CHAPTER IV

GOOGLE ANTITRUST CASE : POLITICAL ENFORCEMENT AND ANALYSIS

A. Google Antitrust Case in Chronological Order

1. Part One: The Beginning of the Case

Adam Raff and Shivaun Raff (2017), the Co-founders of Foundem and SearchNeutrality.org noted that the case started when UK's vertical search engine and price comparison service, Foundem, issued the case of network monopoly done by Google, Inc in November 2009. After several times trying to reach a dialogue with Google, Inc via e-mail, but to no avail, Foundem submitted the formal Competition Complaint under Article 102 about Google's abuse of dominant position toward European Commission, demanded an open investigation. The Complaint contains the explanation on how the Titan-sized search engine Google, has committed anti-competitive business practices by using its overwhelmingly dominant search engine to promote Google's products and services.

Usually, the users around the world would considers the first result appeared on the search engine as the most favorable choices. As the most prominent-used search engine worldwide, Google tried to promote its products and services by putting them at the top results to appear before the consumers. Consequently, this practice will lower the chances for the competing companies to be connected with consumers. As the top

results will only show those of Google's, it will dismiss the competitors' to the lower result and reduce the possibility of their products to be seen by consumers.

In the following months, complainants who submitted Complaint to European Commission keep increasing. These complainants came from the variety of national competitors and regulators in both Europe and America. All of them more or less mentioned the same concern as Foundem. Some of them i.e., French legal search engine, eJustice.fr; the Microsoft-owned, European price comparison service, Ciao; Twenga, online shopping search engine from France; Yelp, Inc, American multinational corporation; Expedia, American travel company; Odigeo, global travel agency company from Spain ; TripAdvisor, American travel and restaurant websites company; etc. Aside from them, VfT (Verband freier Telefonbuchverlerger, the German Association of Independent Phone Book Publishers, submitted a Complaint to European Commission as well. Texas Attorney General was also opening antitrust investigation toward Google (Raff & Raff, 2017)

2. Part Two: The European Commission Officially Opened Investigation

The Commission formally opened the investigation on 30 November 2010 (Case COMP/C-3/39.740 – Google versus Foundem and others). In the following months, while the Commission performed the investigation, Google shows a willingness to cooperate (Raff & Raff, 2017). On 21 May 2012, Commissioner Antitrust Chief, as well as Vice President of European Commission in charge of Competition Policy, Joaquin

Almunia (2012) announced that the Commission had been executed a large scale market investigation due to the increasing amount of complainants toward Google anti-competitive practices. It produces a provisional evaluation in which under Article 9 of Regulation 1/2003, Google had abused its dominant position. Almunia further stated that the Commission would give Google a chance to propose a solution/remedies regarding the four main concerns identified :

a. Vertical Search Services. Different from horizontal search engines which show the general search results, vertical search services provided by vertical search engines are displaying specific search results derived from specific topics, i.e., beauty products, price comparison, news, restaurants, etc. In its general search results, Google shows different manner regarding how it promotes their vertical search services and those of competitors. Like for example, putting their sites in the top result while putting those of competitors in the lower result, despite sometimes the sites may being inferior to the competitors.
b. Investment of Competitiors. The investigation found that Google has been copying the original data from competitors' websites on its own without prior authorization. If this happens, the original websites in which the data came from will undoubtedly face loss. Google's act has indirectly decrease competitors motivation to invest in the original websites, for the internet users will mostly depend on bigger or more popular sites. This practice may prove harmful to sites that offer public places' guide or travel sites.

c. Search Advertisement. Search advertisement is advertisement online which show up together with search results when a user types a query or keyword in website's search box. Google has made an agreement with co-ed websites in which Google provides search advertisements. The concern is that the agreement may demand them to get the requirements of search advertisements from Google. It agrees become exclusive and at the same time closing the chance of the other search advertising mediation services. Online stores, online magazines, or broadcasters are the most likely to be harmed from this practice.
d. Restriction on Portability of Search Advertising Campaign. The investigation found that Google has been putting a restriction on the portability of search advertising campaigns from its platform AdWords to those of competitors. It will become more beneficial if the search advertising campaign can be connected through AdWords and other platforms, but if Google is putting a restriction on software developers who can offer a tool to make it happen, then it will become alarming.

