

4. Fourth plea in law, alleging that the contested decision of 1 December 2017 is vitiated by a manifest error in the competition process, in that the disputed questions of the verbal reasoning computer-based tests were subject to a material irregularity.

(¹) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 9 October 2018 — Google and Alphabet/Commission

(Case T-604/18)

(2018/C 445/26)

Language of the case: English

Parties

Applicants: Google LLC (Mountain View, California, United States), Alphabet, Inc. (Mountain View) (represented by: N. Levy, Solicitor, P. Stuart, Barrister, J. Schindler and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the Commission's decision of 18 July 2018 in case COMP/AT.40099 —Google Android;
- 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

The present action seeks the annulment of the Commission's decision C(2018) 4761 final of 18 July 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (AT.40099 — Google Android).

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 its assessments of market definition and dominance.
 - In this regard, the applicants submit that the contested decision errs in finding Android dominant.
 - The applicants further claim that the contested decision errs in finding Play dominant.
 - The applicants also put forward that the contested decision's claim that Google is dominant in general search services provided to users does not fit its theory of abuse, which relates to search apps licensed to original equipment manufacturers.
2. Second plea in law, alleging that the contested decision errs in finding Google's mobile application distribution agreement's preinstallation conditions abusive.
 - In this regard, the applicants submit that the contested decision fails to demonstrate that the challenged preinstallation conditions were likely to foreclose competition.
 - The applicants further claim that the contested decision wrongly ignores that the preinstallation conditions are objectively justified because they enable Google to provide the Android platform for free.

3. Third plea in law, alleging that the contested decision errs in finding that the sole preinstallation condition in Google's portfolio-based revenue-sharing agreements was abusive.
4. Fourth plea in law, alleging that the contested decision errs in finding that it was abusive for Google to condition Play and Google Search app licenses on the anti-fragmentation agreement's anti-fragmentation obligations.
 - In this regard, the applicants submit that the contested decision errs in finding that the anti-fragmentation obligations are likely to restrict competition.
 - The applicants further claim that the contested decision fails to take into account that the anti-fragmentation obligations are objectively justified because they ensure compatibility.
5. Fifth plea in law, alleging that the contested decision infringed the applicants' rights of defence.
 - In this regard, the applicants submit that the Commission improperly put its 'as efficient competitor' analysis to the applicants in letters of facts and refused them an oral hearing.
 - The applicants further claim that the Commission infringed the applicants' rights of access to file.
6. Sixth plea in law, alleging that the contested decision errs in imposing a fine and in calculating that fine.
 - In this regard, the applicants submit that the fine is unlawful because it fails to consider Google's lack of intent or negligence.
 - The applicants further claim that the fine is unlawful because it does not respect the principle of proportionality.
 - In the alternative, the applicants also put forward that the contested decision errs in calculating the fine.

Action brought on 5 October 2018 — Fujifilm Recording Media v EUIPO — iTernity GmbH (d: ternity)

(Case T-609/18)

(2018/C 445/27)

Language in which the application was lodged: German

Parties

Applicant: Fujifilm Recording Media GmbH (Kleve, Germany) (represented by: R. Härer, C. Schulze, C. Weber, H. Ranzinger und C. Gehweiler, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: iTernity GmbH (Freiburg, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'd:ternity' — EU trade mark No 11 152 154

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 July 2018 in Case R 2324/2017-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- in the alternative, declare that there is no need to adjudicate on the dispute in the main proceedings;