

A. Executive summary

Article 6(5) DMA condemns specific ‘platform envelopment’ strategies, 1
where a designated core platform service moves into the space of vertically
competing platforms or services by favouring a self-developed service in
order to offer the same value propositions to its end users. Such practices
are condemned because they impede market entry, create barriers to entry,
increase concentration and thus restrict competition.

The provision was drafted with a view to the market realities of general 2
online search services. For nearly two decades, Google Search has been
the critical entry point for end users to online information of all types.
To prevent that Google Search is leveraged for prominent placement of
distinct Google services and to demote competing ones, Article 6(5) DMA
thus condemns any form of self-preferencing in ranking, including any
interference in related mechanisms (such as crawling, algorithmic opacity,
interoperability).

For a gatekeeper to comply with such obligation, it is crucial that the search 3
results provided in response to queries are confined to the characteristics of
an Online Search Engine (“OSE”) and do not encroach into the realm of
another digital service. Where the gatekeeper expands into a separate and
distinct service, it is prohibited from favouring such service, either directly
or indirectly, over a third party providing a similar service.

In accordance with the wording and objective of the DMA in general, and 4
Article 6(5) DMA in particular, the following ten principles should be ob-
served when interpreting the provision. Such principles relate to three main
criteria: First, principles for identifying a distinct service of a gatekeeper
(hereinafter: “**First-Party Service**”) that shall not be favoured. Second,
principles for identifying a similar service of a third party (hereinafter:
“**Third-Party Service**”) that shall not be disadvantaged. Third, principles
for excluding a more favourable treatment of the First-Party Service as
compared to the Third-Party Service.

I. Principles for identifying a distinct First-Party Service that shall not be favoured

- 5 First, the following guidelines shall be observed to identify a distinct service of the gatekeeper.

(1) **A service is considered distinct if it extends beyond the characteristics of an OSE, as defined in the DMA, regardless of whether it is provided through the interface of an OSE or elsewhere.** According to the DMA's definition, the function of an OSE is to perform searches across all websites and to return results mirroring content made available there to the searcher. An OSE's role is to guide end users to information that publishers provided on their websites, by (i) crawling and indexing sites automatically, (ii) storing the information temporarily, (iii) referring to it according to a particular order of preference and, (iv) finally navigating the user to such site.

(1.1) **Any economic activity with a different function or intended use than to perform searches across the Internet, constitutes a distinct service.** This includes situations where the gatekeeper, rather than guiding to relevant sources, itself directly offers the information, products or services end users are seeking, thereby acting as an online publisher.

(1.2) **A service shall also be deemed distinct when aggregated information is presented in a manner not equally accessible on any crawled third-party website.** The purpose of an OSE is to retrieve and extract openly accessible information on the web in order to enable end users to access such information at its source. Thus, a distinct service is also offered whenever information is presented in a manner that cannot equally be found on any third-party website. This scenario arises, for example, when a gatekeeper curates proprietary or third-party information or combines it with other content in a way that does not reflect the original online publication. Such instances can involve displaying information not published for indexing by web crawlers but actively provided to the gatekeeper via an API or specific markup such as schema.org, if that information does not equally appear, visibly in plain text, image or video on the provider's website. Additionally, services such as translations, calculations, or advice offered directly on general results pages of an OSE ("SERPs") constitute a distinct service as they do not merely re-

trieve but generate or significantly modify information, thus stepping beyond the OSE's function.

(2) Online Intermediation Services constitute a distinct service, regardless of how they are provided. The existence of a distinct service is determined if the criteria for another core platform service are met, in particular if it satisfies the DMA's criteria for an Online Intermediation Service ("OIS"). A gatekeeper operates an OIS, distinct from its OSE function, when rather than guiding end users to websites, it facilitates the initiating of direct transactions between them and business users, irrespective of where those transactions are ultimately concluded. To assess whether a gatekeeper facilitates the initiation of transactions, the following factors shall be considered:

