

**Action brought on 11 September 2017 — Google and Alphabet v Commission**

(Case T-612/17)

(2017/C 369/51)

*Language of the case: English***Parties**

*Applicants:* Google Inc. (Mountain View, California, United States) and Alphabet Inc. (Mountain View) (represented by: T. Graf, R. Snelders and C. Thomas, lawyers, K. Fountoukakos-Kyriakakos, Solicitor, R. O'Donoghue and D. Piccinin, Barristers)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- annul the Commission decision of 27 June 2017 relating to proceedings under Article 102 TFUE and Article 54 of the Agreement on the EEA (AT.39741 — Google Search (Shopping));
- in the alternative, annul or reduce the fine imposed on the Applicants in exercise of the Court's unlimited jurisdiction, and
- in any event, order the Commission to bear the Applicants' costs and expenses in connection with these proceedings.

**Pleas in law and main arguments**

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging that the contested decision errs in finding that Google favoured a Google comparison shopping service by showing grouped product results (Product Universals).
  - The applicants put forward that the contested decision misstates the facts. According to the applicants, Google launched grouped product results to improve quality, not to drive traffic to a Google comparison shopping service.
  - The applicants further put forward that the contested decision errs in finding that treating product results and generic results differently involved favouring, when there was no discrimination.
  - The applicants finally put forward that the contested decision violates the legal standard for assessing Google's objective justifications for showing Product Universals.
2. Second plea in law, alleging that the contested decision errs in finding that Google favours a Google comparison shopping service by showing grouped product ads (Shopping Units).
  - The applicants put forward that the contested decision errs in finding that treating grouped product ads and free generic results differently involves favouring, when there is no discrimination.
  - The applicants further put forward that the contested decision errs in finding that product ads in Shopping Units benefit a Google comparison shopping service.
  - The applicants finally put forward that the contested decision violates the legal standard for assessing Google's objective justifications for showing Shopping Units.

3. Third plea in law, alleging that the contested decision errs in finding that the alleged abusive conduct diverted Google search traffic.
  - The applicants put forward that the contested decision does not demonstrate that the alleged abusive conduct decreased Google search traffic to aggregators.
  - The applicants further put forward that the contested decision does not demonstrate that the alleged abusive conduct increased traffic to a Google comparison shopping service.
4. Fourth plea in law, alleging that the contested decision errs in finding that the alleged abusive conduct is likely to have anticompetitive effects.
  - The applicants put forward that the contested decision errs because it speculates about potential anticompetitive effects without examining actual market developments.
  - The applicants further put forward that the contested decision fails to take proper account of the competitive constraint exercised by merchant platforms.
  - The applicants finally put forward that even if the competitive analysis could be limited to aggregators, the contested decision fails to show anticompetitive effects.
5. Fifth plea in law, alleging that the contested decision errs by treating quality improvements that constitute competition on the merits as abusive.
  - The applicants put forward that the decision wrongly characterises Google's product improvements in general search as abusive leveraging.
  - The applicants further put forward that the contested decision demands that Google supply aggregators with access to its product improvements, without meeting the requisite legal conditions.
6. Sixth plea in law, alleging that the contested decision errs in imposing a fine.
  - The applicants put forward that a fine was not warranted because the Commission advanced a novel theory, selected the case for commitments, and previously rejected the remedy.
  - The applicants further put forward that the contested decision errs in calculating the fine.

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**Action brought on 13 September 2017 — Poland v Commission**

**(Case T-624/17)**

(2017/C 369/52)

*Language of the case: Polish*

**Parties**

*Applicant:* Republic of Poland (represented by: B. Majczyna, acting as Agent)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the Commission's decision of 30 June 2017 on the State aid SA.44351 (2016/C) (ex 2016/NN) implemented by Poland for the tax on the retail sector, notified under document C(2017) 4449; and
- order the European Commission to pay the costs.