A Note on the Google (comparison shopping) case*

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1 Introduction

On 27 June 2017, the European Commission fined Google EUR 2.42 billion for abusing its market dominance as a search engine by promoting its own comparison shopping service in its search results, and demoting those of competitors.

The full decision on the *Google (comparison shopping)* case is not available at the time of writing, but the case has already spurred considerable discussion. On the basis of the few public statements of the Commission (see in particular Press Release IP/17/1784 of 27 June 2017) as well as remarks made throughout the case by Google and complainants, the purpose of this note is to highlight what I consider the salient features of the case. The note is structured as follows. Section 2 summarizes the main facts of the case, Section 3 discusses a possible theory of harm while Sections 4 and 5 discuss the possible effects of Google's conduct on competitors and consumers.

2 Facts of the case

On the basis of the Commission's assessment, there are two relevant markets at issue in this case. One is the search engine market, in which Google - which has more than 90% of market queries in Europe - is deemed to be dominant. The other is the European market for comparison shopping, namely the service which allows consumers to compare products and prices and make online purchases.

Google entered the latter market in 2004, with a product that was initially called 'Froogle', and then re-named 'Google Product Search' in 2008. Since 2013 it has been called 'Google Shopping' and has introduced some new features: in particular, consumers clicking on cells containing pictures and prices of products would go directly to a merchant's website (making it more similar to an advertisement model which is directly monetised by Google), whereas in the previous versions of the service, clicking would bring the consumer to Google's comparison service.

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When Google entered comparison shopping markets with Froogle, there were already a number of established players, and reportedly Google was unsatisfied with Froogle's market performance relative to its comparison shopping rivals.

According to the Commission, Google decided in 2008 to rely on Google's dominance in general internet search to improve its performance in the comparison shopping market. In particular, Google has since then resorted to a strategy which involves two elements, according to the Commission. First, it has systematically given prominent placement to its own comparison shopping service: when a consumer enters a query into the Google search engine, Google's own comparison shopping service results are displayed at or near the top of the search results. Second, Google has demoted rival comparison shopping services in its search results. As a result of changes in Google's generic search algorithms (incorporated in the so-called 'Panda' version), rival services have started to be ranked very low, and hence virtually disappeared from a Google search page.[1] Moreover, Google's own comparison shopping service was not subject to Google's generic search algorithms including such demotions.

As a result, Google's comparison shopping service is much more visible to consumers in Google's search results, whilst rival comparison shopping services are much less visible (users tend to focus on the very top results - and this effect is more pronounced in mobile devices because of the smaller screen size - and very rarely browse beyond the first page of generic search results).

This preferential treatment to own comparison shopping services and the simultaneous demotion of rival services, has according to the Commission distorted traffic (namely, consumers' visits) away from competitors and towards Google's own services. Traffic is crucial in this line of business for two reasons: first, because it leads to more clicks and hence to more revenue; second, because online retailers would be willing to list their products in a comparison shopping website only to the extent that it reaches enough consumers (that is, it generates enough traffic).

3 Which theory of harm?

Given that the Decision has not been published yet at the moment of writing, I can only make conjectures about the precise theory of harm followed by the Commission. However, from the information available it seems to me that this case may potentially be assessed as a tying or as a vertical foreclosure case.

Under the tying interpretation, Google would be tying its Google shopping service pages to the pages featuring the results of Google's organic search whenever the consumer queries are related to shopping. In other words, Google would leverage its dominance in the organic search market into the comparison shopping market through tying.

Under the vertical foreclosure interpretation, Google would be dominant in the upstream market of organic search services and would effectively deny access to such an input to its comparison shopping rivals, while giving prominence to its own services.

Both in the case of tying and of vertical foreclosure, we know that the Chicago School has pointed out that exclusionary strategy may well be unprofitable, so we should ask what the

[1] The Commission states that there is evidence that even the most highly ranked rival service appears on average only on page four of Google's search results.

anti-competitive rationale behind Google's strategy would be.

One particular feature of these markets which may play an important role is given by the fact that these are two-sided markets in which consumers (as well as the sites which are ranked by the Google search engine) pay a zero monetary price (as users, we are not charged for either browsing general search results or for visiting comparison shopping services) while it is only retailers/merchants which will pay Google (or its rivals) for the consumers' clicks. Therefore, the typical Chicago School critique that exclusion would not be profitable because a dominant firm would make more money by appropriately pricing its dominant products or services does not apply here: given its business model, Google does not charge consumers, nor comparison services for inclusion in its search pages. The monetisation of its search services would come only when consumers go to its 'Froogle' or 'Google Product Search' webpage and click on a merchant post; or when they click on the image of a merchant in its 'Google shopping' service.

