



European Commission and Digital Markets – Competition Decisions and Regulation

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**The views expressed are purely personal and do not necessarily represent an official position of the European Commission*

Features of the digital sector

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Fast moving (innovation, new products/services)



Business models (zero-pricing, two-sided platforms, “ecosystem” approach)



Market dynamics (network effects, multi- or single-homing, consumer switching or inertia)



Economies of scale and scope, issues of **interoperability** and **portability**



Markets prone to **tipping** (“winner takes most”) and entrenched market positions



Data as competitive parameter: crucial input for operators in digital markets (e.g. to develop products)
- incentives to monopolise data

These features can present **challenges for regulators and enforcers**: e.g., in terms of market definition (free-of-charge services, platforms); market power (multi-homing, data, network effects); enforcement (standard of proof, non-price effects, speed)

EU enforcement in digital (antitrust and mergers)

EU enforcement in digital – Antitrust

- Robust enforcement of competition rules in digital markets
- Increased use of **Article 101** (cases on consumer electronics resale price maintenance and on geoblocking (*Guess*, videogames))
- **Article 102 TFEU:**
 - 2 Microsoft cases (*Server OS/Media Player*, *Web browser*)
 - Amazon (*E-books MFNs*)
 - 3 Google cases (*Shopping*, *Android*, *AdSense*)
 - 2 Qualcomm cases (*Exclusivity* and *Predatory pricing*)
 - Broadcom (interim measures + commitments)

Article 101 TFEU - anticompetitive agreements

Resale price maintenance



Territorial restrictions

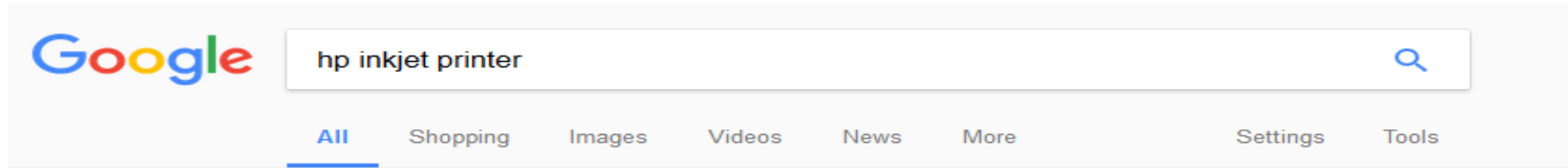


Article 102 – Google cases



- AT.39740 **Google Shopping** (27 June 2017)
 - Abuse of Google's dominance in general online search services, leveraged into the market for comparison shopping services
 - Fine: €2.42 billion
- AT.40099 **Google Android** (18 July 2018)
 - Four abuses of Google's dominance in relation to licenseable Operating Systems for mobile devices: tying, anti-fragmentation and revenue-sharing
 - Fine: €4.34 billion
- AT.40411 **Google AdSense** (20 March 2019)
 - Abuses of Google's dominance in online search advertising (exclusivity arrangements)
 - Fine: €1.49 billion






Google Shopping



Google Shopping
on the top

Shop for hp inkjet printer on Google

Sponsored ⓘ

| | | | | |
|---|---|--|--|--|
|  HP ENVY 4526 All-in-One printer €69.99 Coolblue |  HP Deskjet 2130 All-in-One printer €43.89 Coolblue |  HP Officejet 5740 - All-in-One €102.95 bol.com |  Multifunctional Hp Officejet 3832 €60.43 discountoffice.be |  HP CR768A (Officejet 7110) €129.00 PrintAbout.nl |
|---|---|--|--|--|

Competitors
not visible

Printers - HP Store UK

store.hp.com/UKStore/Merch/List.aspx?sel=PRN&fc_ptyp_inkp=1

HP DeskJet 3720 Wireless All-in-One Printer with Instant Ink Plan. Get the compact printing power and wireless independence you need to print, scan, and copy ...

