

Making Sense of the Google Android Decision

February 27, 2020

[Dirk Auer](#)

The European Commission's recent Google Android decision will go down as one of the most important competition proceedings of the past decade. Yet, in-depth reading of the 328-page decision leaves attentive readers with a bitter taste. The problem is simple: while the facts adduced by the Commission are arguably true, the normative implications it draws—and thus the bases for its action—are largely conjecture.

This paper argues that the Commission's decision is undermined by unsubstantiated claims and non sequiturs, the upshot of which is that the Commission did not establish that Google had a "dominant position" in an accurately defined market, or that it infringed competition and harmed consumers. The paper analyzes the Commission's reasoning on questions of market definition, barriers to entry, dominance, theories of harm, and the economic evidence adduced to support the decision.

Section I discusses the Commission's market definition. It argues that the Commission produced insufficient evidence to support its conclusion that Google's products were in a different market than Apple's alternatives.

Section II looks at the competitive constraints that Google faced. It finds that the Commission wrongly ignored the strong competitive pressure that rivals, particularly Apple, exerted on Google. As a result, it failed to adequately establish that Google was dominant – a precondition for competition liability under article 102 TFEU.

Section III focuses on Google's purported infringements. It argues that the Commission failed to convincingly establish that Google's behavior prevented its rivals from effectively reaching users of Android smartphones. This is all the more troubling when one acknowledges that Google's contested behavior essentially sought to transpose features of its rivals' closed platforms within the more open Android ecosystem.

Section IV reviews the main economic arguments that underpin the Commission's decision. It finds that the economic models cited by the Commission poorly matched the underlying fact patterns. Moreover, the Commission's arguments on innovation harms were out of touch with the empirical literature on the topic.

In short, the Commission failed to adequately prove that Google infringed European competition law. Its decision thus sets a bad precedent for future competition intervention in the digital sphere.

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