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Highlights

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The Google Shopping Hearing Before The General Court Of The European Union

In a three-day session culminating on St Valentine's day, the General Court of the European Union (the "General Court") heard Google LLC's ("Google") and the European Commission's (the "Commission") arguments in the *Google Shopping* case.[1] In 2017, the Commission adopted a decision (the "Decision") fining Google a record-breaking €2.42 billion for abuse of dominance by positioning and displaying its own comparison shopping service ("CSS"),[2] Google Shopping, more favorably in its general search result pages compared to rival CSSs.[3]

Google subsequently filed an action to the General Court seeking the annulment of the Commission's decision. According to Google, the Commission erred in its Decision on several grounds. Among other points:

— Google alleged that the Commission's decision wrongly found that Google had favored its CSS through the positioning of Product Universals and Shopping Units on its general search result pages. It argued that these formats improved the quality of Google's general search service. This positioning therefore constituted competition on the merits in general search.

— Google also argued that the Commission was wrong to claim that the conduct had "diverted" traffic from rival CSSs to Google's CSS because the Decision failed to establish that the conduct at issue had any causal link with the evolution of rivals' traffic.

[1] *Google LLC and Alphabet Inc. v. European Commission* (Case T-612/17), case pending. Google is represented by Cleary Gottlieb.

[2] CSSs are online search services that allow users to search for products and compare their prices and characteristics across offers from different merchants. The EC's decision concludes that CSSs constitute a distinct product market that excludes merchant platforms like Amazon and eBay.

[3] *Google Search (Shopping)* (Case COMP/AT.39740), Commission decision of June 27, 2017. *See* Cleary Gottlieb's European Competition Report of Q4, 2017.

— And Google argues that the Commission's case amounts to a duty to supply, but fails to address, let alone meet, the well-established "indispensability" test for this head of abuse.

The hearing

In front of a five-judge panel,[4] Google and the Commission debated the case during the three-day hearing. They were joined by a number of interveners, including the Computer & Communications Industry Association (the "CCIA") on the side of Google, and several CSSs,[5] consumer organization BEUC, and two German publishers' associations on the side of the Commission. The hearing was public and attended by the press.

Arguments were made in English, the language of the case, while questions from the bench were bilingual with the judges opting for both English and French. Simultaneous translation in English, French, and Estonian was available.

Day one: "discussions of general and specific matters concerning the context"

Google started the first day with an introduction focused on whether it has a duty when it develops innovations for its search service to ensure that rivals in other markets have access to those innovations. Discussion then focused on two aspects at the center of the factual and legal debate in this case:

At the center of the factual debate was the question of how Google positions its result formats. Google explained that it competes with rival general search engines by positioning its results on the basis of their merits. Google explained to the judges that it could not have included results generated by rival CSSs' algorithms without undermining the quality of its general search service. The Commission claimed that Google positioned its results to promote its CSS.

The legal debate centered on whether or not the requirements set out in the Commission's Decision in substance created a duty to supply rivals. The Commission sought to rebut Google's argument that its case posits a refusal-to-supply. Instead, the Commission claimed that *Google Shopping* is a "classic" leveraging case. The legal tests needed to establish a refusal-to-supply are therefore irrelevant. The Commission, however, admitted that Google may not have had an anticompetitive strategy, but, nonetheless, intentionally or negligently favored its own CSS by displaying it more favorably.

Day two: market definition and effects

The second day of the hearing began with discussions on market definition. The debate centered on Google's argument that merchant platforms like Amazon are part of the relevant market. The Commission and interveners retorted that Amazon could not be a competitor of Google's because it was also a customer of Google's.

The discussion moved on to the effects of the conduct. Google explained that the Commission's analysis of "diversion" was flawed because it wrongly attributed traffic declines experienced by CSSs to the alleged abusive conduct without establishing that this conduct had caused these declines. According to Google, this flaw in the Decision was due to its failure to perform a proper counterfactual analysis. Google filled this gap itself with an analysis that compared traffic developments in conditions where the abuse alleged by the Commission had not taken place.

