

NO COMPARISON



Google fined € 2.4 billion for downgrading rival shopping sites

The European Commission has fined Google a record-breaking € 2.4 billion by seeking to use its search algorithms to systematically promote its own site, Google Shopping, and demote rival sites such as Foundem and Kelkoo in its search results. Essentially, when you search for a product on Google, the search algorithms were written to make sure that what you see at the top are the relevant entries from Google Shopping, with hits for other sites several pages down in the results. As a result, the Commission says, rival services have been denied the chance to compete on the merits and to innovate, denying customers the benefit of choice and innovation.

Google's practices were found to be an abuse of a dominant position affecting 13 EEA countries for a period from 2008 onwards. The scope and length of the infringement are an important factor in the scale of the fine, which is more than twice any other ever imposed by the Commission.

The decision comes at the end of a 7 year investigation by the European Commission and is highly likely to be followed by an appeal. Google has made no secret of its view that the Commission's approach is misconceived, particularly in failing to take account of the role of Amazon and e-bay in online shopping. It is part of a series of continuing battle between Google and the Commission, which has two other ongoing cases on its books.

The decision is also likely to be followed by re-invigorated damages claims by those price comparison sites whose businesses may have been stifled by Google's practices. The Commission's announcement gives a nod to these potential claims, finding that traffic to rival sites dropped dramatically (up to 85% in the UK) after Google began to apply demotions in its searches and concludes that these sudden drops could not be explained by other factors. If courts agree, the fine could in time be supplemented by substantial damages pay-outs.

Quite apart from the fine, it is the impact of the Commission's requirement that Google treat rival comparison sites in the same way as its own when a consumer searches that will be closely watched in the retail space. It is up to Google how it does it, but it will need to apply the same processes and methods to position and display rival comparison shopping services and its own site. Such changes should come quickly, with Google given 90 days to comply with the Commission's order to change its search processes. The result could be the rapid evolution of quite a different online shopping landscape to that we have today.

For consumers, the product ads at the top of a Google search are arguably convenient and easy. However, for retailers, being reliant on a major gatekeeper to reach customers online can be uncomfortable. The Commission's decision creates the possibility of more innovation and choice for retailers and consumers alike.

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