- (2.1) Groupings of results that co-mingle business users or their offerings for end user discovery or comparison are indicative of a distinct OIS.** This includes scenarios where the gatekeeper facilitates, directly or indirectly, (i) discovery, (ii) assessment, (iii) comparison, or (iv) acquisition of offerings from specific business users and ancillary delivery and payment services. It is then aligning more with the functionalities of an OIS than with those of an OSE. Regardless of whether such service includes (i) direct suppliers (e.g. merchants, hotels, airlines) or (ii) those who already act as an intermediary (e.g. specialised search services, marketplaces, online travel agencies) for such suppliers, any co-mingling or aggregation of businesses or their respective offerings on the SERP signifies a transition from navigating to websites (OSE) to facilitating transactions (OIS) because this assists end users in discovering and comparing offerings or otherwise making decisions for a transaction such as a specific booking or purchase.
- (2.2) Providing tools for end users to specify commercial intentions, such as filters or date selectors for bookings, or presenting transaction-facilitating information, exemplifies the transition into a separate OIS.** Features that enable end users to filter commercial offers by attributes such as price, product details, availability, reviews, location, or brand, or tools for setting service booking dates, constitute distinct OIS functionalities. Compiling, organising, and showcasing details like pricing, availability, shipping terms, payment options, reviews and/or ratings, distinctly indicate an OIS operation, surpassing the mere search facilitation of an OSE.

- (2.3) **The display of product images, videos, maps, or any other type of rich media transforms the OSE into an OIS when paired with product or pricing details.** Given the significant role of visual content in facilitating direct transactions, gatekeepers must be particularly careful in granting equal treatment whenever they combine visuals with crucial product information. Hence, while merely displaying a product image or video does not automatically classify the service as an OIS, pairing these visuals with product or pricing details delineates an OIS.
- (2.4) **Information that becomes accessible through end user interaction, such as hovering or preview actions, should be considered as part of the search result.** When such interactive elements incorporate functionalities that initiate the facilitation of a transaction, the complete information set is to be regarded as forming an OIS, invoking the duty of equal treatment.
- (2.5) **Even the systematic provision of single, specialised, and highlighted commercial results can transform an OSE into an OIS.** Where an OSE highlights individual results that match end users and businesses (e.g. tagged as “best offer”) or expands further choices upon end user engagement with such result (e.g. unveiling a carousel to “explore more”), even providing individual tailored offerings, may embody an OIS, which may not be favoured in raking.
- (2.6) **The same equal treatment principles apply to both paid and unpaid results.** Nurturing and exploiting end users’ advertisement blindness enables gatekeepers to provide a distinct service via an OSE through both paid and unpaid results. The arrangement of ads therefore must adhere to the same standards as unpaid results. Notably, even if an advertisement format is theoretically available to any website owner (aligning with an OSE’s definition), a gatekeeper may still design and combine such ads in a way that their display fulfils the function of a distinct service to end users. For instance, a specialised search service can be provided to end users through both unpaid and paid content, including visually ‘enriched’ and purposefully co-mingled advertisement. Consequently, when a gatekeeper architects, curates, and exhibits advertisements on the results pages in a manner that empowers end users to directly assess and compare products and prices, thereby facilitating direct transactions with advertisers, such constructs transform into an OIS, thereby forming a distinct First-Party Service.

II. Principles for identifying a Third-Party Service that shall not be disadvantaged

Second, the following guidelines shall be observed to identify a similar Third-Party Service of the gatekeeper. 6

(3) **When a gatekeeper wishes to offer a distinct First-Party Service, as identified above, it must treat a provider of a “similar service” no less favourably.** As long as no third-party provides a similar service, the gatekeeper has flexibility in offering its distinct service through its OSE. However, once a similar Third-Party Service exists, the ban on self-preferencing comes into play.

(4) **A service is considered “similar” if it offers the same core functionalities as the gatekeeper’s distinct First-Party Service, regardless of the technology or user interface.** With a view to curbing any ‘platform enveloping’ strategy, the broad wording ensures protection not just for direct competitors of the gatekeeper, but for any entity providing functionally comparable services, regardless of their market focus or business model. For instance, this means that meta comparison services that compare aggregated results from intermediaries (e.g. specialised search services, marketplaces, online travel agencies) instead of results from direct suppliers (e.g. merchants, hotels, airlines) are to be considered “similar” in that sense as both serve the end users primary need to compare different offers, irrespective of where a final transaction might occur.

III. Principles for excluding a more favourable treatment of the First-Party Service

Third, the following guidelines ensure that an identifiable First-Party Service is not treated more favourably in ranking than an identifiable similar Third-Party Service. 7

(5) **The gatekeeper must ensure that any third-party offering a similar service is provided a commercially equivalent opportunity to present or provide its service via the OSE.** (i) If the gatekeeper shows a teaser (e.g. snippet, thumbnail) leading to its distinct service, third parties need to get an opportunity which is no less favourable (the easiest example being an equivalent teaser in an equivalent position). (ii) If the gatekeeper wishes to partly or entirely embed its First-Party Service by directly providing it through the interface of its OSE, third parties need to obtain an equivalent

opportunity to provide their similar service through the interface of the OSE, with their own technology. (iii) If the gatekeeper includes additional features like maps, images, logos, filters or reviews in the results linking to or generated by its First-Party Service, it must ensure such features are equally available for similar Third-Party Services.