This analysis showed that traffic evolved the same way regardless of whether or not the alleged abuse was in place. Google argued that its allegedly abusive conduct could not therefore have caused the effects as attributed by the Decision. Google also argued that the Commission wrongly counted clicks to merchants' websites as if they were clicks

[4] Since the reform of the Rules of Procedure of the General Court in 2016 and the addition of new judges, the General Court has more opportunities to hear cases in a panel of five judges and it is not anymore a sign of the importance given to the judgment. The number of cases heard in chambers of five judges increased from 12 in 2016, to 18 in 2017, and 87 in 2018. *See* articles 13 and 14 of the Rules of Procedure of the General Court, 4 March 2015 (OJ 2015 L 105, p. 1) as amended in 2016, available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2008-09/txt7_2008-09-25_14-08-6_431.pdf. *See also* K. Lenaerts, J.C. Bonichot, and others "An ever-changing Union; perspectives on the future of EU law in honour of Allan Rosas," Oxford, Hart, 2019, p. 125.

[5] Foundem, Kelkoo, Twenga, and Visual Meta.

to Google's website, thereby vastly exaggerating the alleged increase in traffic to Google's service.

The Commission replied that the counterfactual required removal of demotions of rivals in search results and favorable placement of Google's own results even though demotions were not the alleged abuse. The Commission also argued that clicks from the Shopping Unit to the sites of merchants should be considered as traffic to Google's CSS because it allegedly benefited financially from these clicks but did not present evidence for this claim.

Day three: fines and final replies

Google first argued that no fine should have been imposed in this case. It argued that existing case law suggested its conduct was not anticompetitive. It also pointed out that the Commission, during the administrative procedure, expressly ruled out the equal treatment principle it subsequently said was violated. Google additionally stated that, even if a fine were appropriate, the calculation used by the Commission was flawed.

In particular, the Commission had failed to take into account the nature of the infringement when setting the 10% "gravity multiplier" and the additional amount. The Commission responded that Google should have known its conduct could amount to a breach of European competition laws. Its representatives also defended the Decision's calculations as falling within the ambit of the Commission's discretion.

In the final replies, Google emphasized that it had competed on the merits as a general search service, while the Commission explained again that the Decision implies a classic leveraging case.

Q&A sessions

After each session, the judges asked questions focusing on legal or technical details, mostly to better understand Google's behavior, whether it could have acted differently, and Google's motivations.[6] Initial questions focused on the legal standard. Judge Lauri Madise and the General Court's President, Stéphane Gervasoni, asked the parties whether the legal tests applicable to establish a duty to supply should apply in the present case, and what the appropriate standards were. The Commission replied that these tests are irrelevant in this case, while Google argued that watering down the test could undermine innovation. The Court also explored whether the Commission must demonstrate a deviation from competition on the merits or whether it is sufficient to rely on alleged foreclosure of rivals.

Judge Mac Eochaich, asked the parties as to the extent of the General Court's discretion in setting the fine. This much reported question led to a debate around the Court's ability to make decisions beyond the pleas made by the parties and, were the Court empowered to reach beyond the pleas, the procedural aspects of doing so.

The panel will now deliberate and will deliver their ruling within an expected 12 to 24 months.

[6] The following topics were discussed during the Q&A sessions (i) competition on the merits in general search; (ii) ranking and relevance of specialized results and generic results; (iii) ranking and relevance of ads; (iv) Google's ability to include results generated by rivals' algorithms; (v) loosening of duty to supply standard; (vi) triggering of Product Universals; (vii) retailers' choices in working with aggregators or merchant platforms; (viii) header link of the Shopping Unit; (ix) nature of the Shopping Unit; (x) calculation of the deterrence multiplier; (xi) increase of the fine; and (x) role of negligence.

The Commission Unveils New Positions On Data And AI As Part Of Its Digital Strategy

On February 19, 2020, the Commission unveiled its strategy to "shape Europe's digital future."[7] This strategy identifies three key objectives: invest in technology that works for people (which includes investment in connectivity, discussions over a framework for AI, cybersecurity, and data literacy), develop a fair and competitive economy (which focuses on the creation of a single market for data and the use of competition law policies to level the playing field), and create an open, democratic, and sustainable society.

The Commission sought to make the digital strategy roadmap more concrete through the publication of two, more detailed, documents: a communication on the Commission's European data strategy (the "Communication"),[8] and a White Paper on its proposed European approach to artificial intelligence (the "White Paper").[9] Both documents are currently open to public consultations until May 31, 2020 through an online questionnaire and an invitation to upload a position paper.