Therefore, in a world where consumers would go to Google's search page to look for price and product comparison, and from there they would go to a rival comparison shopping website, Google would not obtain any revenue from the comparison shopping market (since it does not charge rival comparison shopping services for inclusion in the search pages). It may just obtain revenue if consumers clicked on some ads placed in the general search page - but the latter may not be a frequent event if consumers got to the search page just to compare online offers. Furthermore, to the extent that over time consumers may start to like some particular comparison shopping site, they may even bypass the Google search page completely and go directly to their favourite website.

Therefore, a possible theory of harm is that - by demoting rival comparison shopping sites and placing its own in a prominent way - Google managed to obtain revenues that otherwise would have not received, as well as - in a more dynamic perspective - to avoid the risk that a number of consumers would eventually not resort to the Google search page as a first step in their process of comparing online offers.[2]

A crucial issue is whether Google's conduct has had anti-competitive effects, namely it has harmed consumers or just some competitors. Let me start with effects on competitors. Since the decision is not available at the time of writing, I can only rely on the data posted in blogs by Google and complainants.

4 Effect on competitors.

Google has always denied that its conduct may be anti-competitive and, rather, has claimed among other things the following:[3]

(1) *'There is more choice than ever before'*. Google argues that there are numerous other search engines, as well as *'a ton of specialized services like Amazon, Idealo, Le Guide, Expedia*

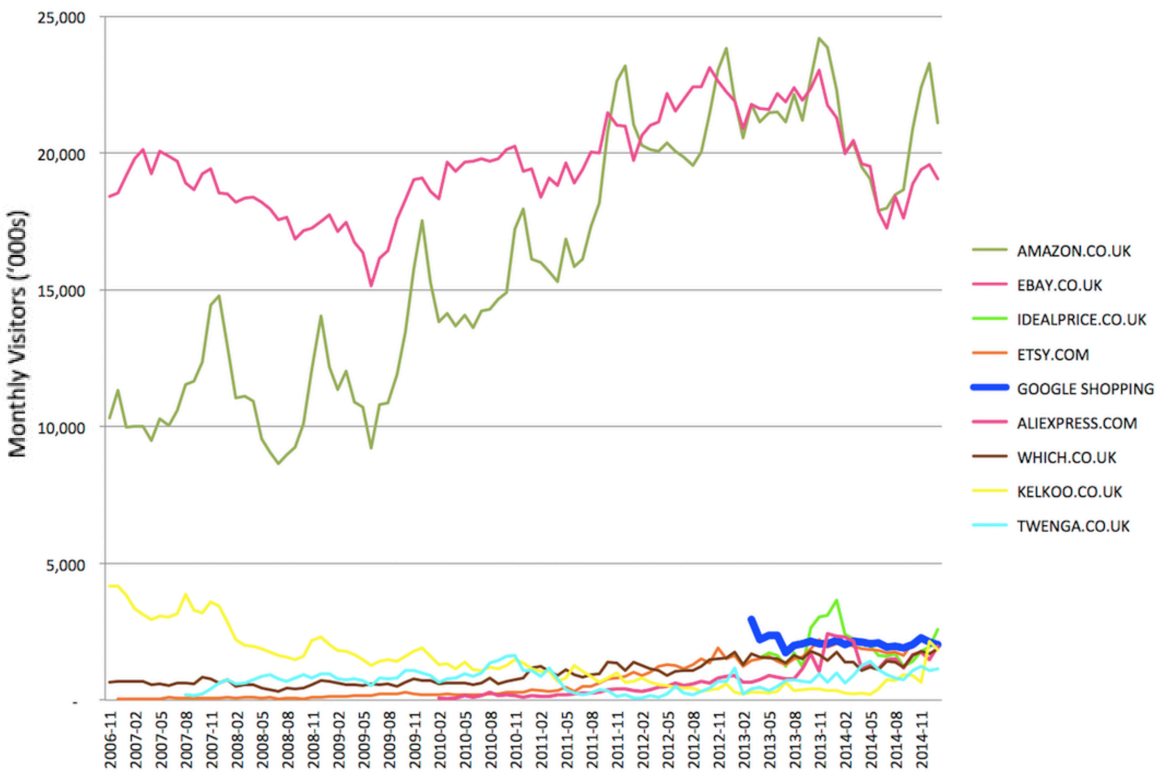
[2]Conceivably, the same sort of theory of harm may also apply to other 'vertical shopping' services, such as flight, hotel, restaurants, that the Commission has been investigating before focusing on the comparison shopping market. In her press conference of 27 June 2017, the Competition Commissioner said that the comparison shopping decision may represent a precedent for similar abuses in other vertical markets.

