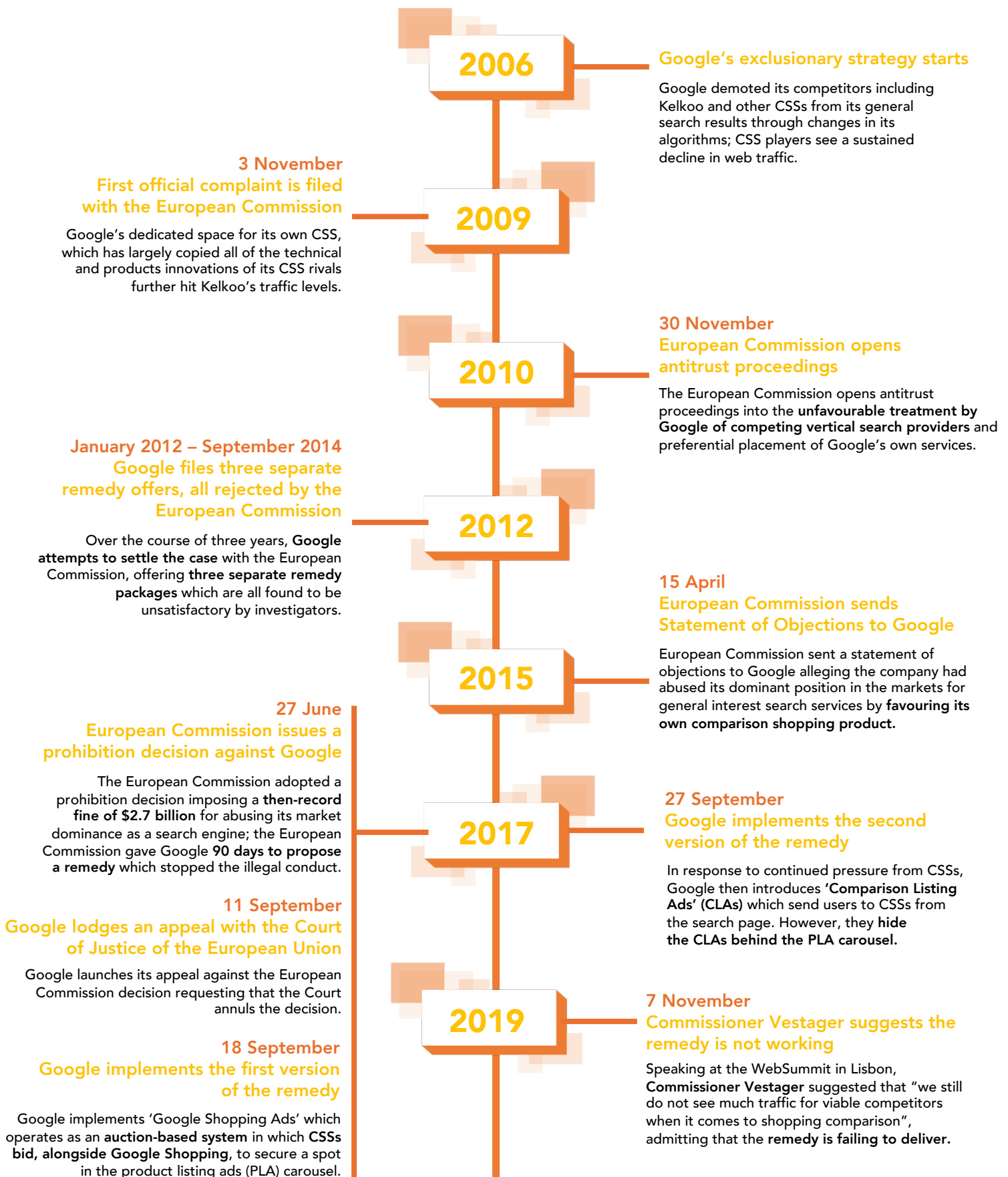


The European Union's Google

Shopping Investigation, Fine and Remedy



2020

10 February

Commissioner Vestager says that Google Shopping tweaks trigger 'substantial increase' in take-up of rival services

Commissioner Vestager has said that Google's move to comply with the EU antitrust order by giving greater prominence to rival shopping services has led to a "substantial increase" in take-up. Nonetheless, according to MLex*, Vestager acknowledged that some companies have complained about the new version of Google's shopping service, questioning its compliance with the original 2017 order to treat rivals fairly.

