

# Analysis On The Effect Of Eu Policies On Google

**Mudit Garg, Garima Jain**

NMIMS University, Mumbai,  
401, Sai Raj CHS, Sector6, Airoli, Navi Mumbai, MH-400708, India, PH-+919920698881  
[mrg.nmims@gmail.com](mailto:mrg.nmims@gmail.com)

NMIMS University, Mumbai  
88, St.no 5, Subhash Nagar, Sheoganj, Sirohi, RJ-307027, PH-+918619627821  
[garima.nmims@gmail.com](mailto:garima.nmims@gmail.com)

**Abstract:** European Competition Law was meant to conform to fairness in trade. However, its targeting remained to only a few companies rather than global monitoring. The paper analyses the effect of EU Policies and its independent anti-trust investigations on its worst victim, Google. The paper also aims to outline the fact that the radar of European Union's GDPR was purposely set over US based tech giants that further leads to a broader strategic objective of breaking them financially.

**Keywords:** Google, European Union (EU), GDPR, Competition Law

## 1. INTRODUCTION

European Competition law is the competition law in use within the European Union. It promotes the maintenance of competition within the European Single Market by regulating anti-competitive conduct by companies to ensure that they do not create cartels and monopolies that would damage the interests of society. An add-on to this, which we can also call the machine gun of EU's Anti-Trust Investigation is the Abuse of Dominance provision, or Article 102. The provision aims to protect competition and promote consumer welfare by preventing firms from abusing dominant market positions. This objective has been emphasized by EU institutions and officials on numerous occasions, for example Google, Facebook, MasterCard, Amazon, and many more cases. To the unlikely surprise, the subjects by far have been giants of US economy operating on European land. Since 2010, the European Union has launched three separate antitrust investigations into Google for violating the EU's competition laws due to its dominant position in the market. These cases have resulted in formal charges against Google related to Google Shopping, Google AdSense and the Android operating system. Till date, Google has been found guilty of antitrust behavior in the cases related to Google Shopping and Android, and has been fined over €6 billion, another case is already in progress. In all the above cases, the international antitrust bodies have supported Google's business procedures and questioned the fine, since it was imposed without warning and despite formal changes and full compliance by Google. On 10 November 2010, the European Commission opened a formal investigation into Google's search algorithm, following a number of complaints issued by small web companies based in US and EU, that Google was downgrading their placement in results returned in Google's search results, and that Google was preferentially favoring their own products over competitors. The EC's investigation also considered if there were issues with Google's terms of use for Google AdSense that prevented those using AdSense to not use advertising from Google's competitors. On 15 April 2015, five years into the investigation, the EC issued its first Statement of Objections towards Google related towards its preferential treatment of its Google Shopping product (including Google Product Search) in search results. The specific complaints issued by the EC included:

- Google's search results predominate display Google Shopping results regardless of the merits of how well the Google Shopping results met the results of the search query.
- Google does not apply its system of penalties, a predefined set of parameters to lower the placement of shopping results, to its own Google Shopping results as it did to other competitors.
- Google had already attempted a shopping product, Froogle, but which it did not give any preferential treatment, and as a result, performed poorly. In contrast, Google Shopping was given favorable placement in Google's search result, allowing the service to achieve higher rates of growth.
- Google's favoring of Google Shopping thus had a negative impact on consumers and innovation.

On 7 June 2017, Google was found guilty and was charged €2.4 billion (about US\$2.7 billion), the largest such antitrust fine issued by the EC. Google has denied the European Union's accusations against them and made a statement claiming "its services had helped the region's digital economy grow". The fine represented just over 2.5% of Google's 2016 revenue. Those who are in competition with Google are pushing for their company to be individually monitored, for fear of losing more business to the dominant search engine. This would include investigating and overhauling Google's most prized search page algorithm, PageRank. The EU's Competition Commission decided to monitor their decision and Google's compliance with it, due to its obligation to report to the EUCC on a regular basis (every four months). Although the issue seems like it is at a close, the European Commission believes it will continue for some time. In order to comply, Google is effectively separating its comparison-shopping service into its own company after the fine. The Google Shopping service still will be a part of Google but will run completely separately with its own revenues and profits. This move will allow Google to avoid further fines, according to Bloomberg, as it complies with the European Union's order of allowing even treatment to businesses, no matter if they compete with Google or not. However, even though Google is complying in part, the company is still appealing the decision. Google responded in its appeal papers to the EU's Antitrust Fine by stating that the EU chair misstated facts and did not show

enough evidence to prove that their site hurt rivals. Google wants the fine either overturned or reduced. The appeal was based on six arguments, with two of them being that the court did not prove that Google favored its own shopping service by placing paid ads on top the search results. Two of them stated that the courts misstated facts and evidence, and the other two argued that a fine was not warranted as a possible penalty.

