

**SUMMARY OF JUDGEMENT OF 15th CHAMBER
OF THE
COMMERCIAL TRIBUNAL OF PARIS
*BOTTIN CARTOGRAPHES v GOOGLE INC., & GOOGLE FRANCE***

On 31 January 2011, the 15th Chamber of the Commercial Tribunal of Paris handed down a judgment in favour of Bottin Cartographes (“Bottin”), finding that Google had abused its dominant position by pricing its mapping API below cost in the market for online mapping for geolocalisation of sales points on company websites.

Bottin is active in multi-media mapping and, more specifically, in the creation of web map applications which enable users to locate addresses and create itineraries online, in return for an annual subscription fee. These maps are exclusively created for clients’ (companies) websites.

As from April 2005, Google Inc., and Google France (“Google”) began offering Google Maps (a service similar to Bottin’s mapping applications), to both individuals and companies for free.¹ In particular, (and most relevant to Bottin’s case against Google), Google offers Application Programming Interface (“API”) for free to companies for installation into their websites.²

On 24 July 2009, Bottin commenced proceedings against Google before the French Commercial Court, raising two main arguments:

1. Google had, in offering its web applications for free (i.e., an abnormally low price), breached Article L 420-5 (1) of the French Commercial Code, which prohibits sales below costs to consumers, where such sales aim to eliminate a market or prevent other companies from accessing a market; and
2. Google had abused its dominant position under Article L 420-2 of the French Commercial Code (which is the equivalent of Article 102 of the Treaty on the Functioning of the European Union under French Law).

In its defence, Google argued that Bottin’s arguments under Article L 420(1) of the Commercial Code were unfounded because its clients were companies and not end-consumers. The Court found in favour of Google on this point, but held that Google had committed an abuse of its dominant position contrary to Article 420 – 2 of the Commercial Code.³

¹ Following its acquisition in 2004 of Keyhole Corp, a publisher of interactive maps.

² Note: Google’s API is paid for when it is used in the context of an intranet.

³ Google argued in its defence that Bottin had failed to demonstrate the necessary elements under Article 420-2 of the Commercial Code, i.e., relevant market(s), Google’s dominance, the abusive practice (the fact that Google had sacrificed profits in the short term), and the probability of anticompetitive exclusion from the markets.

In coming to this conclusion, the Court agreed with Bottin that the correct definition of the relevant market was for “*online mapping for the geolocalisation of sales points on company websites*”. The Court went on to find that Google enjoyed a *de facto monopoly* in France on the search engine market, pointing to 2009 surveys which indicated that Google had 89.1% of the search market and to the Opinion of the French Competition Authority dated 14 December 2010 that Google had a “*strong dominant position*” on the market for search-based online advertising. The Court then used this evidence of Google’s dominance in the markets for search and search advertising to find that Google is also dominant in relation to online mapping:

“This principal can be seamlessly transposed to online mapping, indeed, Google Maps’ dominant position being linked to Google’s dominance on the search engine market.”

The Court also analysed how Google had abused its dominant position. It found that in selling mapping programmes for free, Google had not allowed for the recoupment of the production costs involved in offering its services, including, for example, product development and distribution, as well as the its payments to acquire rights for geographic data.

The Court found that Google’s conduct led to the elimination of all market competitors and furthermore, considered that this was part of a wider exclusionary strategy. It held that in offering the product for free, Google had the objective of optimising its commercialisation of targeted advertising overtime. The Court noted in this context that client companies rightly considered that Google Maps API would improve their natural search listings on Google because a search on Google’s search engine leads to the display of Google Maps.

The Tribunal ordered Google to pay Bottin EUR 500,000 in damages and interest to repair the harm suffered and ordered Google to pay the legal costs. It also ordered the judgment to be published in a number of national and International newspapers.