The Communication sets out the Commission's concrete investment plans and legislative proposals along with suggested implementation timeframes. It aims to create and regulate a single market for data. The White Paper, on the other hand, seeks to open a policy discussion, rather than to announce a specific roadmap. It describes in broader terms the Commission's proposals to both promote the development of, and create a legislative framework for, artificial intelligence.

The European data strategy communication

The Communication on data strategy is the more advanced of the two publications. It focuses on the second goal of the Commission's digital strategy, namely to bring about a "fair and competitive economy." The communication is organized in two parts. First, it sets out the problems identified by the Commission regarding data. It then sets out "key actions" for the Commission to take between now and 2027. It is rumored to have been shaped by Thierry Breton, the current Commissioner for Internal Market and Services.

The Communication starts off by identifying several issues "holding the EU back from realising its potential in the data economy." Its focus is on perceived imbalances in data access for European small and medium enterprises. The Commission links this concern to a lack of interoperability and the need for clearer governance over the access and use of data. The Communication also deplores the EU's limited cloud infrastructure and its ensuing dependence on non-EU cloud service providers. The Commission also reflects on both the perceived shortage of data and analytics skills in the EU workforce and the lack of technology to help individuals exercise their privacy rights.

The Communication then formulates proposals to respond to these concerns. The Commission has devised a strategy that combines funding, policy measures, and legislation to "realise the vision for a genuine single market for data." This strategy, itself a sub-part of the Commission's broader digital strategy, is articulated around four pillar proposals: a governance framework for data access and use,[10] European investment in data infrastructures,[11] the

[7] https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf.

[8] https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020_en.pdf.

[9] https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf.

[10] Communication, p.12.

[11] *Ibid.*, p.15.

development of data literacy,[12] and the creation of that which the Communication describes as "common European data spaces" in certain strategic economic sectors.[13]

The Communication then translates these four pillars into a series of upcoming measures. In particular, the Communication highlights the following concrete proposals, for which it proposes clear implementation time frames:[14]

— A Memoranda of Understanding between Member States on cloud federation and data-sharing initiatives (Q3 2020);[15]

— A Commission proposal for a legislative framework on data access and data use, which may include standardization and interoperability requirements, specifications on what considerations are relevant when selecting datasets for scientific research, and tools for individuals to consent to the use of their data for the "public good" (Q4 2020);[16]

— An "Implementing Act," to be adopted by the Commission, identifying high-quality public sector data and requiring that these be available in machine-readable format via APIs (Q1 2021);[17]

— A "Data Act," to be proposed by the Commission, to create incentives for data-sharing both within and between the private and public sector, strengthen portability rights, and request compulsory access to data in sectors where market failures are identified or foreseen (2021). The scope of this proposal remains unclear. On some interpretations, this proposal could lead to burdensome and invasive requirements on private companies. It is not clear how the requirement would interplay with the GDPR, or how it would balance out its possible negative effect on user privacy and on companies' legitimate ability to use the data they collect from users without being compelled to share it with their rivals;[18]

— The creation of "data pools" and a "data exchange infrastructure" for certain strategic sectors (industrial, Green Deal, mobility, health, finance, energy, agriculture, public administration, skills) (2021–2027);[19]

— An EU regulatory cloud rulebook, to consolidate existing cloud codes of conduct and certifications and create common European standards and requirements (Q2 2022);[20] and

— A cloud services marketplace, with requirements in data protection, security, data portability, energy efficiency, market practice, and transparent and fair contract conditions (Q4 2022).[21]

In addition to the specific proposals outlined in the Communication, the Commission is also expected to publish a Digital Services Act package later this year, following a commitment in Ursula von der Leyen's political guidelines to upgrade the EU's liability and safety rules for digital platforms, services, and products.

The White Paper

The White Paper focuses on the "technology that works for people" strand of the Commission's Digital Strategy. Unlike the Communication, it does not set out a roadmap of key actions, nor does it list potential, upcoming legislation. Rather, it seeks to draw out the contour of the policy discussion around AI, and presents a potential framework for AI "based on excellence and trust."

[12] *Ibid.*, p.20.

[13] *Ibid.*, p.21.

[14] As the Communication pre-dated the Covid-19 pandemic, it seems likely these timeframes will slip.