## 2. RESEARCH PROBLEM

EU has been straining its wings over the digital world for a while. Two of the major policies which sworded the Silicon Valley are GDPR and Antitrust investigations. Anti-Trust investigations imply to European competition law, which is the competition law in use within the European Union. It promotes the maintenance of competition within the European Single Market by regulating anti-competitive conduct by companies to ensure that they do not create cartels and monopolies that would damage the interests of society. An add-on to this, which we can also call the machine gun of EU's Anti-Trust Investigation is the Abuse of Dominance provision, or Article 102. The provision aims to protect competition and promote consumer welfare by preventing firms from abusing dominant market positions. This objective has been emphasized by EU institutions and officials on numerous occasions, for example Google, Facebook, MasterCard, Amazon, and many more cases. It has been indicated by industry experts and Global leaders that this step is a way to pump the European economy and rather a targeted investigation than a fair one. As a consequence of such policies and legislations an outflow of billions of dollars has been generated from the US economy into the European economy in the form of fine imposed on targeted US tech-giants. The provisions of such policies conclusively led to the benefit of the European local tech industry globally. Although the EU states that it was meant to break the monopoly of tech-giants in the industry and to regulate the giants' operations in the European territory, the tech-giants had paid millions of dollars as fine, hereby initiating to change their operation. Instead of time allotment to review policies, EU increased the frequency (and amount) of fines imposed over some targeted giants. Interestingly, there has been no report that state any warning or notice to any Asian or American tech companies regarding GDPR compliance issues. Prior to GDPR, all tech companies worked the same way, yet one was chosen to 'set an example' for others. If this isn't targeting, then what is it? The research raises a question on regulation of investigations conducted by EU.

## 3. RESEARCH PROBLEM

- How has EU's policies affected the tech-giant Google?
- What is the real motive behind targeting Google?
- Whether the EU's policies and investigations adversely affect the consumers and R&D of leading Android-based mobile manufacturer?

## 4. SCOPE OF THE PAPER

The paper studies the effect of EU's policies on Google, and how it directly affects the android community on the European land. The paper also attempts to analyze the biased motives of EU regulators against Google. The paper further

compares behavior of EU regulations towards other tech-giants to that of Google.

## 5. RESEARCH METHODOLOGY

For the following research paper, the method employed for research is that of secondary means. The research began by conducting an extensive literature review. The review included, but was not limited to, relevant research literature, various research papers, blogs, journals, newspapers, daily news articles, review reports and eBooks. Internet has provided with major contribution to explore into the various dimensions of the topic by providing with latest and relevant information. Efforts have been made to be as objective and analytical as possible while conducting research.

## 6. REVIEW OF LITERATURE

### Tom Warren, Google Fined A Record \$5 Billion By The Eu For Android Antitrust Violations, The Verge, July 18, 2018

The author in the article implicates the consequences to be dealt by the Android industry if Google has to be removed from being bundled in android phones in violation of Android antitrust laws. The author also furnishes that Google has provided a free-spree market for android and regulating the activities of Google in the name of fair competition will not only hamper the free business model of Android but also will lead to a downfall in the android market.

### → Peter Sayer, Android And Antitrust: What You Need To Know About The EU Google Antitrust Case, IDG News Service, June 7, 2018

The author highlights that the anti trust case of EU against the Google in the year 2015. The case has been made certainly on three major points, which are:

- whether Google illegally hindered the development and market access of rival mobile applications or services by requiring or incentivizing smartphone and tablet manufacturers to exclusively pre-install Google's own applications or services;
- whether Google has prevented smartphone and tablet manufacturers who wish to install its applications and services on some of their Android devices from developing and marketing modified and potentially competing versions of Android (so-called "Android forks") on other devices, thereby illegally hindering the development and market access of rival mobile operating systems and mobile applications or services;
- whether Google has illegally hindered the development and market access of rival applications and services by tying or bundling certain Google applications and services distributed on Android devices with other Google applications, services and/or application programming interfaces of Google.

Also, the author tries to compile the whole scenario and give away the remedies in order to keep the android market in line, that could mean mobile phones with access to the Play store, but with some other search engine or browser set as the default in place of Google Search or Chrome, appearing on the market from major manufacturers.