[3]See for example the following entries in Google's blogs: https://googleblog.blogspot.be/2015/04/the-search-for-harm.html?m=1; https://europe.googleblog.com/2015/08/improving-quality-isnt-anti-competitive.html; https://blog.google/topics/google-europe/improving-quality-isnt-anti-competitive-part-ii/; https://www.blog.google/topics/google-europe/european-commission-decision-shopping-google-story/.

or eBay', and that people use social sites and mobile phone apps to be assisted in their online search. It contests that consumers would necessarily rely on Google search as an entry point to obtain more shopping information.

(2) *'Thriving competition in online shopping'*. Related to the previous point, Google argues that the market should not include only comparison shopping websites (as it is the case according to the Commission's definition), but rather it should be defined in a broader way so as to include shopping sites such as Amazon and eBay. More generally, Google claims that while a handful of price comparison aggregators may have lost clicks from Google search pages, there is a lot of competition in this (broader) market, which is dominated by Amazon. Figure 1, which shows the evolution of monthly visitors of shopping sites in the UK from the end of 2006 until the end of 2014,[4] seems to support Google's claims, in relation to the UK.[5]

Figure 1. Evolution of monthly visitors to UK shopping sites.



However, by considering only *comparison* shopping websites (as in Figures 2 and 3), one obtains a very different view of the evolution of the market.[6]

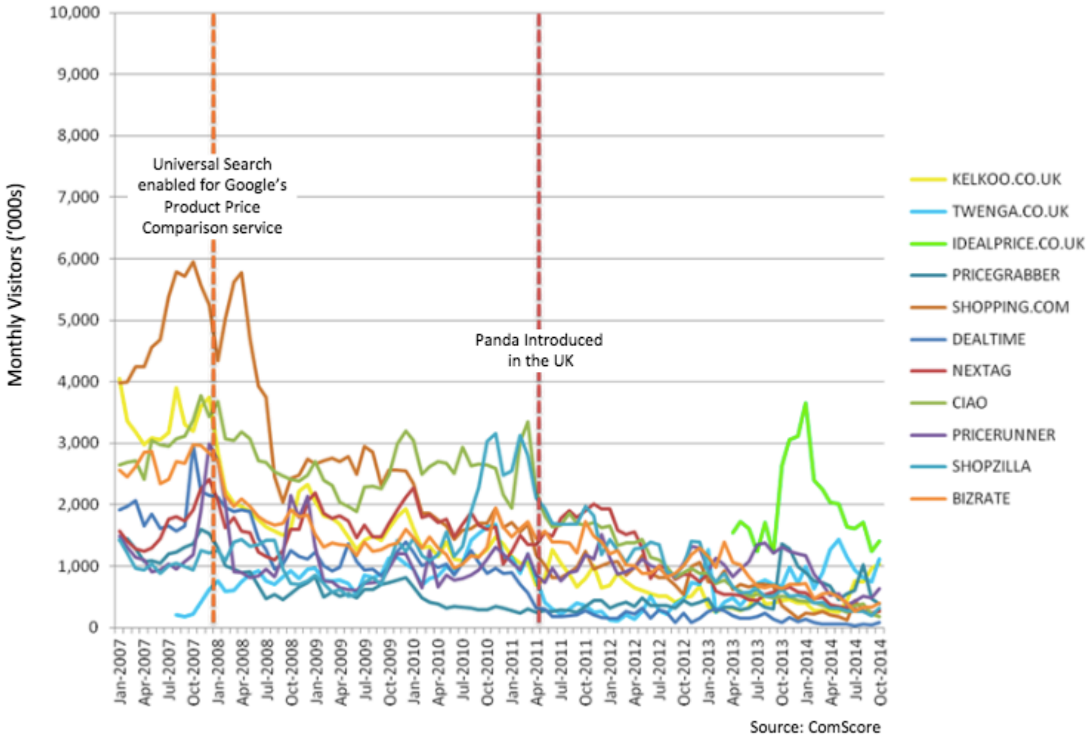
As shown in Figure 2, the downward trend is very clear, especially if considered that this was a period in which there has been a spectacular increase in internet use and of e-commerce.