LaserJet - Store UK - Print scan and copy

HP Printers - HP Store UK

store.hp.com > [Store Home](#) > [Printers](#)

HP DeskJet 3720 Wireless All-in-One Printer with Instant Ink Plan. Get the compact printing power and wireless independence you need to print, scan, and copy ...

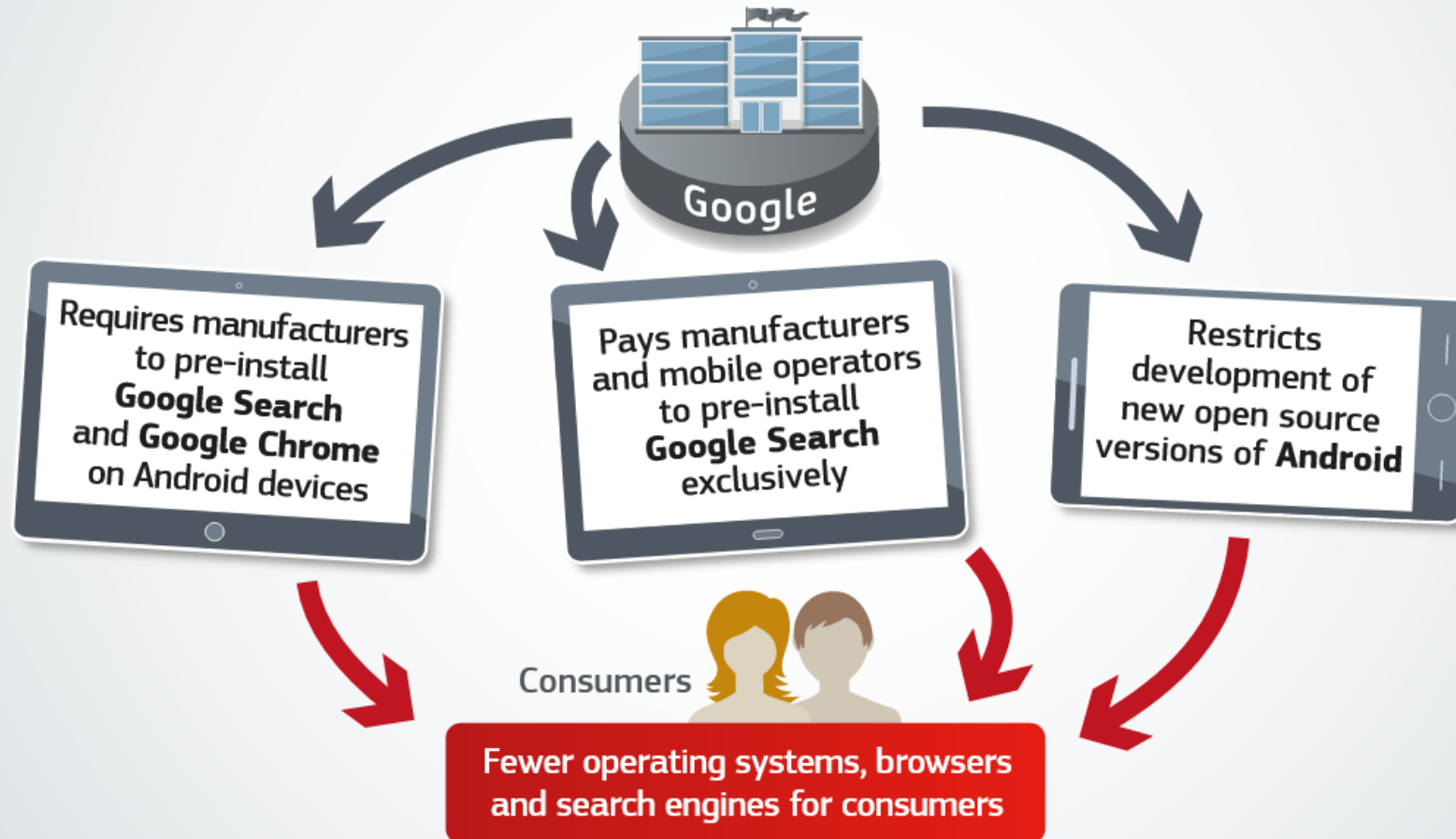
Inkjet Printer - HP OfficeJet Pro | HP® United Kingdom

www8.hp.com/uk/en/printers/officejet-pro-printers.html

Discover the HP OfficeJet Pro series of inkjet printers and hear how they pack huge capabilities into a small package, giving your business the power to be