### **Jon Porter, Google Accused of GDPR Privacy Violations by Seven Countries, The Verge, November 27, 2018**

The author reveals the complaints against Google with regards to national data protection laws in keeping with GDPR rules, which came in the wake of the discovery that Google can track user's location even when the "Location History" option is turned off. The BEUC claims that Google uses 'deceptive practices' to get users to enable both these options and does not fully inform users of what doing so entails as such consent is not freely given. The author also refers to the response of Google which entails that Location History is turned off by default, and that it makes clear that disabling it does not prevent all location tracking. It said that it intends to read the report to see if it contains any information for it to take on board. As a new piece of legislation enacted in May 2018, GDPR violations are still relatively untested in courts so it's unclear exactly how strong of a case these consumer groups have. If successful, GDPR states that Google might be liable to pay a fine of up to four percent of its global revenues, which would be over \$4 billion based on its 2017 filings.

## **7. CHAPTER I- EFFECT OF EU POLICIES ON GOOGLE**

The European Union levied a \$2.7 billion fine against Google in 2017 for illegally disadvantaging (alleged) several European e-commerce sites by algorithmically favoring Google Shopping results over their own. The reasons for the fine were quite tedious, even by going through the usual standards of EU bureaucratic action. The specific Google product at issue in hand wasn't well-known or widely used and the specific companies involved weren't well-known either, which raises an ambiguity over selection of Google for EU's investigation. While the cash stakes were nothing to sneer at, the amount of money involved was relatively trivial because of Google's overall scale. Although this raised a concern that regulators are bringing a new thinking to digital antitrust, this also posed a query as to what is the basis of investigation and setting up the fine. From the standpoint of American antitrust authorities, Google is largely immune to scrutiny on two grounds. One is the theory that despite its large market share, Google is no monopoly because competition is 'just a click away.' A traditional monopoly would rely on control over physical asset to make competition literally impossible. By contrast, it's genuinely quite easy to navigate over Bing or Duck Duck Go if you decide, you don't have to necessarily use Google for web search. The other is that US antitrust doctrine since the late-1970s has focused exclusively on consumer welfare, typically with a narrow focus on consumer prices. Legally suspect monopoly behavior would raise prices while Google is 100% free. From Google's point of view, all of this is broadly ridiculous. It implies a punishment for success and opportunities. If Google had to be selfish, it would keep users away from using competitor's web engine, and force Google on them. Truly, an anti-competitive move would be for regulators to prop up non-Google information services by preventing Google from outcompeting them, which is reflected upon with EU's fines. According to CNN, EU's fine took a big share, but not big enough to hurt Google. The €4.34 billion (\$5 billion) penalty was a record fine, "Google can brush [the fine] off without an enormous amount of difficulty," said Richard Windsor, founder of the tech research firm Radio Free Mobile. Mark Patterson, an

antitrust expert and law professor at Fordham University, said the biggest win for Google was that the Commission did not order it to share the user data that forms the backbone of its business. Clearly, that's where the regulators 'nearly missed' their target. The Commission has been fighting with Google on multiple fronts for almost a decade. With the third antitrust case, which is still being investigated, involves the Google advertising placement service AdSense. If not biased target, then what should it be? Google's way of trading is completely fair. Looking in the android chapter of Google, Google's Android is an open-source operating system (OS) for smartphones, tablets, and other mobile devices -- meaning hardware manufacturers are free to alter the software to fit their needs. Manufacturers who make extensive changes to Android sell what are known as 'forked' devices. For manufacturers who wanted the convenience of the OS plus a suite of software and services to go with it, Google offered an Android license for free. However, the Google Play Store for app downloads was required to be bundled with Google Search and Chrome internet browser, and manufacturers had to pre-install numerous other Google apps and search products on devices. Google was able to license its OS for free because it makes the lion's share of its revenue off advertising on Search -- to the tune of 86% of the company's \$32.5 billion in revenue last quarter. Now, technically, even in the Barter system, when something is to be bought, the other is to be paid. If there's a service in exchange for service, or product in exchange for product, with both parties agreeing to it, this should be considered fair trade. If any third party, not participating, neither complying with the trade, raises question of illegal monopoly and antitrust. It would probably make things difficult for the people who managed to survive on barter with the giant. According to Google and millions of users using it, people have a choice in the market. Let's say in search, about 2% searches go through Bing as well. But EU had to impose binding regulation which Google complied with. According to a report from The Verge, that licensing fee (for what was free before) will be as much as \$40 per phone and \$20 per tablet. The fee could be waived with the additional licensing of Search and Chrome. Google will also now allow phone makers that want to distribute Google apps to build non-compatible devices for the European Economic Area (EEA). That is, people will be asked if they would like to go with the EU way or the Google way. With the scenario of the decade put front, it's understandable that the EU regulators want to foster choice, competition, and innovation. But the Commission may have just ventured into the realm of unintended consequences. As history speaks for itself, Google would not only survive, it could come way stronger than ever in the end, backed by millions who already use Google and Google's premium customer satisfaction and optimum experience services.