[4] In the figures provided in this section, we report data up to 2014 (inclusive). Based on the public sources we have reviewed, we are not aware of more recent comparable data in the public domain at the time of writing.

[5] Figure 1 has been obtained from Google's blogs: https://googleblog.blogspot.be/2015/04/the-search-for-harm.html?m=1

[6] See the claims posted by one of the complainants at: http://www.searchneutrality.org/google/analysis_of_google_public_so_ response, from which Figures 2 and 3 have been taken.

Figure 2. Evolution of monthly visitors to UK comparison shopping sites.



Still, it may well be that this trend is not caused by Google's conduct, but by other factors, such as the rising importance of other services that facilitate online shopping.[7]

However Figure 3, which includes the evolution of traffic of Google's own comparison shopping services and extends the period over which Google's own services are included, shows that the introduction of the change in the Google search algorithm (resulting in the 'Panda' version) in April 2011 has been instrumental in promoting the sudden growth of Google's own service. Equally visible, although less stark, is the fall in rivals' traffic since that date.[8]

The Commission argues that the evidence of these sudden changes in traffic demonstrates the simultaneous demotion of rivals and promotion of Google's services, and shows that *'Google's practices have stifled competition on the merits in comparison shopping markets, depriving European consumers of genuine choice and innovation'*.[9]

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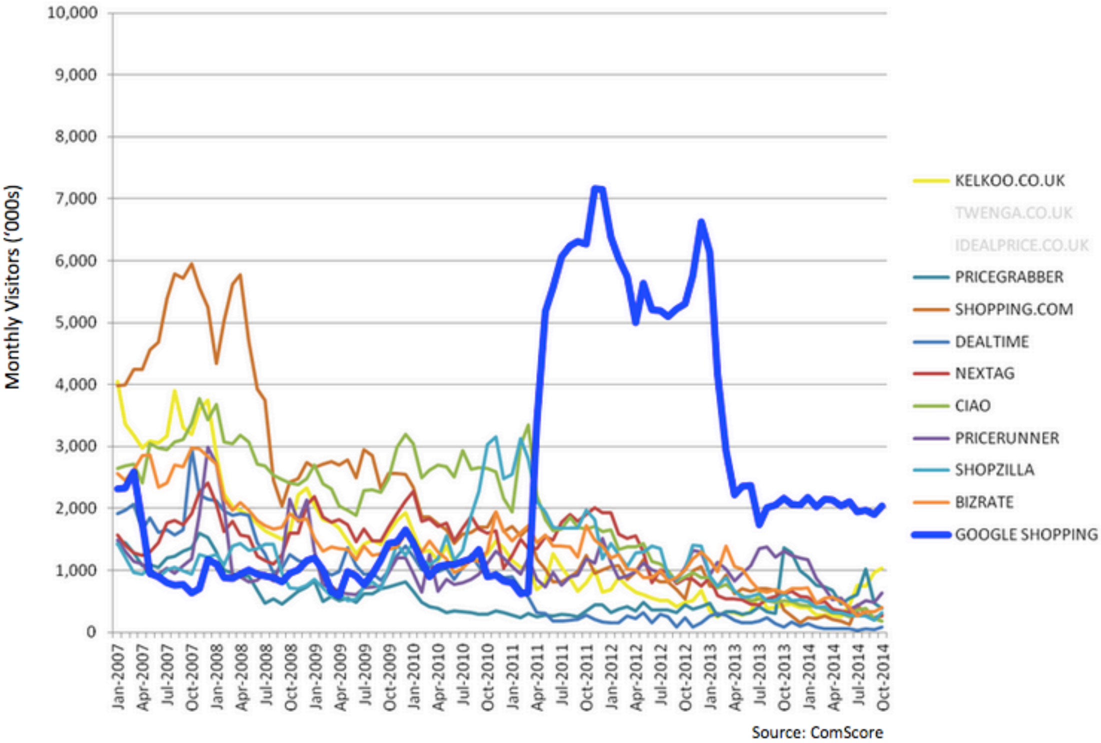
[7] It should also be noted that a couple of rivals, such as Twenga and Idealprice, performed much better than others, and this begs the question of what is behind the different evolution. If it was because they have been able to innovate and offer better products, then Google's claim that comparison shopping sites have been failing because they have been unable to offer a better product would be vindicated. If it was instead because these sites have been much more aggressive in their use of online advertising - for instance because of reliance on Google AdWords - then it would be consistent with the complainants' arguments that Google stopped ranking them high in search pages in order to favour its own service or oblige rivals to rely on Google's advertising services.

