

Discrimination as abuse of dominance - the limits of fairness?

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Outline

- What does fairness mean? Can discrimination be seen as “unfair” *per se*?
- Are concepts of fairness and non-discrimination actually finding their way into antitrust enforcement?
- Decision in *Google Shopping* case – Brave New World or The Same Old Story? Is there now a new “non-discrimination” obligation on dominant companies?
- Conclusions

What is "fair"?



IT'S NOT FAIR!



Is discrimination “unfair” in itself? What if it enhances consumer welfare and economic efficiency?



Are “fairness” and “discrimination” actually finding their way into antitrust enforcement?



Commissioner Vestager

- “Fairness” mentioned at least once in every speech

VS.



Commission and EU Courts

- “Fairness” or “Discrimination” never used as substantive criteria in themselves, always substituted with more precise and objective standards

Brave New World of “non-discrimination” obligation? Or The Same Old Story?

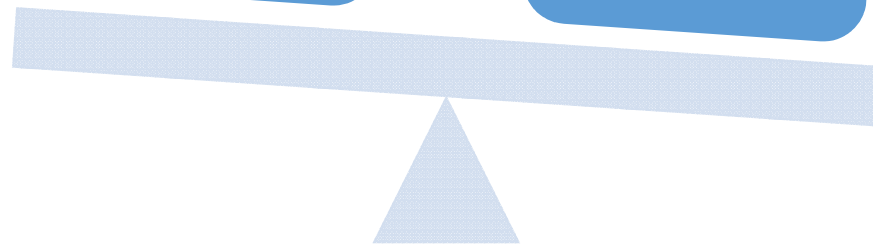


Brandishing
“fairness” and
“discrimination” as
legal concepts

Factual and legal
analysis

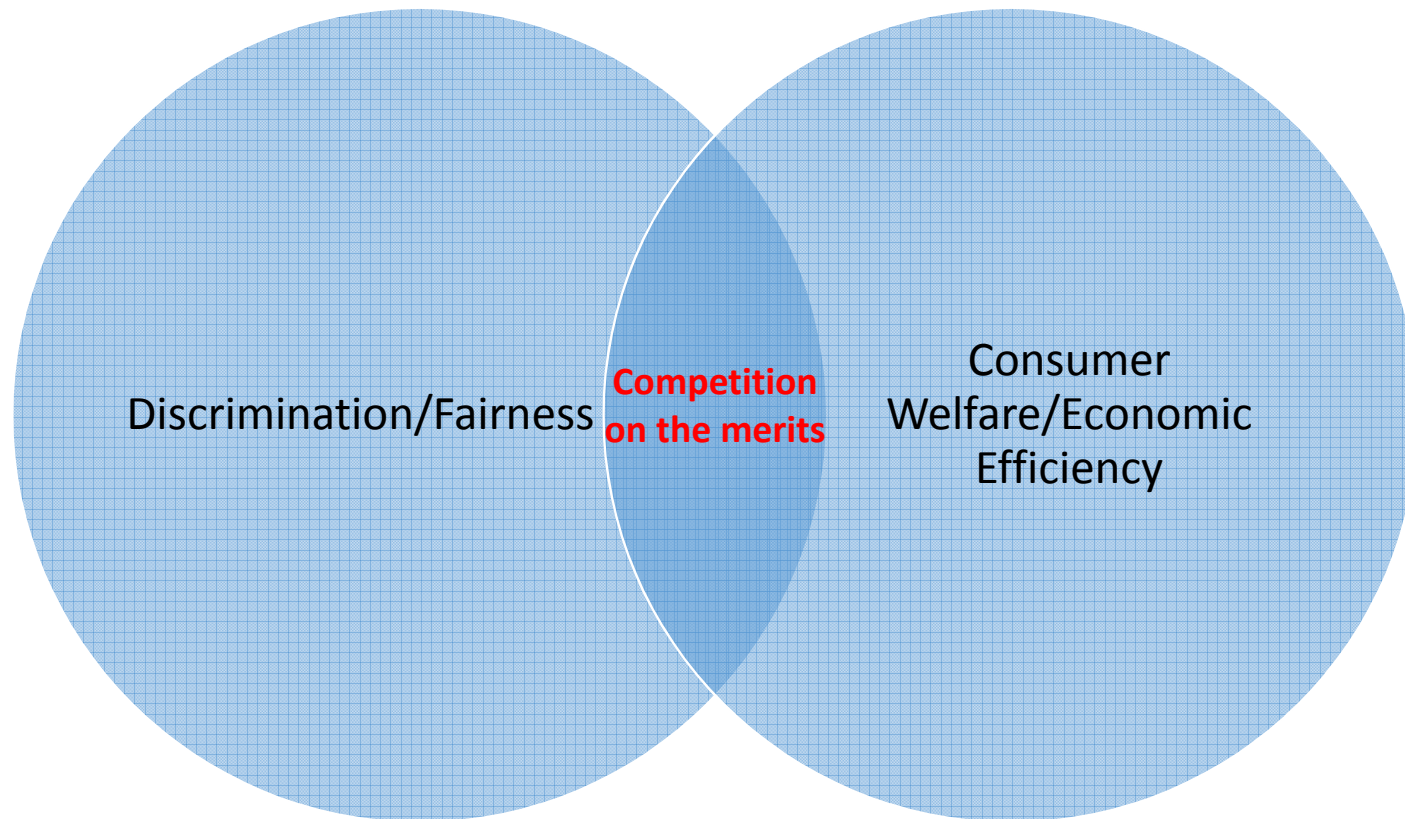
“Discrimination” or
“fairness” not
mentioned once in
215 pages long
decision

60% of decision
focused on Google’s
conduct and its anti-
competitive effects



Conclusion

“Fair” and “non-discriminatory” competition best achieved through rigorous, factual, economic and legal analysis



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