



GOOGLE 2.4 ... BILLION!

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In the aftermath of the European Commission announce of its decision declaring that Google breached antitrust rules by abusing its market dominance as a search engine and giving an illegal advantage to another Google product, there is still a considerable set of questions to be clarified. Yet, we will have to wait for a public version of the decision to be made available.

What we already know, though, is the amount of the fine imposed: €2.424.495.000!

It is obvious that what is being considered is a world company with a 2016 revenue amounting 89.5 billion US dollars. Nevertheless, the fine imposed goes straight to the hall of fame of the highest fine ever imposed by the European Commission and, moreover, it continues to demonstrate the strong trend of an impressive increase in fines for breaching EU antitrust rules.

After several years discussing the Microsoft case and the fine of 899 million euros imposed in 2008 for non-compliance with a previous European Commission decision, we saw Intel being fined in 2009 with a record fine of 1.06 billion euros. In its appeal to the General Court, one of the arguments presented by the undertaking was precisely that the amount was disproportionate, which was dismissed on a Court judgement of 2014 but is currently under appeal before the Court of Justice.

In the meanwhile, the car glass producers cartel was fined in 2008 with a total of fines of 1.35 billion euros, with Saint-Gobain receiving the largest individual fine of 880 million euros. Again, the case was appealed by part of the undertakings involved firstly before the General Court and afterwards before the Court of Justice, and the lack of proportionality of the fines was argued without success.

More recently, in July 2016, a new fine record was set in the Truck producers cartel case, where a total of fines of 2.93 billion euros was imposed. In this situation, though, we were facing several undertakings (MAN, Volvo/Renault, Daimler, Iveco, and DAF) that colluded on truck prices for over 14 years and concerning around 9 out of every 10 medium and heavy trucks produced in Europe, and the highest individual fine was on Daimler, amounting 1.008 billion euros.

One year later, we see that figure more than doubling with this fine of 2.424 billion euros being imposed to one undertaking.

The question that many have been raising concerns the nature of the European Commission fines for the breaching of EU antitrust rules. Since their beginning, their administrative nature has been defended, but more and more that “certitude” is rightly being challenged considering that the European Commission’s recent decisions end up raising the following question: until when will we have the discussion, limited only to a few, that “[...] fines of an exorbitant scope [...] have effects identical, or at least similar, to criminal sanctions. Any other perception would be a life lie.” (Möschel, Fines in European competition law, *European Competition Law Review*, 32(7), p. 371)?

And will the Google decision foster that discussion? Absolutely.