## **8. CHAPTER II- TARGETING GOOGLE BY EU**

The European Union's GDPR and anti-trust policies are relatively young, but Google is already in hot water over claimed violations. Such so called scandals have been happening across the globe, but ironically, only US based market giants have caught the limelight. Between the massive data breaches in world-famous companies and the plethora of ongoing scandals of Facebook, 2018 was the year that personal data protection began to make headlines and

has generated concern all over the world. And there was one game-changer among all these cases: the GDPR, the new European General Data Protection Regulation, which has been mandatory since May 25, 2018. For companies, the fines can go up to 20 million Euros or 4% of company's revenue. The only way to avoid the consequences of the GDPR and competition laws is to comply with it, getting ahead of incidents involving personal data and user consents. One question that arises to any individual's mind is that Apple and Google share equivalent amount of data usage, followed by Microsoft and even MasterCard, then why a harder hit to Google? Strategically, Google has the widest market set as compared to any of the other data using companies. Nonetheless, any EU company wouldn't even account of a percent of data that Google processes every second. If Google, the wild animal that can potentially monopolize any market of its choice by will, which is heavily chained, broken by regulations, fines and threat to its reputation, a way would easily be paved for any small-scale company to match Google or create a competition. "The European Union harbors 'grave suspicions' about the dominance of Google and has not ruled out breaking it up", the bloc's competition commissioner had warned in March 2018. Reportedly, the EU believes that Google holds market dominance in three separate markets and that Google is using its dominant position to limit its competition. Google has been alleged of forced consent over personal data, dominance in search, compelling the phone market, all of it accompanied by hefty fines one after the other without any warning or consideration to the fact that Google complied to majority of amendments in its policies while challenging some in USA courts. Historically, EU has been after Google since 2010. For instance, the 'Search' investigation took 5 years to complete, where they simply tried to find out Google's loopholes in favoring its partner while jumping on priorities for its competitors. A simple justification for any market is natural competition. Considering Microsoft and Apple for instance, while Microsoft sent a complimentary Media Player as a bundle while facing alternate competitor VLC, Apple faced mobile phone competition from China – the place where it manufactures. On similar lines, despite market share and monopolistic position of Google in the market, its efforts of harboring competition cannot be considered as abuse of power, at least not without strong evidence. But Europe has said that it isn't enough and the mere fact that some competition is possible doesn't mean that a firm with a dominant position won't be tagged for abusing its power. Abuse of a dominant position is a central no-no of European antitrust law, and the preliminary view of the European Commission is that Google holds a dominant position in three different markets, which the EU calls general internet search services, licensable smart mobile operating systems, and app stores for the Android mobile operating system. From the behavior and statements of EC's officials, their targeting is heavily biased, naturally due to the relatively young laws, they are after the 'big fish' in the pond. Apple and Microsoft and even MasterCard have been hit at least once with EU fines but for Google it was high at frequency. EU's willingness to chase Google here clearly reflects its continuing efforts to regulate Google's core search business, and perhaps a belief that given Android's numerical dominance in phone sales, Google is a bigger target than Apple or any other company. For a need of neutral investigation, EU presumably believes that is

workable even if it isn't clear that it will accomplish anything. It is the exact point where they deviate from their standpoint. Instead of maintaining fairness of data protection, they end up resolving grudges or fueling their interests in shadow of an investigation.

### 9. CHAPTER III- ADVERSE EFFECTS ON THE ANDROID SECTOR

The European Commission's decision to fine Google €4.34 billion for abuse of market power has been accused of being politically motivated and of risking higher prices for consumers by numerous experts across the globe. According to a study by Vox and their panel of experts, here are several myths about the EU-Google case:

- ✓ This is another case about Google abusing its market power in search. No, this case is not about search dominance but Google's way of operation elsewhere.
- ✓ There cannot be anti-competitive effects when competition is 'a click away'. No, a key question in the case is the extent to which granting a search engine or app default status results in significant changes in its level of usage. This is a purely empirical question without any material effects.
- ✓ This is the end of 'free' installation and means consumers having to pay more. No, however, depending on Google's way of monetizing Android, manufacturers might face true costs.
- ✓ It is not about Apple Vs Google Android flourishing over EU. This can be indicated by the number of violations vs number of fines imposed on both, but it is not the case in this scenario.