At the end of his statement, Almunia announced that the proposal remedies made by Google in the effort to solve the case would be going through a market test before the Commission make it official. Complainants and third parties are allowed to participate ‘appropriately' during the process. Should the proposal deem as unsatisfactory, then the proceeding of the case will continue accordingly (Almunia, 2012).

3. Part Three: Google's Proposal Remedies

Ten months after Almunia gave Google a chance to propose remedies, Google finally came up with their first proposal remedies on 3 April 2013. The Commission then initiate a formal Market Test for the proposal. Like Almunia's previous statement, the Complainant and third parties are permitted to give their feedbacks. (Raff & Raff, 2017).

On 21 May 2013, Foundem submitted a formal response regarding the proposal to the Commission. It gave disapproving answer against Google proposal, specified it as "...*would not only grant Google the right to profit from any traffic it sends to rivals.*" Foundem expressed the horror it feels toward the proposal by further stated that the proposal of Google has no intention to address the concern of search manipulation, but instead making it worse by changing its system for sites placement from relevance-based into payment based. It naturally will make the competitors' race for the highest bidding, and thus not only exert the payment to the maximum but also means Google will seize the vast majority of the competitors' profit (Raff & Raff, 2017). It will leave the competitors' in such disadvantageous marketplace, and the revenue of Google will sky-rocketing after this.

Not only Foundem, but other complainants also shows unfavorable response toward Google's proposal. On a press conference arranged by FairSearch, several companies attended and give their comments regarding the proposal. Thomas Vinje, a spokesman for the FairSearch coalition, argued that the proposal is so dangerous to the point that it is better for Commission to do nothing than to accept it. Michael Weber, director

of Hot Maps, an online maps service said, "*A normal user goes to the biggest and boldest thing on the page.*" (EUbusiness, 2013) He indicated on how the situation will still be the same regardless which one between the previous method or still-in-proposal method to be adopted, as the internet users always tend to go to the most top result or more popular sites. Moritz Von Merveldt from ProSiebenSat1, a German audiovisual media company also stated, "*At the end of the day, Google is offering a big ad banner, this is self advertising they are proposing, nothing more, nothing less.*" (EUbusiness, 2013)

After analyzing the incoming response, Commissioner Almunia declared that the proposal is not good enough and demanded Google to improve their proposal. On 21 October 2013, Google submitted their second proposal. But again, the proposal was rejected due to the content which is not so different from the previous one. The third set proposal was submitted on 31 January 2014, and after some consideration, Almunia planned to accept it. Even though there are many complainants demanded Almunia re-think his decision, saying that the third proposal remains unchanged except for few minor details from the second one. Almunia later announced on 5 February 2014 that he had accepted Google's third proposals, and the implementation will be conducted without Market Test or further consultation. But of course, the complainant's response will be considered as the part of the procedure (Raff & Raff, 2017).

4. Part Four: Commissioner Margrethe Vestager took the Case

Almunia's announcement is broadly understood as the end of European Commission's Google Search Antitrust case. Unfortunately, as if trying to scream "this is not over yet!", Almunia received many pressures due to his decision on Google case. In an official letter from European Parliament to Vice President Almunia, MEPs (Member of European Parliaments) Ramon Tremosa and Andreas Schwab wrote to Almunia and asked him to kindly appear in Parliament's Economic and Monetary Affairs (ECON) Committee. The purpose is to clarify in details regarding his decision on Google case, mentioning that this case will have significant political and economic impact, so it needs to be analyzed thoroughly and carefully (Raff & Raff, 2017).

The European Consumer Organisation (BEUC), the Open Internet Project (OIP) —A coalition consists of 400 French and German start-ups, consumer associations, online publishers, and digital rights groups— submitted an EC Competition Complaint against Google. The French Economic Minister, Arnaud Monteburg, and the German Minister for Economic Affairs, Sigmar Gabriel also wrote to Commissioner Almunia, to voice their concern on how the proposal received without a proper market test, and thus make them feel doubtful about its effectiveness (Raff & Raff, 2017).