[8] As the Commission's Press Release IP/17/1784 of 27 June 2017 put it: *'Since the beginning of each abuse, Google's comparison shopping service has increased its traffic 45-fold in the United Kingdom, 35-fold in Germany, 19-fold in France, 29-fold in the Netherlands, 17-fold in Spain and 14-fold in Italy. Following the demotions applied by Google, traffic to rival comparison shopping services on the other hand dropped significantly. For example, the Commission found specific evidence of sudden drops of traffic to certain rival websites of 85% in the United Kingdom, up to 92% in Germany and 80% in France. These sudden drops could also not be explained by other factors. Some competitors have adapted and managed to recover some traffic but never in full.'*

[9] See the Commission's Press Release IP/17/1784 of 27 June 2017.

Figure 3. Evolution of monthly visitors to UK comparison shopping sites.



At the heart of the case there seems therefore to be a different idea of how consumers reach their online shopping decisions, which results into different market definitions and different effects on competition. In the Commission's view, consumers start looking for products through a search engine, then click through to a shopping comparison site, and from there they click on merchant websites. In Google's view, consumers reach merchant websites not only via general search engines, but also via specialist search services, merchant platforms, social networks, and online ads.

This is likely to be one of the thorniest issues that the judges will have to decide on, should this decision be appealed.

I limit myself to three considerations. First, the Commission's decision covers a long period, and it is very likely that the opportunities available to consumers may have expanded over time; and that while in 2008 they may have tended to start their online shopping by going to a search engine page, this behaviour may be much less pronounced ten years later (perhaps also because they have started to become loyal to particular sites over time).

Second, it is possible that there are at least two different groups of consumers, those who start their online shopping through general search and those, perhaps more sophisticated or simply more accustomed to online shopping, who go directly to merchant platforms or to merchant sites. Similarly, it is also possible that there are different types of merchants: those who decide to sell through merchant platforms like Amazon and eBay and those who prefer avoiding them - and who therefore would be more likely to be found starting from a general search page. If this was the case, then the Commission's reasoning may still hold, although it would not concern all consumers and all merchants but only particular groups of them.

Third, and related to the previous points, the appropriate market definition and the resulting effects on competition produced by Google's conduct may vary across countries. The above figures show the evolution of traffic in the UK, where Amazon and eBay gained significant importance early on during the period of the investigation. Other countries, where online shopping has expanded later than in the UK, may display a different pattern.

5 Effects on consumers

Another crucial point is whether the fall in rivals' traffic and the growth in Google's own services corresponded to the introduction of a drastic innovation in Google's comparison services. If that was the case, it is likely that consumers benefited from the innovation and the deterioration of rivals' position in the market would not be proof of anti-competitive harm.

Google has argued that they have provided consumers who intend to shop online with an improved service over time, in at least two ways.[10] First, by improving the format of their ads to include more informative displays with pictures, prices, and links where one can buy products. Second, by connecting users directly to merchants who sell the items, whether through organic links or ads. Google's claim is that its changes have improved consumer experience and that some price comparison aggregators have lost relevance because they were unable to provide the service that consumers wanted.

Again, it is worth noting that the abusive conduct at issue covers a long period, and that whatever innovative component may be in the service provided by Google, it is more likely to exist in the final years of the period, and in particular when (in 2013) 'Google shopping' introduced a 'box' containing pictures with price and product information (an auction decides which merchants would be selected in the box) which would bring consumers directly to the merchant sites.[11] At the beginning of the period, instead, consumers would not be able to reach merchant sites directly from the Google search page, but would just go to the Froogle and Google Product Search sites, whose features were therefore more typical of a price comparison site.

More importantly, based on the evidence available in the public domain at the time of writing and summarised above, it is hard to see in the changes introduced in the search algorithm in April 2011 an innovative component that may benefit users (at least as far as comparison shopping services are concerned). Indeed, with reference for example to the UK case (see Figure 3), if the main driver of the fall in rivals' traffic is the change in Google's search algorithm, with an effect of steering traffic away from competitors and towards Google's own (and similar) services, then it would be plausible to conclude that consumer harm has occurred, by making it more difficult for consumers to reach a comparison shopping site they would have otherwise preferred.

[10] See, for example, www.blog.google/topics/google-europe/european-commission-decision-shopping-google-story (post of 27 June 2017).

[11] This development is likely to be a key driver of the significant drop in the number of visits to Google's comparison shopping website in 2013 (which is noticeable - for the case of the UK - in Figure 3 for example): instead of being directed to that website, users' clicks would lead them directly to merchants' websites.