(6) In particular, if a gatekeeper enables its own OIS to generate specialised search results or output and displays these on its OSE results pages, it must ensure an equivalent opportunity for any similar third-party OIS to generate and display their specialised results, using their own technology. A gatekeeper may not favour the output of its own distinct online search or intermediation service (i.e. the specialised results that such service generates) on the online interface of its OSE. A gatekeeper may seek to favour its own OIS by (i) forwarding a query entered on its OSE, (ii) using any relevant user data obtained, or (iii) sharing query refinement tools offered on its OSE interface, to allow such OIS to generate specialised output in real-time and to present it on the results pages of its OSE. To prevent such self-preferencing, the simplest way for a gatekeeper to offer a commercially equivalent opportunity is to equally enable any third party providing a similar OIS to generate and display corresponding specialised results with corresponding content. Accordingly, whenever an OSE seeks to share query-related data or refinement tools with its own specialised intermediation service for it to return corresponding results, the OSE will also have to share such data and tools in a non-discriminatory manner to providers of similar intermediaries for them to return specialised results, using their own data indexes, quality-control mechanisms, and matching algorithms. Principle (7) provides further clarity on this concept:

(7) Should a gatekeeper wish to offer a distinct service through its OSE pages, it needs to grant any provider of a similar service an equivalent opportunity. Independent of the technology deployed, a gatekeeper may not provide any distinct service via its OSE, unless providers of a similar service obtain a commercially equivalent, non-discriminatory opportunity. For instance, if a gatekeeper intends to provide an OIS by co-mingling business users in a special unit (see principle (2.1)) or integrates transaction-facilitating features (e.g. product information, prices, booking dates, or reviews) for its OIS (see principle (2.2)), third-party providers must be afforded an equal opportunity. The simplest way is for such party to present its offerings at the same position of the SERP and with the same design features and technological abilities. For the equality of opportunity, the following factors matter:

- (7.1) **For a gatekeeper to prevent the favouring of any embedded First-Party Service by equally embedding Third-Party Services, it is essential that the Third-Party Service is perceived by end users as independent from the gatekeeper.** Due to an anchoring bias, end users associate anything shown to them through an OSE as a service provided by the gatekeeper. To overcome such bias, a third party must be enabled to provide its Third-Party Service in a manner that end users rightly perceive it as an independent service of such third party and do not confuse it as one provided by the gatekeeper. This will typically require a distinct and visually clear branding as Third-Party Service.
- (7.2) **Ensuring equal opportunities implies that the gatekeeper must enable third parties to use their own technology to provide their similar Third-Party Service through the interface of the OSE equally.** To allow for competition and innovation, similar Third-Party Services should be able to deploy their own specialised technology to provide their service and compete on the interfaces of the OSE. For instance, when a gatekeeper intends to provide a First-Party Service, such as an OIS, on the results pages through units that compare offerings of business users on the basis of specialised algorithms, third parties providing a similar OIS need a commercially equivalent opportunity. The simplest way to achieve this is for them to be able to curate equivalent units based on their own data pools of offerings of business users and their own specialised matching algorithms, cataloguing and indexing systems, quality controls and query interpretation. The requirement of equivalence of opportunity weighs strongly against any approach where the gatekeeper monopolises (i) control over the onboarding of business user and offerings, (ii) their matching with end users, and (iii) the curation of units available for Third-Party Services to equally appear on the SERP. Merely inviting third parties to provide data feeds to enhance a gatekeeper's proprietary database for it to curate units on their behalf, runs counter to this principle and the objective of the DMA. Equal treatment mandates independence and equal opportunities in service provision.
- (7.3) **An equal opportunity requires that third parties are able to differentiate and individualise their similar service.** Where a gatekeeper intends to offer a First-Party Service through its OSE, it must ensure that third parties are able to differentiate their services from that of

the gatekeeper. Otherwise, the provision of any Third-Party Service would be standardised by the gatekeeper, excluding any innovation. In particular, to ensure that third parties are not limited to any possibly lower performance level that the gatekeeper's First-Party Service is capable of achieving, third parties offering a similar service must be enabled to present their full technological potential and scope of innovation. This includes the ability to present their unique selling points. If, for example, in lack of additional data, the gatekeeper's own service may only display a limited amount of information within its own unit, this must not restrain third parties from offering their full potential in terms of a broader set of relevant information in their respective units. Accordingly, technological independence shall include the right to determine the content of the units that third parties must be granted to offer their Third-Party Service on an equal footing.

