

## PRESS DOSSIER

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### **Popular action for the compensation of consumers following Google's anticompetitive practices**

*Ius Omnibus submitted yesterday, to the Portuguese Competition, Regulation and Supervision Court, a popular action aimed at defending Portuguese consumers injured by Google's anticompetitive practices alleged in several lawsuits pending against Google in other jurisdictions (including the United States of America and the United Kingdom). Since July 6, 2009, Google provides the Android operating system, which is used by virtually all mobile communications equipment sold in Portugal, excluding Apple equipment. Consumers using these mobile communications equipments have no effective alternative to using the Android operating system and applications (apps) and in-app content for Android. Over the years, Google has entered into contracts with Android equipment manufacturers and app developers with anti-competitive terms and conditions, culminating in a 30% commission on each sale. The excessive value of this commission was passed on to consumers. This action aims to put an end to Google's anticompetitive practices that artificially preserve its near monopoly on the distribution of Android apps and in-app content, which undermines innovation and quality in these markets, and to compensate consumers for the increased prices they have paid through the Google Play Store.*

#### **1. What is the object of this action?**

It is a popular action for the defense of the diffuse and/or collective and homogeneous individual interests, filed by Ius Omnibus.

It is a claim to defend consumer rights, brought under the Popular Action Act (Law No. 83/95) and Article 19 of the Private Enforcement of Competition Act (Law No. 23/2018), for abuse of a dominant position, prohibited by Article 102 TFEU and Article 11 of the Competition Act,

and for agreements restricting competition prohibited by Article 101 TFEU and Article 9 of the Competition Act.

## **2. What were the unlawful behaviors of Google?**

This is a mostly stand-alone private enforcement action under competition law, focused on anticompetitive behaviors alleged in several lawsuits pending against Google in other jurisdictions, namely in the United States of America and the United Kingdom. Google's dominant position in two of the relevant markets has already been declared and one of the anticompetitive behaviors at stake has already been partially declared to infringe European competition law in a European Commission Decision (Decision of 18 July, 2018, in the **Google Android** case (AT.40099)), binding on the national courts (follow-on component).

## **3. Who is represented in this action?**

Ius represents in this action all consumers, residents in Portugal, who have downloaded (free or paid) Android applications from the Portuguese Google Play Store and/or who have purchased Android application content through Google's *in-app* payments mechanism, from July 6, 2009, unless they expressly indicate that they do not wish to be represented.

Consumers do not have to do anything to be represented and to be entitled to compensation if the action is successful. Any consumer who does not wish to be represented in this action may exercise the right to opt-out, communicating this intention to the Court. Consumers may also decide to intervene in the process in support of Ius Omnibus.

## **4. How were Portuguese consumers harmed by Google's unlawful practices?**

Google's behavior harmed Portuguese consumers in two ways: (i) compromising healthy competition and consumer protection in the Portuguese market, with multiple consequences on the quality, variety and innovation of products and services in these markets, and (ii) causing damage to consumers and causing an unjust enrichment at the expense of the unjustified impoverishment of the represented consumers.

## 5. What is being asked in this action?

Ius asks the Court to:

- a) declare Google's single and continuous infringement of the above-mentioned rules causing damages to the diffuse and/or collective interests of protection of the consumption of goods and services and competition (including publications in the national media);
- b) order Google to cease the anticompetitive practices in question;
- c) order Google to pay compensation to all Portuguese consumers who suffered damage.

## 6. How does popular action and consumers compensation work?

The mass consumer compensation mechanism used here, provided for in the Portuguese rules of class action, has not yet been tested in practice until the very last step. However, according to the law, the following will happen if the court finds in favour of Ius Omnibus:

- 1) the Court will set the overall amount of damages to be paid by Google to consumers, to be deposited in a compensation fund;
- 2) the Court will designate an entity responsible for managing the compensation fund, including the receipt, management and payment of compensation to injured consumers;
- 3) the Court will set a deadline for consumers to claim their share of the compensation and this information will be publicized in various ways;
- 4) consumers will have to contact the entity that manages the compensation fund, as well as submit the court-decided evidence and the respective payment instructions, in order to receive their share of the compensation;
- 5) at the end of the legally established period, if a part remains of the global compensation that was not requested by consumers:
  - (i) that amount will be used to pay the expenses incurred by Ius Omnibus as a result of the action; and
  - (ii) what is left will be handed over to the Ministry of Justice, to be used to support access to law and justice, including the promotion of popular actions.

## 7. Do consumers need to contact the Court or Ius Omnibus?

Consumers do not have to contact the Court or Ius Omnibus, nonetheless it may be in their interest to do so.

All consumers residing in Portugal, who, since 6 July 2009, have downloaded (free or paid) Android applications on the Portuguese Google Play Store and/or who have purchased content from Android apps through Google's in-app payments mechanism (i.e. whose Google Play Store account indicates as a country "Portugal"; and who have in their Google Play account history at least one download of Android applications and/or purchase of Android application content) are automatically represented in this popular action.

If they want to be represented, they do not need to do anything else for now to be entitled to compensation if Ius Omnibus wins this claim. At the end of the process, if successful, they will have to contact the entity appointed by the Court to request compensation. However, if they wish to intervene in the action in support of Ius Omnibus they may do so, within the time limit established by the Court.

All consumers represented in this action are invited to contact Ius Omnibus at once, so that their data be registered and they be informed by Ius of all developments in this case, guaranteeing that they don't miss the deadline to claim compensation, when that moment arrives.

## 8. About Ius Omnibus

Ius Omnibus is a non-profit association, created in March 2020, with the objective of defending consumers in the European Union. It is headquartered in Portugal and has members from several European countries.

The Board of Ius Omnibus is composed by:



Julia Suderow  
President  
Professor at the University of God



Maria José Azar-Baud  
Vice President  
Teacher at The Paris-Saclay University



Victoriano Nazareth  
Vice President  
Retired Senior Technician in School Administration at the Ministry of Education.

Ius Omnibus is represented in this case by the law firm Milberg Sousa Ferro.