*See *Google Shopping tweaks trigger 'substantial increase' in take-up of rival services, Vestager says* (MLex, 10 February 2020), https://content.mlex.com/-/content/1161453?referrer=portfolio_openrelatedcontent

2021

10 November

Google loses Shopping appeal before EU Court

Google lost its legal challenge to the EC's antitrust decision. The European Court largely dismissed Google's appeal and upheld in full the fine of EUR 2.42 billion.

18 November

Commissioner Vestager stresses antitrust rules are effective

Commissioner Vestager told the EU Parliament that she was aware of the calls for the effective implementation of the Google Shopping decision. She pointed out that antitrust tools are effective in taking on the challenges of digital markets and remedies.

2022

20 January

Google challenges EU Court loss over antitrust abuse of search engine

Google has lodged an appeal against the General Court's judgment. Google is arguing that judges at the lower court substituted their own reasoning for that of EU investigators and failed to apply the right legal test regarding granting access to infrastructure.

7 February

Google faces EUR 2.1 billion lawsuit by PriceRunner

Google is facing a lawsuit by the Swedish price-comparison service PriceRunner over damages it claims to have suffered from manipulation of search results in favour of Google's own comparison shopping services. According to PriceRunner the anticompetitive practices are still ongoing, despite the remedies, which could impact the final sum of the damage.

Lessons from the European Google Shopping Investigation

- The European investigation into Google Shopping has proven categorically that **Google is unable to self-police**. Abusive conduct over decades has had catastrophic consequences for both consumers and businesses, leading to a position where antitrust enforcement agencies and key political figures in both the US and Europe are calling for Google to be broken up.
- **Antitrust enforcers must act quickly and decisively** to prevent further harm to consumers and Google's competitors. Preliminary injunctions are a key tool in the arsenal of competition authorities, preventing further damage to the market from occurring whilst investigators carry out their analysis.
- In dynamic markets that are prone to tipping, **large fines and cease-and-desist orders have not proved effective** in restoring competition in Europe. Working with affected parties, US authorities should pursue targeted remedies which seek to address the root cause of the anticompetitive behaviour and restore markets to open and fair competition.

Background

Founded in 1999, Kelkoo is a pioneering price comparison shopping service (CSS), designed to provide consumers with access to a vibrant shopping ecosystem and fair pricing on a wide range of goods.

After a period of sustained growth, in 2008, Kelkoo noticed a dramatic drop in its SEO traffic to its comparison sites, affecting visibility for both merchants and consumers. Kelkoo moved from being a pioneer in its field to a company struggling for survival.

European Commission Investigation into Google Shopping (2010 – 2017)

In 2010, the European Commission opened antitrust proceedings against Google, investigating unfavourable treatment by Google's rivals, particularly CSSs, in Google's unpaid and sponsored search results coupled with an alleged preferential placement of Google's own service. This followed over a year of complaints from CSS rivals.

Playing for time, Google entered prolonged discussions with the European Commission to settle the case, offering small changes to their behaviour over the course of three years in the hope that the European Commission would halt its probe. In the meantime, consumers and CSSs continued to suffer from Google's abusive conduct.

Finally, in June 2017, 2,401 days after the initial investigation was opened, the European Commission issued an official decision against Google, imposing a then record fine of EUR 2.1 billion for abusing its market dominance as a search engine by giving an illegal advantage to its comparison shopping service. The Commission then gave Google 90 days to propose a remedy which put an end to the illegal conduct. Google has continued to resist creating a level-playing field and created a remedy which is ineffective.

Aftermath of the European Investigation (2017 – Present)

Google was left to create its own remedy and chose to hide CSSs behind its own product listing ads. As a result, the market abuse continues, consumers remain deprived of the benefits of CSSs and effective competition has yet to be restored.

More than ten years after the initial complaints were made by Google's rivals, Commissioner Vestager admitted that the remedy in Google Shopping is ineffective stating that "we still do not see much traffic for viable competitors when it comes to comparison shopping". Simply put, Google has proven incapable of self-policing and implementing a remedy which restores fair competition to the comparison shopping market.

Finally, in November 2021, the European Court upheld the Commission's decision to fine Google for its anticompetitive behaviour. Commissioner Vestager welcomed the judgment and highlighted the importance of antitrust in tackling digital markets, together with the Digital Markets Act (DMA). Furthermore, she said that the ongoing 'tweaked' remedies* have helped redirect some of the web traffic, despite calls for more effective implementation of the remedies.

*See *Google Shopping tweaks trigger 'substantial increase' in take-up of rival services, Vestager says* (MLex, 10 February 2020), https://content.mlex.com/#/content/1161453?referrer=portfolio_openrelatedcontent