- (7.4) **Compliance necessitates that providers of a similar service are not compelled to alter their business models, to offer different services, to cease competing with the gatekeeper, or to become its customer.** The DMA requires that, as a result of measures intended or implemented to ensure equal treatment, there is no remaining imbalance of rights and obligations on third parties and that the measures do not themselves confer an advantage upon the gatekeeper, including its OSE, which is disproportionate to the service it provides to third parties. This principle ensures that the conditions for obtaining equal treatment in ranking do not exclusively benefit the gatekeeper or impose competitive disadvantages upon third parties. Less favourable treatment exists if the gatekeeper conditions an equivalent prominence on the results pages on criteria that only the gatekeeper may fulfil or that would put third parties at a relative competitive disadvantage elsewhere. Unfair conditions arise, in particular, if equal prominence requires third parties to (i) change their business model (e.g. by selling instead of recommending products), (ii) provide different services (e.g. a marketplace instead of a comparison service or shop), (iii) enter in direct competition with their own customers (e.g. by being treated equally or placed in same ad auctions), (iv) transfer value to the gatekeeper (e.g. by having to upload proprietary data that is not required for the operation of an OSE), or (v) purchase another service from the gatekeeper (e.g. advertising) to be treated equally in ranking.

(7.5) **The gatekeeper may only provide a distinct service through its OSE after it has implemented a feasible technical solution that equally enables any third party to provide their similar service through the OSE.** Gatekeepers bear the burden to ensure equal treatment. It is the essence of Article 6(5) DMA that if any ambition to showcase their distinct First-Party Service cannot be matched with a viable means for third parties to do the same, without suffering a commercial disadvantage, the gatekeeper must refrain from advancing its own service in such a manner. If, for example, a gatekeeper wishing to provide its OIS via the interface of its OSE (e.g. through units comparing commercial offers) fails to implement a technical solution enabling third parties to provide their similar intermediation service in a commercially equivalent manner without any of the disadvantages outlined above (principle (7.4)), the gatekeeper may not provide its First-Party Service through the OSE interface either. It is equally imperative that any gatekeeper-initiated features favouring its distinct service (e.g. teasers, filters, or chips) are withheld or removed until a fair integration method for Third-Party Services is operational.

(8) **The gatekeeper is obligated to onboard (crawl, index, upload, etc.) and catalogue any information related to its First-Party Service in a manner equivalent to how it onboards and catalogues content from similar Third-Party Services.** A gatekeeper may not favour a distinct service in ranking by previously onboarding its information through means unavailable to third parties. In particular, information must be onboarded with an equal frequency, level of detail and precision; and in a manner that such information may be displayed with an equivalent latency. If the gatekeeper enables its First-Party Service to adjust its offering prior, during or in response to a query, equal opportunities must be granted to a third party providing a similar service.

(9) **Direct navigation to Third-Party Services, not to own intermediary page.** Ensuring that end users are led to their intended destinations (as indicated by their click), OSEs must navigate them directly to the webpage they have clicked, without detours through intermediary pages or services offered by the gatekeeper. This means bypassing any gatekeeper-owned pages offering functions of a distinct service. Similarly, as the ban on self-preferencing in Article 6(5) DMA extends to all elements with which an OSE engages with end users, the use of filters, toggles, chips or other

choices or functionalities within an OSE's interface to subtly guide end users toward a distinct gatekeeper service, constitutes self-preferencing, unless such features are equally available to lead end users to a third party providing a similar service.

(10) Transparency and equal updates on rankings. Gatekeepers must be transparent in their ranking processes, ensuring no preferential treatment is given to their services through advanced access to ranking information or prior notifications of algorithmic changes. Gatekeepers need to disclose ranking criteria unequivocally to all services, both their own and third parties'. This principle extends across all search results, paid or unpaid, and mandates timely updates to all services regarding algorithm adjustments, reinforcing the DMA's commitment to a level playing field.