

The Theory of Abuse in Google Search: A Positive and Normative Assessment Under EU
Competition Law

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Summary

In its investigation into Google's search practices, Google Search, the Commission alleges that Google abuses its dominant position on the web search market by giving systematic favourable treatment to its "comparison shopping product" (namely, "Google Shopping") in its general search results pages. This Article analyses whether the conduct in question in Google Search can be an abuse under Article 102TFEU (prohibiting the abuse of a dominant position in the EU) and, if so, under what conditions. This Article proceeds by first providing a positive assessment of the application of Article 102TFEU and the relevant case law to the issues involved in Google Search on the assumption that the Commission may seek to place the facts under an existing category of abuse. Three categories of abuse are analysed to this end: refusal to deal (including the essential facilities doctrine), discrimination, and tying. The article then proceeds to a normative assessment of the circumstances under which Article 102TFEU should be applied in Google Search under a principled conceptualisation of "abuse," one which requires exploitation, exclusion, and a lack of an increase in efficiency. The Article finds that the facts in Google Search do not meet the requirements of the existing law to be found abusive unless the established frameworks for the types of abuse examined are unjustifiably disrupted. It also finds that under the principled conceptualisation of abuse adopted in this Article, the facts in Google Search do not represent the type of conduct that should be found abusive either.

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