Due to the pressure and numerous feedback from the variety of parties, on 23 September 2014, Commissioner Almunia formally declined Google's third set of proposals. Soon after that, Almunia ended

his mandate as Competition Commissioner. His position replaced by Margrethe Vestager. She officially began her five-year mandate on 1 November 2014, and her first job is finishing what her predecessor left off (Raff & Raff, 2017).

Following Almunia's decision before his leaving, the European Parliament agreed upon the decision that EU should "support consumer rights in the single digital market." They urged the Commission to enforce the antitrust law assertively. Vestager then begins a comprehensive understanding of the case, by doing consultation and review to form the next step in Google case. On 15 April 2015, the EC officially accused Google with abusement of its dominant position. They sent Google a Statement of Objection (SO)[1] which focused on four main concerns that have been announced before. It prioritizes the search manipulation case raised firstly by Foundem. Complainants are welcomed to give their feedback, and Google had given ten weeks to respond (Raff & Raff, 2017).

Google rejected the charge, claimed that the competition is "flourishing." On April and July 2016, the Commission issued SO regarding Android mobile operating system, and also a Supplementary Statement

[1] SO is an obligation of the Commission in which the result from the addresser's right of defense. This right empowers them with the opportunity to make their claim to be known and understood. The SO is an important part of competition case proceeding, as the content of the SO will become the main source of Commission's decision, even if it is a negative one.
Read more: European Commission. (2002). Glossary of term used in competition policy. Brussels : European Community

of Objection (SSO)[2] in Google search case. (Raff & Raff, 2017)

Adam Raff and Shivaun Raff (2017) noted that the Commission passed a Prohibition Decision (guilty verdict) in the Google search case on June 2017. It specified by European Commission (2018) in Summary of Commission Decision of 27 June 2017 :

> "The fine imposed on Alphabet, Inc. and Google, Inc. for the abusive conduct is calculated on the basis of the principles laid out in the 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No. 1/2003. The decision concludes that the final amount of the fine imposed on Alphabet, Inc. and Google, Inc. is EUR 2 424 495 000."

The Antitrust fine against Google is the biggest antitrust fine EU ever imposed on a company since Intel antitrust case in 2009, with the total amount of fine € 1.06 billion. The Commission announced that Google has 90 days to remedy the system that favor its products and services while marginalized those of competitors'. If not, the EU will give further penalty up to 5 percent of Alphabet's average daily global income per day (Chee, 2017).

[2] Supplementary Statement of Objection (SSO) SSO issued if there are some additional objections to the first SO. The Commission sent it to the defendant of the case to inform them about the additional objections that were raised against them.
Read more: Ibid.

B. Google Antitrust Case : Political Enforcement and Analysis

1. Google as Political Actor

The previous sub-chapter has explained on how Google has evolved since its formal establishment in 1998 to current worldwide Google that we know. From single garage into a big company in California. To say that Google is a simple search engine is an understatement as the business practice of Google can quickly affect the other regulators, internet-based companies, or online services. Different from the real world, the internet is no-boundary, free spaces in which people come and go. Everybody can use it, but no one can have the right to its ownership. So, if there is a case where the internet is being ‘ruled' or ‘monopolized' by a particular group of people, it will eventually give birth to a big problem.

When it comes to search engine, no one can deny that everyone must be gain benefit from it at least once in their lifetime. It is so easy and convenient to use no matter whether you are young or old, students or scholars, labors or managers. Like station to the virtual world, a search engine can direct the internet users to the right platforms. It opens an opportunity for everyone to go wherever they wish to go. From this statement, there are two kinds of interpretation: the existence of search engine is a "lifesaver" for lost wanderer in the virtual world; or a "puppetmaster" that directing these wanderers to the place it wants them to be.

