

Steering brief

Scene setter

You will meet with [REDACTED] Google and Alphabet. The last time you met was in January 2021.

Case T-612/17 Google and Alphabet v Commission (Google Shopping)

On 10 November 2021, the General Court largely dismissed Google's action against the Commission decision that had found that Google abused its dominant position by favouring its own comparison shopping service over competing comparison shopping services. The Court upheld the fine of EUR 2.42 billion imposed on Google (see *press release in your file*).

DG COMP input to be added

Google position on digital policies and transatlantic cooperation

On 28 September 2021, [REDACTED]
[REDACTED] Google, published a blog post¹ in support of a **closer transatlantic cooperation** and of the **Trade and Technology Council**.

Google is calling for:

- **shared regulatory principles** and other new policies governing digital markets and services are interoperable and adhere to principles of consistent treatment, robust due process protections, and safeguard user privacy and intellectual property.
- a reliable, long-term EU-US agreement **on transatlantic data flows** and calls for greater transatlantic coordination in the field of **cybersecurity**.
- a common approach to **policy and research** enabling responsible adoption of artificial intelligence (such as within the context of the Trade and Technology Council).
- an open internet that respects international human rights and **protects freedom of expression**: Europe and the US should continue to stand up for internet freedom and human rights in the online space².
- **small businesses** and workers to be given specific consideration in international trade is highlighted³.

Google is committed to working with governments and other stakeholders to protect open internet respecting international human rights.

Recent developments in Google's position on the Digital Services Act

- IMCO Rapporteur Christel Schaldemose has suggested amending the DSA to include **search engines as online platforms**.
- Google, Microsoft and other search engines sent a letter to the Commission criticising this update as not feasible: this new classification "... evidences a deep **misconception about how online search engines** and search syndication **work** and what is technically feasible".

¹ <https://blog.google/outreach-initiatives/public-policy/strengthening-transatlantic-digital-space/>.

² "[T]he open internet is increasingly under threat. According to Freedom House, governments suspended internet access in over 20 countries in 2021 and dozens of countries pursued content rules that would impact freedom of expression."

³ "The EU and the US should identify access barriers, find new ways to ensure that workers get digital skills, and put digital tools and exporting technologies in the hands of small businesses."

- Signatories of the letter said they only store information in a temporary and fleeting way, and are **limited in their content takedowns**.
- They added that they would **not be able to comply with their due diligence obligations**, such as tracking their business customers, because they “often have no idea who the corporate website user is or how to contact it” (they do not have contracts with them).

Implementation of the copyright directive

- The French competition authority is pursuing an abuse case against Google for allegedly failing to negotiate with publishers in good faith, as mandated by the recently revised EU Copyright Directive –despite the fact that Google has reached an agreement with some hundred publishers in the beginning of 2021⁴.

Google argues against new rules that could make online marketplaces liable

- Google has reportedly urged MEPs and EU diplomats to reject new rules that could make online marketplaces liable for illegal products and traders on their platforms⁵.
- The company stressed that new amendments are going against recent EU case law and could result in general monitoring obligation. Google also said that marketplaces do not have control of goods sold by third-party sellers on their platforms and would not be able to comply with requirements to independently verify the products.

Key messages

On the Digital Services Act

- We welcome Alphabet’s motto to “do the right thing”. But **determining the right thing requires open, sincere and truthful dialogue**. Alphabet has shown to be a constructive and valuable participant in the dialogue on digital regulation in the past. I hope that it will continue to do so now.
- Services and products offered by Alphabet have improved our economy, societies and individual daily lives, including during the peak of the COVID-19 crisis.
- At the same time, concerns have emerged about **new types of problematic practices**, such as regarding disinformation and illegal content. I trust that you will tackle these concerns continuously and effectively.
- The Digital Services Act sets rules on **content moderation practices** of online platforms, their interaction with the freedom of speech and a healthy and well-informed public debate.
- Under the proposed rules, **platforms will have to apply effective measures against misuse** of their systems and **transparency mechanisms**. Users will have the right to **be informed about the moderation policies and decisions** by the platform and to contest them (through a means of redress).
- Moreover, very large platforms in particular will have to ensure that the ‘public spaces’ that they are operating are **open and fair**: they will need to assess and **address risks** their systems pose to freedom of expression and other **fundamental rights**.

On the Digital Markets Act (DMA)

COMP to provide input

⁴ <https://www.reuters.com/article/us-france-google-antitrust-exclusive-idUSKBN2AN268>.

⁵ According to Politico Pro Morning Tech of 29 October 2021.

On Trade and Technology Council (TTC)

- The **Trade and Technology Council** is the tool for new types of trade and economic governance discussions: to **coordinate approaches to key global technology, economic, and trade issues**; and to deepen transatlantic trade and economic relations, basing policies on shared democratic values.
- **We do not aim to replace our legal frameworks**, but rather to **develop common understanding** and avoid discrepancies where possible.
- Following the successful inaugural meeting in Pittsburgh on 29 September, it is clear that the TTC has the potential to become the **main channel of our dialogue** on global economic and **technological challenges**. We should seize this opportunity to jointly lead the work to **set standards and rules for the 21st century**.
- We have established **10 Working Groups** under the TTC, which will **focus on the actions identified** in the Joint Statement from Pittsburgh⁶. **Each working group has been given tasks**. The groups will analyse what the tasks will mean in practice and how to achieve them. The **next TTC meeting** will take place sometime next year.
- In the Working Group on AI, we will work together on developing **artificial intelligence (AI)** that serves our societies and economies and is used in ways **consistent with our common democratic values** and human rights. We also agree that a risk-based approach is needed to ensure proportionality of the regulatory framework.
- [REDACTED] a consensus has been built between EU and US around a set of challenges and concerns, such as the **spread of illegal content online and the misuse of economic power** by some of the large online platforms.
- In the **Working Group on Digital Platforms**, we had in depth conversations, **against the background of the EU initiatives** and agreed to an ambitious workplan.
- This includes in particular the **issues of algorithmic amplification, meaningful transparency for platforms' content moderation processes**. We also discussed ways of making sure that **independent researchers** can have **data access to platforms content moderation** practices.

On the cloud

- Cloud services offered in Europe must **comply with EU rules and standards in the area of security, portability/interoperability, data protection**, energy and resource efficiency.
- The Commission is working on an **EU cloud rulebook** to be published in **summer 2022**.
- I understand that you have recently concluded several partnerships (with OVHCloud, Thales, T-Systems) to **provide cloud services in compliance with 'EU sovereignty rules'** (such as those that the French National Cloud strategy requires). We need to make sure that these partnerships are **compliant with EU law**, also when it comes to the free flow of data in the EU single market.

Contact – briefing coordination: [REDACTED] (SG.A.4)

⁶ In your file.