[15] Communication, p.18.

[16] *Ibid.*, p.12.

[17] *Ibid.*, p.13.

[18] *Ibid.*, p.13.

[19] *Ibid.*, p.26.

[20] *Ibid.*, p.18.

[21] *Ibid.*, p.19.

The White Paper nonetheless adopts the same format as the Communication in that it seeks to identify areas of concern, and proposes initial ideas as to possible solutions.

In the first part of the Paper, the Commission identifies two sets of risks associated with AI: First, the impact that AI could have on European consumers' fundamental rights (most notably, personal data and privacy protection, and non-discrimination). Second, that certain new safety risks for users may not be captured by the existing EU and national liability regimes (on the basis that flaws in the design of AI technology, problems with the availability or quality of data, or other problems stemming from machine leaning, create or aggravate certain safety risks without legal certainty as to liability).

The White Paper then sets out an initial approach for dealing with these concerns. This approach, similar to that in the Communication, is articulated around four key pillars: the amendment of existing European legislation to account for new AI-based products and services (and most notably product safety regulation and the underlying concepts of risks and safety), the creation of a standards and labelling system in order to build trust, the establishment of a European governance structure, and the creation of a new European regulatory framework for AI.

In relation to this potential new regulatory framework, in particular, the White Paper advocates a risk assessment approach, in order to limit regulation to "high risk" AI applications. The Commission then suggests two cumulative criteria to identify such applications.

First, the AI application is employed in a sector where, "given the characteristics of the activities typically undertaken, significant risks can be expected to occur." The at-risk sectors identified by way of example in the Paper are healthcare, transport, energy, and parts of the public sector (asylum, migration, border controls, judiciary, social security, and employment services).

Second, the AI application is used in a manner that means that "significant risks are likely to arise," based on the impact on the affected parties. The White Paper provides examples suggestive of a relatively high threshold, namely AI applications with legal or similar effects on rights of an individual or company, risks of injury, death, or significant material or immaterial damage.

In addition, the Commission also suggests applying a stand-alone two-stage test to capture "exceptional instances where, due to the risks at stake, the use of AI applications for certain purposes is to be considered as a high risk as such." The only examples the Paper includes under this *per se* category are recruitment processes and use cases impacting workers' rights, and remote biometric identification and other intrusive surveillance technologies.

The Commission's plans outlined in the White Paper envision this regulatory framework impacting both the design stage and the point of sale.

— At the design stage, the Commission suggests regulating training data (with requirements to use sufficiently broad, representative datasets and keep records of such datasets, their use to train AI systems, and how they were selected), while also requiring the use of operational constraints to guarantee human oversight (whether it be to validate a system, or to review or intervene in AI-generated decisions).

— The White Paper then suggests requirements to demonstrate a certain level of robustness and accuracy, as well as transparency measures to ensure that clear information on AI systems' capabilities and limitations is provided at the point of sale, and that citizens are informed when interacting with an AI system.

The tech sector at the intersection of competition and regulation tools

These two announcements provide an initial insight into how the Commission proposes to develop the Digital Strategy into concrete initiatives. They showcase the Commission's work in identifying problem statements with respect to both data and AI. The announcements also outline initial ideas to alleviate the perceived concerns. These suggestions nonetheless remain initial, particularly with respect to AI.

The Commission will likely need to engage in the difficult trade-offs inherent in forcing access to data and creating new oversight in a burgeoning fast-moving area such as AI. In a context where the Commission already deplores the lack of European players in these sectors, obtaining the correct balance will be critical in not fettering future growth. The Commission's request for input is therefore a welcome opportunity for industry participants to help shape these initiatives.

The Commission Fines Meliá €6.7 Million For Restricting Cross-Border Sales

On February 21, 2020, the Commission fined hotel group Meliá €6.7 million for restricting cross-border sales through the terms of its hotel accommodation agreements with tour operators.[22] These terms allegedly forced tour operators to discriminate between EEA customers based on their country of residence. The *Meliá* decision is noteworthy for two reasons. It reiterates the Commission's strict stance on any measures partitioning the EU Single Market, a theory of harm the Commission has applied frequently in recent years. It also continues the Commission's now frequent practice of rewarding cooperation in non-cartel cases.

