset; and (ii) the tying deters innovation, tends to harm, directly or indirectly, consumers of mobile web browsers and helps to maintain and strengthen Google's dominant position in each national market for general search services.
- (17) Third, the Decision concludes that Google has not demonstrated the existence of any objective justification for the tying of Google Chrome with the Play Store and the Google Search app.

*The licensing of the Play Store and the Google Search app conditional on the anti-fragmentation obligations in the AFAs*

- (18) Since at least 1 January 2011, Google makes the licensing of the Play Store and the Google Search app conditional on hardware manufacturers agreeing to the anti-fragmentation obligations in the AFAs. The Commission concludes that this conduct constitutes an abuse of Google's dominant positions in the worldwide market (excluding China) for Android app stores and the national markets for general search services.
- (19) First, the Decision demonstrates that entering into the anti-fragmentation obligations is unrelated to the licensing of the Play Store and the Google Search app, that Google is dominant in the worldwide market (excluding China) for Android app stores and in the national markets for general search services, and that the Play Store and the Google Search app cannot be obtained without entering into the anti-fragmentation obligations.
- (20) Second, the Decision establishes that the anti-fragmentation obligations are capable of restricting competition. This is because: (i) Android forks constitute a credible competitive threat to Google; (ii) Google actively monitors compliance with, and enforces, the anti-fragmentation obligations; (iii) the anti-fragmentation obligations hinder the development of Android forks; (iv) compatible forks do not constitute a credible competitive threat to Google; (v) the capability of the anti-fragmentation obligations to restrict competition is reinforced by the unavailability of Google's proprietary APIs to fork developers; and (vi) Google's conduct helps to maintain and strengthen Google's dominant position in each national market for general search services, deters innovation, and tends to harm, directly or indirectly, consumers.
- (21) Third, the Decision concludes that Google has not demonstrated the existence of any objective justification for making the licensing of the Play Store and Google Search conditional on the anti-fragmentation obligations.

*Portfolio-based revenue share payments conditional on the pre-installation of no competing general search service*

- (22) Between at least 1 January 2011 and 31 March 2014, Google granted payments to OEMs and mobile network operators ('MNO's) on condition that they pre-installed no competing general search service on any device within an agreed portfolio. The Decision concludes that this conduct constituted an abuse of Google's dominant position in the national markets for general search services.
- (23) First, the Decision concludes that Google's portfolio-based revenue share payments constituted exclusivity payments.
- (24) Second, the Decision concludes that Google's portfolio-based revenue share payments were capable of restricting competition. This is because Google's portfolio-based revenue share payments: (i) reduced the incentives of OEMs and MNOs to pre-install competing general search services; (ii) made access to the national markets for general search services more difficult; and (iii) deterred innovation.

- (25) Third, the Decision concludes that Google has not demonstrated the existence of any objective justification for the grant of portfolio-based revenue share payments.

*Single and continuous infringement*

- (26) The Decision concludes that the four different forms of conduct described above constitute a single and continuous infringement of Article 102 TFEU and Article 54 of the EEA Agreement.
- (27) First, the four different forms of conduct all pursue an identical objective of protecting and strengthening Google's dominant position in general search services and thus its revenues via search advertisements.
- (28) Second, the four different forms of conduct are complementary in that Google creates an interlocking interdependence between them.

**5. Jurisdiction**

- (29) The Decision concludes that the Commission has jurisdiction to apply Article 102 TFEU and Article 54 of the EEA Agreement to Google's conduct, since it is implemented in the EEA and is capable of having substantial, immediate and foreseeable effects in the EEA.

**6. Effect on trade**

- (30) The Decision concludes that Google's conduct has an appreciable effect on trade between Member States within the meaning of Article 102 TFEU and between the EEA Contracting Parties within the meaning of Article 54 of the EEA Agreement.

**7. Remedies and Fines**

- (31) The Decision requires Google and Alphabet to bring effectively to an end the single and continuous infringement and each of the four separate infringements, within 90 days of notification of the Decision, insofar as they have not already done so, and to refrain from adopting any act or conduct having the same or equivalent object or effect. The Decision indicates that if Google and Alphabet fail to comply with the requirements of the Decision, the Commission imposes a daily periodic penalty payment of 5 % of Alphabet's average daily turnover in the preceding business year.
- (32) The fine imposed on Google and Alphabet for the infringements is calculated on the basis of the principles laid out in the 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. For the single and continuous infringement consisting of four separate infringements, the Decision imposes a fine of EUR 4 342 865 000 on Google, of which EUR 1 921 666 000 jointly and severally with Alphabet.
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