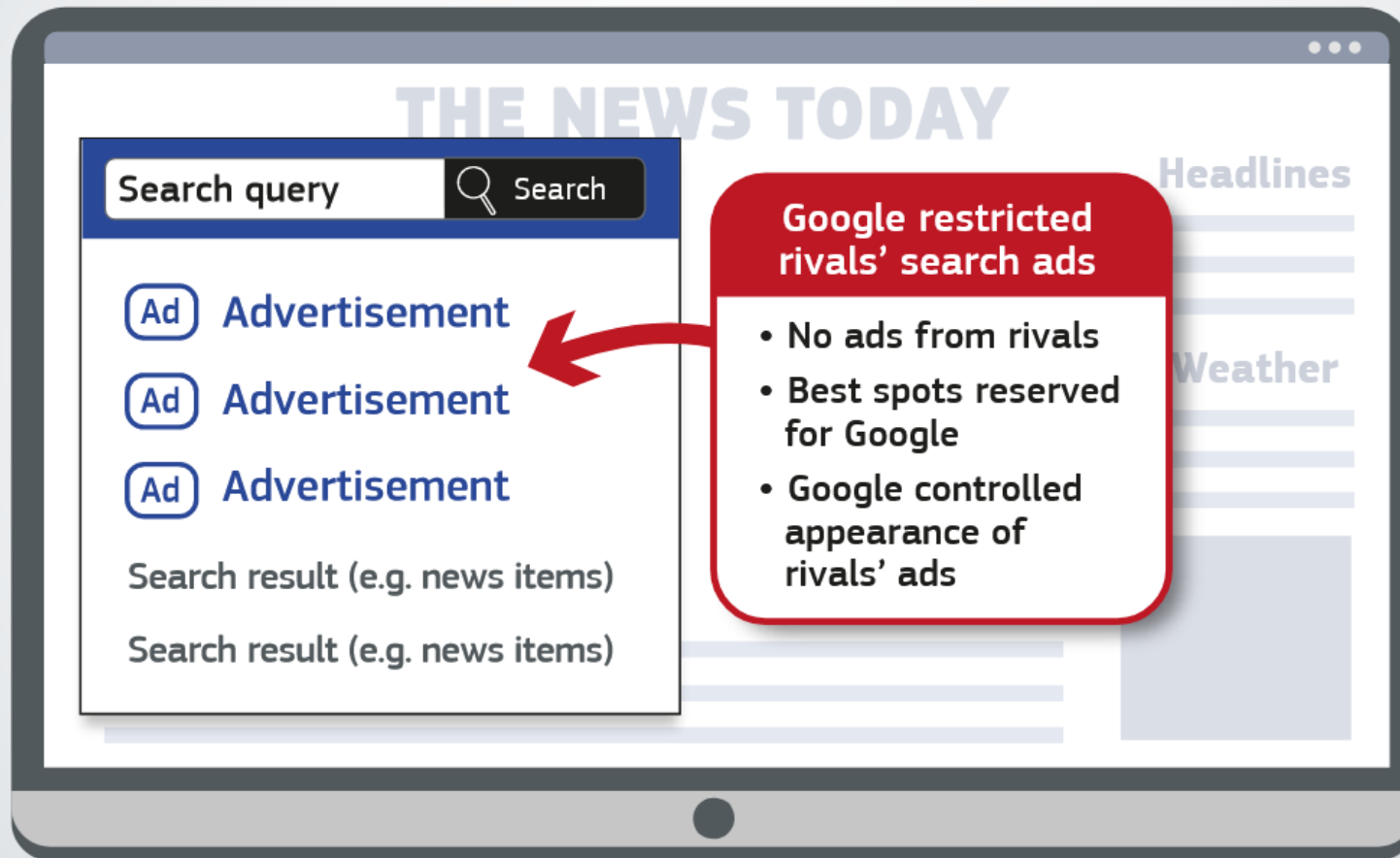
Google Android

Google's Android restrictions illegally protect its internet search dominance

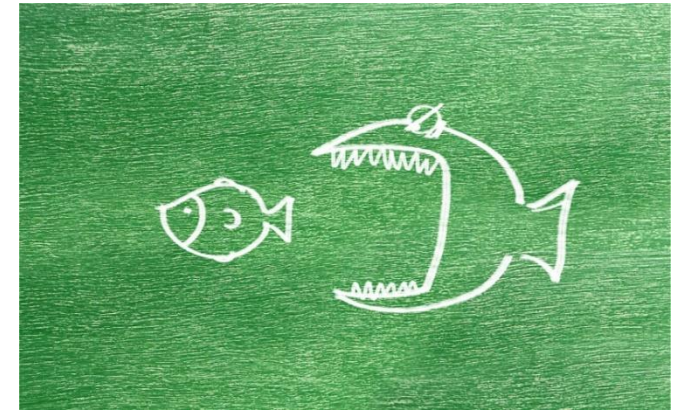


Google AdSense

Google's AdSense restrictions protect its dominance in search advertising

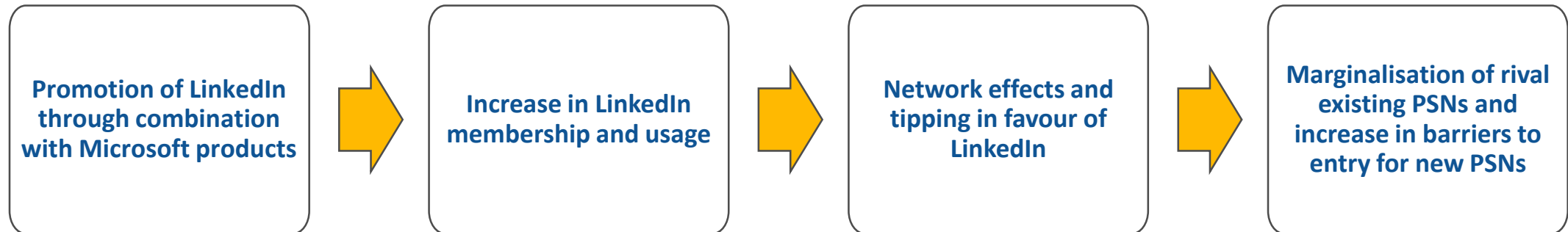


EU enforcement in digital – Mergers



- Common concern: big tech preemptively acquiring start up/nascent firms (e.g. “killer” acquisitions)
- Commission reviewed many digital mergers (e.g. *Google/DoubleClick*, *Microsoft/Skype*, *Facebook/WhatsApp*) and intervened where justified (*Microsoft/LinkedIn*, *Apple/Shazam*, *Google/Fitbit*)
- Jurisdiction: **Article 22 Guidance** (March 2021) – full use of the referral mechanism to capture below-threshold transactions
- Substantive analysis: Increased assessment of **non-price effects**, notably innovation and quality (e.g. *Apple/Shazam*, *Microsoft/LinkedIn*; also non-digital: *Bayer/Monsanto*, *Dow/DuPont*, *Novartis/GSK Oncology Business*)