Google is no longer a simple search engine like it used to be, but a gateway to the internet. Not only for

the regular internet users, but also other ‘patrons' such as companies, competitors' specialized services, and individual websites in general. It is almost impossible to avoid, for it is like an essential tool for survival in this modern era, where information becomes a weapon. The Director of the Values Institute at the University of San Diego, Lawrence M. Hinman, describes search engine as ‘gatekeepers of knowledge.' Therefore, as Google is the most used search engine worldwide, if you do not appear in Google, you do not exist. For business-oriented users, if you do not appear within the top result on the first page of Google, you barely exist (Pauxtis & White, 2009).

This occurrence is also the main problem from Google Antitrust Search Case. The reality of Hinman's philosophy of search engine becomes truly apparent when a dozen of complainants issued a Competition Complaint against Google to European Commission under the Article 102 of TFEU. It is because they experience it in the hard way, how fearsome it is to ‘barely exist' in search engine.

The Google Antitrust Case precisely shows the involvement of MNC not only in the business network but politic as well. The seven years case settlement did include several parties to solve it, not only from the involved parties such as Google, Inc and European Commission, but also third parties such as national government officials, European Parliament and other EU's organizational bodies, even businessman, and regulators. Every party allowed to exercise its influence toward each other by the existing rules and regulations. The enforcement of EU laws, in this case, is highly political as it calls for many political actors to solve it. It also uses diplomacy as the means of settlement. It

proved how the business activity could easily influence or influenced by politics. Just like Ramon Tremosa and Andreas Schwab stated about the case: that the Google Antitrust Search Case will have a significant impact on economy and politics. It is true because the anti-competitive business practice conducted by Google which hampering the competition happened in a politic environment. Any business which occurs under government's or institutional bodies' area of supervision cannot avoid its involvement with politics. It will be difficult to use an economic approach solely alone to solve the issue, due to its involvement with the bureaucratic body which regulates not only the economy but also politics. It will be worse if the ‘defendant' of the case is multinational actors who operated globally and under many countries' jurisdiction. Thus, Google must comply with rule and regulation applied by European Union, as Google operates under EU jurisdiction, despite being an American company. While many kinds of literature are deliberating on how state-less MNC's business activities are, it held its independence, visions, and goals as strong as a state can. It means that MNC, or Google, in this case, exercise its power on its way to deliberate about the case in equal standing with EU. Both are neither superior nor inferior in comparison to each other.

2. The Reasons for Long Settlement

As multinational actors, Google adapt well to its surrounding. It does not defy the regulations directly, but it does insidious business practices which makes its competitors' insecure and feel threatened. The

writer assumed this as one of the reasons why the law settlement took so long: because there are no solid parameters on how far a business practice can be considered as ‘dominance' (not to mention in the virtual landscape such as search engine). High market share does not necessarily means dominance. Of course, market share is the first you look at when you want to justify market structure and market power, but it does not mean the result can become the definite proof of market power or dominance. Google held 90 percent of market share in the world; it equally means two things: it is suggestive evidence of market power and dominance, as the result of competitive restraint from competitors' or Google has the best products and traffic that attract most of the consumers (Wagner-von Papp, 2015).

Everybody can make claims, and regulations can change due to the situations, but the enforcement will be difficult to do if the parameters are not clear. It is also different from one area to the other. In EU, it is rather easy for a multinational company to be entangled in an antitrust case as the regulations are quite strict and less tolerant to monopolies. It different with the U.S, which more lenient and more flexible in its economic activities and regulations. Thus, you need more evidence if you want to accuse a company of doing antitrust infringement in the U.S.

The connotation is suggesting the second reason for the prolonged Google Antitrust case settlement: the proceeding needs to be extra careful to avoid over-enforcement and under-enforcement at the same time. The multinational corporation operates in different countries, so it is easy to assume that they are swimming under a diverse set of regulations, in which

obliged to comply. The diversity of anti-trust focuses, preferences, and enforcement in the world makes it unavoidable for Google's business practice to be contemplated by multi enforcers, not only European Commission. With the absence of general parameters for anti-trust enforcement, it is up to host-nation to implement their respective competition regime against anti-competitive business practices (Wagner-von Papp, 2015).

