

Europe's top court backs crackdown on Apple and Google

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Europe's top court backed EU antitrust crackdown against Apple's Irish tax deal and Google's anti-competitive practices in two landmark cases [File: Mark Lennihan/AP Photo]

Brussels, September 11 (RHC)-- European Union antitrust chief Margrethe Vestager has scored two major wins as Europe's top court has backed her crackdown against Apple's Irish tax deal and Google's anticompetitive practices in two landmark cases.

Vestager, who ends her term in November, has made a name for herself going after Big Tech's tax arrangements with some EU countries and attempts to stifle smaller rivals. The court victories, which were announced on Tuesday, could embolden her successor to take a similar tack.

The antitrust chief cheered the judgements. "Today is a huge win for European citizens and tax justice," she said on X of the Apple ruling while also praising the Google judgement as a big win for digital fairness.

The European Commission in 2016 ordered Apple to pay 13 billion euros (\$14.4 billion) in back taxes to Ireland, saying the iPhone maker benefitted from two Irish tax rulings for more than two decades that artificially reduced its tax burden to as low as 0.005 percent in 2014.

The Luxembourg-based Court of Justice of the EU sided with Vestager. "The Court of Justice gives final judgment in the matter and confirms the European Commission's 2016 decision: Ireland granted Apple unlawful aid which Ireland is required to recover," its judges said.

They said Apple's two units incorporated in Ireland enjoyed favourable tax treatment compared with resident companies taxed in Ireland, which are not capable of benefitting from such advance rulings by the Irish tax authorities.

Apple said it paid \$577 million in tax, 12.5 percent of the profit generated in the country, in line with the tax laws in Ireland in the period 2003-2014 covered in the EU investigation. It said it was disappointed with the ruling.

"The European Commission is trying to retroactively change the rules and ignore that, as required by international tax law, our income was already subject to taxes in the US," Apple said.

Separately, Apple said in a regulatory filing that it was expecting to record a one-time income tax charge of up to about \$10 billion in its fourth quarter, which ends on September 28th.

Ireland, whose low tax rates helped it to attract Big Tech to set up their European headquarters there, had also challenged the EU ruling, saying its tax treatment of intellectual property transactions is in line with other countries in the Organisation for Economic Co-operation and Development (OECD).

Still, Ireland has cooperated in an overhaul of global corporate tax rules and did what was once unthinkable – dropped its opposition to giving up its prized 12.5 percent corporate tax rate. But its tax take from multinational firms has actually increased since.

Google's anticompetitive practices

The court also threw out Alphabet unit Google's appeal against a 2.42 billion euro (\$2.67 billion) fine levied by Vestager seven years ago, the first of a trio of hefty fines meted out to the company for anticompetitive practices.

"In the light of the characteristics of the market and the specific circumstances of the case, Google's conduct was discriminatory and did not fall within the scope of competition on the merits," the judges said.

Google voiced disappointment with the ruling.

"This judgment relates to a very specific set of facts. We made changes back in 2017 to comply with the European Commission's decision," a spokesperson said.

The commission fined the world's most popular internet search engine in 2017 for using Google's own price comparison shopping service to gain an unfair advantage over smaller European rivals.

Google has racked up 8.25 billion euros (\$9.11bn) in EU antitrust fines in the past decade. It has challenged two rulings involving its Android mobile operating system and AdSense advertising service and is now waiting for the judgements.

It is also fighting against EU antitrust charges issued last year that could force it to sell part of its lucrative ad tech business after regulators accused it of favouring its own advertising services.

Both rulings are final and cannot be appealed.

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