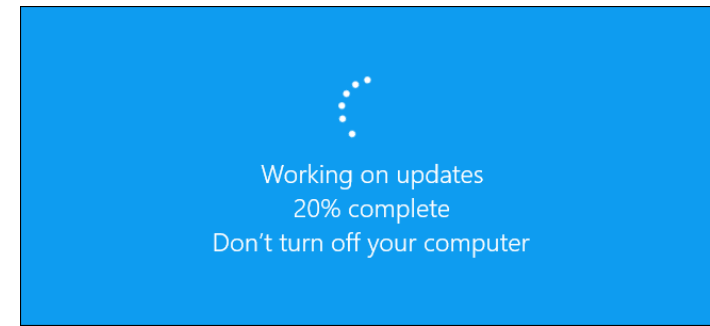
Concern: Leveraging Microsoft's strong position from PC operating systems (OS) to professional social networks (PSN), through pre-installation of LinkedIn on Windows PCs and integration in Office products



Microsoft's commitments:

- i. to allow PC manufacturers and end-users to uninstall a possible LinkedIn app/icon in Windows OS; and
- ii. to enable competing PSNs to integrate with Microsoft products on a non-discriminatory basis

EU enforcement in digital – What's next



New antitrust investigations

- *Amazon Marketplace* (use of competitors' data)
- *Amazon Buybox* (self-preferencing)
- *Apple App Store Practices* (music streaming and e-books / audiobooks)
- *Facebook Marketplace*
- *Google Adtech*

Sector Inquiry in Internet of Things launched July 2020

Review of toolbox

- Marked Definition Notice
- Horizontal Guidelines
- Vertical Guidelines

amazon



Regulatory initiatives in digital, to complement competition rules – Digital Markets Act

Wide reflection on competition law in digital

- Numerous reports/studies on the role of competition law in the digital sector, e.g.:
 - Commission's Special Advisers Report "[Competition Policy for the Digital Era](#)" (April 2019)
 - UK report by Professor Furman "[Unlocking Digital Competition](#)" (March 2019)
 - Stigler Center, "[Report of the Committee for the Study of Digital Platforms](#)" of the (September 2019)
 - Autorité de la Concurrence and Bundeskartellamt, Joint report "[Competition Law and Data](#)" (May 2016)
 - German "Competition 4.0 Commission", "[A New Competition Framework for the Digital Economy](#)" (September 2019)
 - Commission's conference "[Shaping competition policy in the era of digitisation](#)" (17 January 2019)
 - [Submissions](#) in response to Commission's public consultation on competition and digitisation (2018)
 - U.S. House of Representatives Majority Staff Report "[Investigation of Competition in Digital Markets](#)" (October 2020)
 - Australian Competition & Consumer Commission (ACCC), "[Digital Platforms Inquiry - Final Report](#)" (June 2019)
 - Lear, "[Ex-post Assessment of Merger Control Decisions in Digital Markets](#)" (9 May 2019)
- Various proposals: changes in the burden of proof; imposition of obligations regarding fair treatment, interoperability and data portability; increased use of interim measures, etc.

The Digital Markets Act (DMA)

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- Proposal for a regulation establishing **ex ante** rules for large digital platforms (“gatekeepers”)
- **Commission proposal December 2020**, now with EU Council and European Parliament
- Not a competition law tool, but **regulation that complements competition law**, which remains applicable (like in other sectors – telecommunications, energy, finance)
- Based on Article 114 TFEU – Legal basis for internal market
- Objective is to improve **contestability** and **fairness** of trading relations in digital markets
- Targeted, proportionate and flexible instrument
- Debate still ongoing and final text may change

Conclusions

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- Enforcement of **EU competition rules** has had a **central role** to ensure that digital markets deliver benefits to consumers
- EU competition law tools are **flexible and can deal with new challenges and markets**. However, it is also necessary to consider **adapting and refining** the competition toolbox
- Competition law cannot solve every problem. Where appropriate, **regulation can help tackle systemic issues and complement competition enforcement**. Competition law experience can inform regulation (e.g. DMA)
- Going forward, **need both competition enforcement and regulation as complementary tools**

Thank you



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