Google is an American company, but after FTC (Federal Trade Commission), U.S' competition watchdog, closed its investigation on Google's Antitrust case in 2013. The U.S does not have the intention to continue the case, despite many American companies issued complaints against it[3]. Google is an American company, but after FTC (Federal Trade it. It may be due to the pressure of lobbyist within its home-nation, and we can not exclude that possibility to happen in other countries as well. Aside from European Commission and FTC investigations, the Google's conduct also investigated by Competition Commission of India (CCI), the French Autorité de la Concurrence (Competition Authority). It triggered few private actions in the U.S and U.K, also opened investigations in South Korea (though it reaches the same conclusion as FTC), and Brazil by its competition watchdog, CADE (Administrative Council for Economic Defense) (Wagner-von Papp, 2015). The absence of international investment regime become one of the primary concern. Different from trade sector who has WTO as its general guide for enforcement, MNC -or

[3] FTC is US' competition enforcer. FTC opened it's first formal antitrust investigation against Google in April 2011, but closed the investigation on January 2013, and deemed Google as not abusing its dominant position.

investment for that- neither has any institution nor international investment regime which can abide for such case.

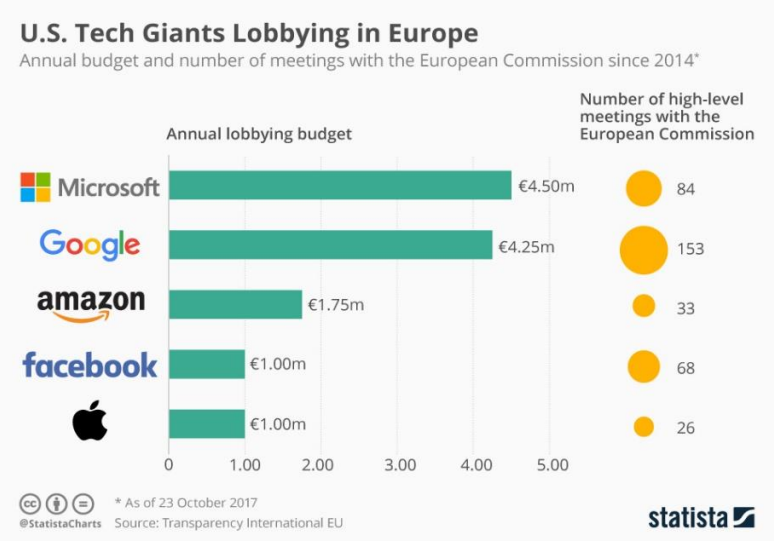
The third reason for the long settlement is the lobbying power. Wall Street Journal published that Johanna Shelton, one of the top lobbyist in Google has had more than 60 meetings at the White House during FTC investigations. By the end of November 2012, according to FTC's internal emails, it had decided not to file an antitrust lawsuit against Google. It also points out Google's spending on lobbying operation. In 2013, Google spent USD 16.8 million on lobbyists more than other company (Mullins, 2015).

Figure ٤.١ The big lobbying spenders in U.S by market capitalization.

Source: Mullins (2015)

According to the Center for Responsive Politics, in 2014, total Google spending on lobbyist is three times of the company's lobby spending in 2010, a year before FTC antitrust investigation began. Aside from that, Google has around 100 individual lobbyists at 20 lobbying firms (Mullins, 2015). From the figure above, we can safely assume that the FTC decided not to go forward with the antitrust lawsuit is not immune from the influence of Google's lobbying effort to fight off allegation. While it is not as much expenditure as in the U.S, Google also one of the big lobbying spender in EU.

Figure ٤.٢ U.S Tech Giants Lobbying in Europe.



Source: Armstrong (2017)

As shown by the figure above, since 2014 until October 2017, amongst all U.S tech companies in Europe, Google expenditure on the lobby is only second to Microsoft, with Google spent €4.25 million, just a little less from Microsoft with €4.5 million. Google also has the most meetings with European Commission with 153, exceeding Microsoft with 84 meetings (Armstrong, 2017). By 2018, the lobbying cost increase to €5.25 million - €5.5 million, and it has 181 meetings with the European Commission. The number of meetings shows how much access Google had to the Commissioner. Undoubtedly, Google is one of the most active lobbyists in Brussels (LobbyFacts, n.d).

