COURT OF JUSTICE
OF THE EUROPEAN UNION

Opinion of the Advocate General at the Court
Juliane Kokott
in Case C-826/24 P | *Commission* v *Google and Alphabet (Google AdSense)*

Press release No 164/26

Luxembourg, 12 November 2026

Advocate General Kokott: The General Court erred in finding that the Commission had failed to demonstrate any exclusionary effects of Google's contractual practices in connection with its online advertising intermediation platform AdSense

She therefore proposes that the General Court's judgment, which annulled the Commission's decision imposing a fine of almost €1.5 billion on Google, be set aside and that the case be referred back to the General Court for a fresh judgment

Since 2003, Google, a subsidiary of Alphabet, has operated a digital online advertising intermediation platform called AdSense. In this context, Google has developed various services, including, in particular, an online search advertising intermediation service called AdSense for Search (AFS).

AFS enables operators of websites with integrated search engines to display online search ads from Google Search when users carry out searches on their websites. In this way, the website operator was able to receive a share of the revenue generated by the display of the advertisements. In order to use AFS, website operators could negotiate, for one or more of their websites, a 'Google Services Agreement' (GSA) with Google. However, the model templates for the GSA used by Google since March 2009 contained clauses that restricted or prohibited the display of ads from services competing with AFS.

Following several complaints, in July 2016, the European Commission initiated proceedings in relation to three clauses contained in the GSA ('exclusivity clause, [1] 'placement clause [2] and 'prior authorisation clause [3]) and informed Google that those clauses were liable to constitute an abuse of a dominant position. In September 2016, Google ceased applying those clauses or amended them.

In a decision dated March 2019, the Commission found that, between 2006 and 2016, Google had committed three separate infringements of EU competition law [4] through the application of those clauses, which together constituted a single and continuous infringement. It therefore imposed a fine of almost €1.5 billion on Google – in part jointly and severally with Alphabet. [5]

Google and Alphabet brought an action for annulment of that decision before the General Court. By judgment of 18 September 2024, the General Court annulled that decision on the grounds of an inadequate examination of the relevant circumstances of the case, in particular the duration of the contractual relationship, and thus failure to demonstrate infringements. [6]

The Commission has subsequently applied to the Court of Justice to set aside that judgment and dismiss the action in so far as Google and Alphabet dispute that the clauses at issue were capable of restricting competition between 31 March 2009 and 31 December 2015.

In her Opinion, **Advocate General Juliane Kokott proposes that the judgment under appeal be set aside and that the case be referred back to the General Court.**

She states that the Court of Justice has recognised several criteria for examining and demonstrating the existence of exclusionary effects to the detriment of competitors, where these arise from contractual commitments imposed by an undertaking with a dominant position on its customers ('*Intel* criteria'). [7] These also include the duration of the contractual commitment.

The Commission's obligation with regard to examination and demonstration of establishing (exclusionary) abuse requires all relevant circumstances of the case to be examined. However, in her opinion, the General Court incorrectly inferred from this that that obligation with regard to examination not only covers the overall assessment of the different *Intel* criteria, as such, including the duration of the contractual commitment, but also requires a particularly detailed analysis of all the relevant circumstances in respect of each individual criterion, failure to comply with which may, in itself, result in the annulment of the contested decision. According to Advocate General Kokott, **the General Court thereby imposed excessive requirements as to the scope of the examination of the criterion of duration and did not sufficiently relate its conclusion to the assessment of the other *Intel* criteria or weigh it in the overall context of those criteria.**

In her view, the General Court had, in fact, found, with regard to the other *Intel* criteria, that the disputed clauses were, in principle, capable of producing the exclusionary effects found in the contested decision, and that the Commission had complied with its obligation as to demonstration in that regard. However, the General Court called that finding into question by erring in law since it found that the Commission had not sufficiently assessed and examined the duration of the GSA or the existence of a unilateral right of termination.

It is mistaken, according to Advocate General Kokott, to require the Commission to carry out a detailed examination and assessment of each of the underlying contracts and their application in order to establish whether and to what extent they contributed to those exclusionary effects. It is sufficient, in principle, to take into consideration cumulatively all the contracts which are significant to the functioning of competition on the relevant market and their respective durations and to establish that, having regard to their content and their application by the contracting parties in the period in question, they gave rise to or could have given rise to, or were capable of producing, such effects collectively. In her view, the Commission complied with those requirements inter alia with regard to the duration of the respective GSAs and the contractual commitments. It had, namely, respectively carried out an overall assessment and, in some cases, relied on average values in order to determine the contribution of the clauses at issue to the exclusionary effects it had established.

Therefore, she considers that the contested decision does satisfy those requirements governing the required individual assessment of the criterion of duration and of the overall assessment of the *Intel* criteria. The General Court could not, without committing an error of law, have criticised the Commission for failing to examine sufficiently or to assess and weigh – in their overall context – the various relevant circumstances and criteria for assessing possible exclusionary effects.

Since the General Court erred in law by finding that the Commission had not demonstrated the existence of exclusionary effects arising, inter alia, from the clauses at issue, the General Court also erred in law by finding that the infringements resulting from each of those clauses could not constitute a single and continuous infringement.

Since the General Court has not yet examined certain pleas in law and arguments put forward by Google, the Advocate General proposes that the case be referred back to the General Court. In particular, she states that the General Court must still address Google's objections to the amount of the fine of almost €1.5 billion imposed by the Commission. In any event, the fine should be reduced, as the General Court's findings regarding the lack of demonstration of exclusionary effects in 2016 have not been challenged. [8]

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the decision of the General Court. Where the state of the proceedings so permits,

the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The full text of the Opinion is published on the CURIA website on the day of delivery.

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[1] Under this clause, the contracting parties were not permitted to use any competing services on the websites at issue.

[2] Under the terms of the clause, the contracting parties were obliged to display a minimum number of Google ads and not to display competing ads above or directly adjacent to them.

[3] This clause stipulated that the contracting parties had to obtain Google's approval before making any changes to the display of online search ads.

[4] Article 102 TFEU.

[5] See the summary of the Commission's decision of 20 March 2019 and the Commission's press release of 20 March 2019.

[6] See the judgment of the General Court of 18 September 2024, *Google and Alphabet* v *Commission (Google AdSense for Search)*, T-334/19, and Press Release No 143/24.

[7] See the judgment of 6 September 2017, *Intel* v *Commission*, C-413/14 P, paragraph 139.

[8] The Commission did not challenge in its appeal the General Court's findings that, for the year 2016, it had not been sufficiently demonstrated that the clauses at issue were capable of having exclusionary effects. Those findings are thus final and must be taken into account in the new decision on the fine.