Android is one of the most prevalent mobile operating systems, used in 80 percent of the world's smartphones. Until now (2018), Google distributed Android as a free, open-source operating system that any manufacturer could use with a catch. If the manufacturer wants to provide access to the Google Play Store, the gateway to billions of Android apps, they must sign a licensing agreement that requires them to bundle Google's apps along with it and set the company's search engine as the default. Manufacturers had a clear incentive of using the massive Google Play Services library without any compatibility issue, free of cost. This also ensured seamless experience of Android for customers using this OS on phones of any manufacturer due to the similarity of structure and apps availability. EU regulators believed that this fee of signing a license suppressed businesses of smaller engines, like Bing, Yahoo and various others who can't just pay other manufacturers to put their search on default. EU's fine was coming right next. To comply with the EU's ruling, Google will now charge manufacturers a fee for licensing with the Play Store, which will provide access to core apps like Gmail, YouTube, and Maps. A separate optional bundle will add Google Search and Chrome. This incident simply implies a much higher price to pay for Android at least for the shipments to the EEA. Shifting the focus to changing market share raises the question: If Android and iOS were the only two major competitors, both abusing the default apps rule, then wouldn't the ruling against Google benefitted iOS? The Commission is being criticized for ignoring competition between Apple and Android in focusing on 'licensable' app stores. The justification states that the decision as to whether to install Google Play/Android on a device rests with the manufacturer, not the consumer.

Manufacturers cannot install non-licensable app-stores (such as Apple's). However, it appears to be too light of an argument to weigh against a €4.34 billion fine. Android, being ripped apart by the EU's ruling, will struggle to compete in a world where every device is an unpredictable slurry of preinstalled detritus and inconsistent experiences. There's a hole in the EU's argument too. If the rules were so suffocating to competition, it's hard to understand how Amazon can do exactly what the EU says is too hard: creating a custom, Google-free version of Android, forgoing the Play Store, and succeeding anyway. Yet, another investigation opportunity overlooked by EU. Targeting Google, killing bundling, and focusing on competition' on the Android platform misses the entire point: both Search and Chrome are already far too big to fail. This implies that the ruling would simply minimize manufacturer's share in the market due to incompetent variation and hurt the customer's pocket due to increased prices.

## 10. CONCLUSION

European competition law is the competition law in use within the European Union. It promotes the maintenance of competition within the European Single Market by regulating anti-competitive conduct throughout companies to ensure that they do not create cartels and monopolies that would damage the interests of society. It was meant to conform to fairness in trade. However, its targeting remained to only a few companies rather than global monitoring. While some companies were issued warnings or adequate time to comply, the other (handful) ones, primarily USA based were bombarded with hefty fines. Since 2010, the European Union has launched three separate antitrust investigations into Google for violating the EU's competition laws due to its dominant position in the market. These cases have resulted in formal charges against Google related to Google Shopping, Google AdSense and the Android operating system. To date, Google has been found guilty of antitrust behavior in the cases related to Google Shopping and Android and has been fined over €6 billion. Google responded in its appeal papers to the EU Antitrust Fine by stating that the EU chair misstated facts and did not show enough evidence to prove that their site hurt rivals. Google wanted the fine either overturned or reduced. The appeal was based on six arguments, with two of them being that the court did not prove that Google favored its own shopping service by placing paid ads on top the search results. Two of them stated that the courts misstated facts and evidence, and the other two argued that a fine was not warranted as a possible penalty. With these investigations, Google had no choice but to comply, which it did, however the series was not to end just yet. On 19 July 2018, EU has fined Google €4.3 billion (about US\$5 billion). Google responded it would appeal, according to company spokesperson Al Verney "Android has created more choice for everyone, not less". To date, this fine is the biggest ever imposed by European Union on a company for anti-competitive behavior. This history-making fine was accompanied by an ideology of the bloc's commissioner who displayed plan to break Google. Now, that is concrete bias for targeting a company for personal grudges/interests. Microsoft, Facebook and MasterCard were also fined by EU, however, were also given time to comply with the policies. Their case was unlike Google, on whom EU had fired from all ends. It seemed that although the fines were easily pushed through by Google,

they accounted to loss of economy from US to fuel EU, as expressed by Donald Trump, President of America. Android case had also posed certain issues for manufacturers and in-turn for customers. The grave issues were of significant increase in pricing at the EEA. Which meant costlier R&D, and fewer small-scale developers and reduced innovation in the European segment. Nonetheless, Google, as directed by the EU, gives developers options whether they would choose the Google Bundle of apps, in case the competitor refuses, it would still be easy for Google to outcompete him due to humungous user base at its hand.

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