The data suggests that Google had sufficient access and influence with the Commission. From the amount of lobbying expenditure and meetings, it means that Google has numerous issues in which requires the effort of lobbying, and antitrust case against it certainly one of them. The purpose is clear : to avoid further fine punishment. But with the Commission passed guilty verdict against Google in 2017, it is clear that the lobbying effort of Google in EU may not go as smooth as it did with the U.S. Lobbies is common occurrence when doing business within a country, but the effect may differ in accordance with policies and regulations applied in respective countries. For example in this case, different with FTC which decided not to pursue the antitrust case in 2013, EU decided to fine Google for antitrust infringement. While the lobbies may not working as well as it did with FTC, the writer thought that the lobbies succeeded in putting considerable influence and pressure within the Commission, which consequently makes the case extended to seven years long.

3. The Significance of Antitrust Regulation within this Case

Foundem first issued its Competition Complaint to European Commission under Article 102 of TFEU, asserting Google's abuse of dominant position. This complaint is the beginning of EU realization to Google's threat of dominance. On 2017, Margrethe Vestager filed formal antitrust charges against the tech company, and in under Article 23(2)(a) of Regulation (EC) No. 1/2003, the Commission ultimately imposed fine on Alphabet, Inc. and Google, Inc. The Regulation (EC) No. 1/2003 Article 23(2)(2) include the statement in which the Commission may impose fines on the act of infringement toward Article 81 (Article 101 of TFEU) or Article 82 (Article 102 of TFEU) of the Treaty (Council of the European Union, 2003).

The antitrust enforcement against Google is the effort of EU in maintaining the competition within the EU. As discussed before, competition is an essential element for economic integration. The advantages of stable competition are market with lower prices, wide variety and better-quality products, and more efficient production. European competition policy aims to realize the correct and efficient functioning of the Single Market (Szczepański, 2014). The Single Market is one of the primary goals of EU, and the competition policy is a tool to achieve that.

As stated by McGrew (2005), that globalization often associated with liberalizations concept. The similarity between both concept is that they are encouraging the process of global integration. He also defined economic globalization as the process

of single, global economy, and even the transformation process of organizations that regulate the world economy. One of the crucial leading actor in this modern world is MNC, and with the evolvement of technology and communication, the market competition becomes more lively than ever. Trade liberalization, the development of IT, and the unpredictable actions of MNC, these factors is sufficient reason for a country to become more careful with their economic strategy and more aware with the 'hole' in their legislation. In this context, the EU tries to accommodate the global changes and adapting its regime to the change, while 'stylizing' it in the way that fit with EU's goal and methods.

Unfortunately, the EU's competition regime is still inadequate in many aspects. Such as how the case proceeding takes too long, it cost a high amount of public resources, and it cannot deliver consistent standard across its jurisdiction and similar cases, so it failed to instruct firms (the less-competitive one) on what is the best practice to do (Calciano, 2009). This is also the applied to Google Antitrust Search case. The proceeding takes seven years, it took many efforts from various parties to conduct the investigation and to reach decision, also the Commission end the case with fine penalty and subtle threat for future infringement, but did not inform specifically on what practices and to what extent, it allowed to do without limiting the choices for consumer and stay in 'competitive' zone. This may confuse the firms on how to behave competitively in the market.

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According to Calciano (2009), the prime aspect of the economic approach is the establishment a consumer welfare standard as the first condition in examining competition case. In other words, a firm can be alleged as doing anti-competitive business practice and banned by competition authorities only if it shows harms to consumer welfare. Thus, theoretically speaking, the goal of competition policy is neither to protect the competitors nor to protect competition in general, but to ensure the welfare of consumers. In fact, almost all economic theory that being used to evaluate an industry or economic performance as a whole use consumer well-being as its main criterion. It suggests that this standard is the one that should be used by competition authorities in evaluating a competition case.