In February 2017, spurred by the preliminary results of the Commission's e-commerce sector inquiry,[23] which suggested widespread use by hotels of restrictive clauses, the Commission opened an investigation into hotel accommodation agreements between Meliá and major EU tour operators.[24] The Commission's investigation focused on whether Meliá's agreements discriminated between end-consumers on the basis of their nationality or country of residence.

Meliá's standard terms and conditions in its hotel accommodation agreements with tour operators limited the validity of the agreements to reservations made by customers in certain countries. The clauses restricted both active and passive sales of rooms in Meliá hotels.[25] They prevented tour operators from actively soliciting sales from residents of countries that were not allocated to them. And they also prevented tour operators from responding to requests for hotel reservations from consumers residing outside these countries. The Commission thus concluded that Meliá's agreements violated Article 101 TFEU because they partitioned the EU single market.

The Commission reduced Meliá's fine by 30% for cooperation. To earn this discount, Meliá expressly acknowledged the facts and its infringement of EU competition rules. It also cooperated by providing evidence. This is the twelfth fine reduction since 2016 under the Commission's informal framework for rewarding cooperation in non-cartel cases.

[22] *Meliá (Holiday Pricing)* (Case COMP/AT.40528), Commission decision of February 21, 2020, decision not yet published. Meliá owns over 350 hotels in 40 countries under brands such as Meliá, Gran Meliá, Paradisus, Sol Hotels, and Club Meliá.

[23] *See* Commission Press Release IP/17/201, "Antitrust: Commission opens three investigations into suspected anticompetitive practices in e-commerce," February 2, 2017. *See also* Final Report on the E-commerce Sector Inquiry, COM/2017/0229, May 10, 2017; and Commission Sector Inquiry into E-commerce, available at: https://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html.

[24] Kuoni, REWE, Thomas Cook, and TUI. The Commission is not further pursuing an investigation against the tour operators.

[25] Active sales are sales achieved from actively approaching customers in other Member States. Passive sales are sales achieved by responding to unsolicited requests from customers in other Member States.

Partitioning the EU Single Market – a European theory of harm

The Commission's case focuses on an allegation that Meliá violated Article 101 TFEU by partitioning the EU single market through vertical restrictions on active and passive sales by tour operators of Meliá's hotel rooms to consumers in other Member States. Melia's agreements prevented customers from booking hotel rooms through tour operators in other Member States. They deprived customers from viewing full hotel availability, or reserving hotel rooms at lower prices with tour operators elsewhere.

Two factors motivate the Commission's scrutiny of these types of vertical restraints. First, from an economic perspective, territorial restrictions may reduce brand price competition for Meliá's hotel rooms across tour operators. If tour operator A knows that a customer in its allocated member state cannot obtain the same room from tour operator B, tour operator A does not need to compete with tour operator B on price. Secondly, from a policy perspective, these restrictions impede the operation of the single market, as they create barriers to trade across Member States. A customer in one Member State cannot access the same hotel rooms at the same price as a customer in another Member State.

These factors have led to a line of cases relating to territorial restrictions. *Meliá* is the eighth recent Commission decision fining companies for partitioning the EU single market; many of which are the result of the e-commerce sector inquiry. In the last two years alone, that inquiry has led to decisions implicating six companies for blocking orders from retailers who sold cross-border,[26] restricting retailers from online advertising and cross-border sales,[27] and restricting cross-border sales of merchandising products.[28] The Commission's fines in cases resulting from its e-commerce sector inquiry now total €191 million.

Reducing fines for cooperating in non-cartel cases

A second notable feature of this case is the 30% fine reduction Meliá received for non-cartel cooperation. This reduction continues a recent trend of rewarding cooperation in antitrust cases that do not qualify for the cartel leniency or settlement procedures.

Beyond the well-established framework for rewarding cooperation by companies in cartel cases,[29] there is no formal framework at EU-level for enabling or rewarding cooperation in other types of cases—the Commission is creatively filling the gap. Since the *ARA* decision in 2016,[30] the Commission has been trading fine reductions for cooperation within an informal framework modelled on the cartel settlement procedure.

