**Antitrust and competition in global digital markets in 2023: What lessons have been learnt?**

**Richard Stables, CEO of Kelkoo Group**

We are approaching the end of another busy year for global competition policy in digital markets. The EU’s Digital Markets Act (DMA) has been adopted. There is significant progress on the Digital Markets, Competition and Consumers Bill (DMCC) in the UK. The Department of Justice case against Google is the biggest antitrust tech trial in the US since the 1990s and is pending a decision next spring. And a new antitrust investigation has been announced against Google in Japan. So, what will next year hold? Will 2024 see Google finally stopped in its tracks?

Google is the king of kicking the can down the road. Despite being fined back in 2017 in the EU Google Shopping case, it has dragged out the appeals process. Google lost its appeal in 2020 and re-appealed. We now wait to hear the Court of Justice’ decision following Google’s final appeal three months ago in Luxembourg. We don’t expect a definitive decision until next summer however, the Advocate General’s opinion on 11 January will indicate which way the wind may blow. That will be seven years after Google was found guilty of market abuse and fined a record €2.4 billion. That’s seven more years of abusive behaviour and undermining competition. That’s seven more years of building its monopoly with dire consequences for competition and consumer choice. That’s seven years when the likes of Kelkoo Group couldn’t hope to compete, however strong our product and services. *That’s 13+ years since the Shopping case in Brussels began*.

We are not alone, and the European Commission knows what to expect when action is taken against Google. When issuing a Statement of Objections against Google on the Adtech case, EVP Vestager said: *“We have seen this play out concretely: each time a practice was detected by the industry, Google subtly modified its behaviour so as to make it more difficult to detect, but with the same objectives, with the same effects.”* She has the measure of Google and included remedies in the Statement of Objections because, as she said: *“Google doesn’t learn.”*

Google doesn’t learn. But hopefully regulators do. The DMA has been adopted but anyone who is anyone in this field is saying that Google will yet again drag things out. I hope I don’t hear the can echoing as it bounces along the Brussels cobbles again. With history about to repeat itself, the EU Institutions will undoubtedly be on high alert and ready to stop this practice that has harmed consumers and business alike.

As anyone who knows anything about Kelkoo Group will know, we have not been shy about our determination to call out market abuses - namely those of Google - that took our business off a cliff, and which continue to stifle innovation and hinder would-be competitors in our shopping comparison sector and elsewhere. In our David versus Goliath fight, we have held on as a point of principle and, in theory, we may have won. But what does that mean if Google carries on business as usual and doubles down on its abuse in its so-called remedy proposals?

The UK Government can change the weather in this regard. With the DMCC Bill going through the House of Lords, the Government remains resolute and has stood firm on the judicial review appeals mechanism. It will undoubtedly continue to face intense pressure from Big Tech to water down this mechanism to allow them to call a case into question, namely a full merits appeals process. However encouragingly the new Minister for Tech and the Digital Economy, Saqib Bhatti, announced that full merits will only apply to fines; whether it was right to impose the penalty and the penalty amount.

That said, the wording as it stands could be misconstrued, risking ‘scope creep’ and in the process, creating unjustified delays - a well versed Google tactic that I am sadly very familiar with over 14 years of trying to create a level playing field in Europe. This concern could be tackled by inserting an explanatory note that would clarify that the final wording in the Bill is the intended meaning. This would remove any ambiguity and send a clear message to the market that a) the full merits appeals standard for fines is not a ‘get out of jail’ card and b) will reassure market participants, like Kelkoo Group, that delays will not be tolerated.

Back to Europe however. I still have hope for the EU. The DMA is underway. The gatekeepers have been designated and there is a compliance deadline of 6March. Between now and then, Google must produce a workable solution (that we and companies like us accept) in line with the DMA. I have a vain hope that Google will change its spots and embrace a fair new digital world. I have perhaps a more realistic hope that regulators get a hold of that can, knowing as they do, the years of legal wrangling they have ahead of them if they do not.