However, in dealing with competition authorities, EU tends to focus on case-law analysis rather than consumer welfare standard. While of course, consumer welfare is one of the main criteria to take into consideration, but the process of antitrust proceeding arranged by case-law analysis of the various business practices firms. The case-law analysis equipped a ‘checklist' approach, in which the process of categorization of anti-competitive behavior into several conducts, such as price fixing, targeted refunds, any kinds of discrimination, etc. Using Google Antitrust

Search case as an example, it is evident that the anti-competitive conduct of Google fall into discrimination category, in which it self-promoting its products and services while giving disadvantage for those of competitors to do business in supposedly fair and competitive market. The result is it limiting consumers choice for goods and services, give harm to competitors, and restricting competition.

With ‘checklist' approach, the Commission confirms that Google is doing anti-competitive business practice by verifying that : (1) whether a firm is dominant or not in its market; (2) whether the supposed firm conducting some of the listed practices. Because the answer to the two questions is both affirmative, then Google alleged for antitrust infringement. It becomes worse due to MNC tendency to adapt to its surrounding. In other words, the list categories of infringement may reproduce, while the competition policy sometimes cannot endure the ‘innovation' ability of MNCs (Calciano, 2009).

Calciano (2009) further explained on how ‘checklist' approach has several consequences, which are :

a. The multi-enforcement. The anti-competitive practices may receive different remedy due to the differences in jurisdictions, case-law traditions, or competition regime. A practice may be permissible in a particular area, while identified as infringement in others. It makes the competition law enforcement become hard to predict, while also bring potential damage to the regular business activity or firms. The anti-competitive conduct of Google considered as

permissible in the U.S, while it is an infringement in EU. Like explained before, it may confuse firms on how to operate correctly, and disturbing the business activity.

b. The adaptation tendency of MNCs. A firm that ever been deemed conducting anti-competitive practice may change to a different practice, which has the same effect as its previous conduct but with various minor details. It is reminding us on how Google submit its three set of proposals, in which bring the same effect, but little different in some features. This may prolong the case proceeding, and also waste a larger amount of public resources.
c. The manipulation and innovation power of MNCs. If an anti-competitive practice by a firm receives different treatment and sanction despite having the same anti-competitive purpose, it will give a firm a possibility to analyze the best possible way to avoid being caught, and receive the lowest punishment. The competition regulation, which serves to protect competition, ironically, may be used as a tool to prevent punishment by MNC instead. Google also use this strategy to maneuver their way through the case proceeding, whether against FTC or the Commission.

From the explanation above, it is understandable that the competition regime of EU is still inadequate in some aspects, but if we consider the achievement of EU through competition cases they tackle until now, it is safe to conclude that the regime is continuously evolving to answer the future

challenges and obstacles. As smooth as MNC is, EU standing firm with its competition regime. The Google Antitrust Search case is one of the successful competition case that EU tackled. Another successful case is Microsoft antitrust case in 2001 or Intel antitrust case in 2009.

EU antitrust policy is based on two main legal provisions, Article 101 and 102 TFEU (Szczepański, 2014). The fact that the foundation for this policy already laid down in Treaty of Rome, in 1957 shows that European Union is already concerned with competition issues since long ago. As a supranational actor, it is imperative to scrutiny the global environment, while at the same time keep the balance of member countries. The ‘modernization' of antitrust regulation, in which decentralizing the Commission investigative rights is the example of EU trying to keep up with global change, which is dominated by the emergence of liberalization and globalization.

Google Antitrust Search case is considered as an excellent example of antitrust enforcement, as it succeeded in imposed a penalty on a giant, influential company. While the enforcement is still not perfect, as the settlement requires a very long time, it still a good step in competition law enforcement. Article 101 and 102 TFEU, and Regulation (EC) No.1/2003 is only the small part of EU's regime, and it succeeded in providing a guideline for the entire proceeding of the case. The environment can change, the law may need amendment or even replaced, but the regime will remain strong as long as the actors involved with the establishment of the regime is in a good commitment with their collective goals. EU antitrust policy is a part of EU's regime that fight against the abuse of dominant position

of an actor. Following it, the EU decided that Google has breached the antitrust regulation and thus imposed fines against it. This act can be considered as deterrence against the dominance of MNC, but it still early to determine that the EU's competition regime as perfect. The previous explanation may become handy for the future references to improve the efficiency of the competition regime.