In a factsheet published following its *Guess* decision in December 2018 to explain its cooperation framework, the Commission explained that it targets instances where "companies are willing to acknowledge their liability for an infringement (including the facts and their legal qualification),"[31] as well as providing evidence or offering remedies. Determining the level of fine reduction to reward an acknowledgement of liability, as with the cartel settlement process "will be based on an overall assessment of the extent and timing of the cooperation given and the procedural efficiencies gained in each individual case."[32]

The Commission's recent interest in rewarding cooperating companies, initially articulated by Commissioner Vestager in February

[26] *Pioneer (vertical restraints)* (Case COMP/AT.40182), Commission decision of July 24, 2018.

[27] *Guess* (Case COMP/AT.40428), Commission decision of December 17, 2018.

[28] *Ancillary sports merchandise* (Case COMP/AT.40436), Commission decision of March 25, 2019; *Character merchandise* (Case COMP/AT.40432), Commission decision of July 9, 2019; and *Film merchandise* (Case COMP/AT.40433), Commission decision of January 30, 2020.

[29] Fine reductions for cooperation in cartel cases can be twofold: through immunity or leniency (if a company provides self-incriminating evidence), and through settlement (if a company admits the infringement and agrees to follow a more streamlined and shorter procedure).

[30] *ARA Foreclosure* (Case COMP/AT. 39759), Commission decision of September 20, 2016.

[31] *See* Commission Factsheet, "Cooperation – FAQ," December 17, 2018, available at: https://ec.europa.eu/competition/publications/data/factsheet_guess.pdf.

[32] *Ibid*.

2016,[33] presents potential benefits for both the Commission and companies. It enables the Commission to achieve procedural efficiencies and more effective enforcement through faster adoption of prohibition decisions, less burdensome evidence gathering, and on occasion, better targeted remedies in prohibition decisions. For defendants, it offers the possibility of a significant fine reduction and swift resolution of antitrust investigations that can otherwise be long drawn.

The cooperation framework does, however, raise concerns about due process. Defendants do not benefit from the formal procedural guarantees of the cartel settlement procedure. The criteria for determining fine reductions remains vague. Moreover, as the cooperation process significantly reduces the prospect and reality of judicial review, it removes one of the sources for clarity and refinement as to the contours of dominant companies' "special responsibilities" under Article 102.

Defendants considering the Commission's invitation to cooperate will have to make their own cost/benefit assessment of this novel use of Point 37 of the Fining Guidelines. At a basic level, the trade-off is between the extent of the available fine reduction and the swift resolution of the investigation on the one hand[34] and foregoing the ability to appeal the decision on the other. So far, the trade-off appears to have been considered rather favorably: 12 companies have embraced the Commission's offer. They are listed in the table below.

Table 1: Commission Decisions Reducing Fines For Cooperation In Antitrust Cases

Decision (Date)	Cooperation Beyond Acknowledgment	Before/After SO	Total Fine	Fine Reduction
Meliá Feb. 21, 2020	Evidence	Before SO	€6.7 M	-30%
NBCUniversal Jan. 30, 2020	Evidence	Before SO	€14.3 M	-30%
Sanrio July 9, 2019	Evidence	Before SO	€6.2 M	-40%
AB InBev May 13, 2019	Evidence Remedy	After SO	€200.4 M	-15%
Nike March 25, 2019	Evidence	Before SO	€12.5 M	-40%
Mastercard Jan. 22, 2019	Acknowledgment only	After SO	€570.6 M	-10%
Guess Dec. 17, 2018	Evidence	Before SO	€39.8 M	-50%
Asus July 24, 2018	Evidence	Before SO	€63.5 M	-40%
Denon & Marantz July 24, 2018	Evidence	Before SO	€7.7 M	-40%
Philips July 24, 2018	Evidence	Before SO	€29.8 M	-40%
Pioneer July 24, 2018	Evidence	Before SO	€10.2 M	-50%
ARA Sep. 20, 2016	Structural remedy	After SO	€6 M	-30%

[33] Margrethe Vestager, *Setting Priorities In Antitrust*, Speech to the 11th Annual Conference of the Global Competition Law Centre, February 1, 2016, available at: https://ec.europa.eu/commission/2014-2019/vestager/announcements/setting-priorities-antitrust_en.

[34] The swift resolution of the proceedings can be a double-edged sword. It frees up resources and avoids a protracted cycle of negative publicity but will also accelerate potential follow-on litigation.

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