Eric K. Clemons, a Wharton professor of operations and information management, stated that EU has always been less generous on monopolies than the U.S. The decision to impose fine on Google not only driven by numerous Competition Complaint submitted to the Commission but also because it disturbing the consumer welfare. As Vestager claimed, that EU aimed to establish the future principle which applies fair-play rules, not to alter Google algorithms (Wharton, 2015). There are also some accusations regarding how EU's decision motivated by protectionism of European against U.S tech company. It is undoubtedly unfounded as most of the complainants come from not only European firms but also U.S firms, such as Amazon, eBay, Microsoft, Expedia, TripAdvisor, Yahoo!, etc. It proved that the U.S firms try to count on EU competition regime, which have less tolerance toward dominant firms, as a tool to gain competitive advantage (Wagner-von Papp, 2015). Just like Vestager's statement, the main motivation for fines penalty on Google is not that complicated. Although maybe some changes need to be adopted to reach the fair market, the main intention for the penalty is neither to change Google nor because it is a protectionist act against U.S tech company but to lay down the neutrality-based principle for establishing a fair and competitive market, and ensuring the consumer welfare.

4. The Real Impact of Google's Fines Penalty

Google, which operates under the parent company Alphabet, Inc is given 90 days to propose a remedy that can change its anti-competitive practice. The EU offer Google time until 28 September to think about it. On 27 September 2017, Google announced some concessions. In their announcement, Google stated that they would give the equal amount of chance for competitors to bid for ad space at the top results page. Furthermore, Google Shopping will also operate as a separate business, participating in the auction for a place in the top results just like the competitors. In other words, with this everyone will have the same chance in promoting their products and services. The European Commission noted that they still considering the Google's announcement, and the issue will continue for some time. The Commission also said that they will monitor Google's behavior now that they announce their decision. Google is demanded to submit a report every four months to inform the Commission about their action in compliance with the decision (Kharpal & Amaro, 2017).

The real impact of the penalty against Google is neither about the amount of money they need to pay nor because they are forced to change its shopping listings. The big issue actually about how the Google antitrust case against EU has opened the door to more lawsuits. It may be useful news for competitors as now they can sue Google in European civil court, and possibly other companies as well (Finley, 2017). The case settlement evidently craved a new step for competition regime. The MNC's business practice may need to be more careful if they want to operate in EU's jurisdiction after this.

Barry Lynn, the head of the New America Foundation's Open Markets program gave his opinion regarding the dominance of internet companies and stated that from the public point of view, maybe it makes sense for any kinds of activity to ends up in one platform, for example in Google. The problem is not that, but instead about the neutrality of the platform. It cannot be regulated by a private actor for their interest, instead of the public interest. Just like Google in this case (Brandom, 2017).

But the answer is not to break or get rid of Google itself. It would not solve the case as other tech companies like Google may appear again someday. The answer for the antitrust enforcement is to keep neutrality intact, with no discrimination. Google just lost a big case in Europe, and it will continue for some times. They also desperately try to avoid another antitrust penalty against them from the U.S or another region. Antitrust is like ‘Achilles Heel' for a titan-sized corporation like Google. Anti-monopoly regulation is their weakness. The example is in the case against EU. Google become increasingly aware of the subtle threat of EU, as it is possible there will be future fines or change in their system. Not to mention Google also desperate to try to keep the case on Europe alone (Brandom, 2017).

It is important to remember that internet is a free virtual space in which people can come and go as they please. It is open for everyone to use, but if by some chances there are people who ‘close' the internet to fulfill their interest, it will be monopolizer of the internet (Brandom, 2017).

The case continue despite fines already being imposed on Google. What EU seeks is the neutrality-based market environment in which the competition can function properly without any discrimination. The antitrust enforcement against Google is an act that needs to be appreciated. It would not only give pressure to the so-called ‘monopolizers' of the internet but also can become a warning for other emerging companies to take extra precaution when they operate in EU jurisdiction. It makes super large corporations less threatening, and most of it is returning the market to its right function: in the consumer's hand.