Google

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Digital Markets Act

Oliver Bethell, Legal Director, Google

Thomas Graf, Partner, Cleary Gottlieb

Our objectives

- We support efforts to protect openness and consumer choice on the Internet
- We hope for a regulatory environment that:
  - Defines clear objectives
  - Sets out rules that are commensurate to those objectives
  - Provides proportionate safeguards against unintended consequences

Potential for unintended consequences: Search ranking

We support rules that ensure that ranking is free from manipulation. But Recital 49 could be read as going beyond that goal and banning all differentiated treatment

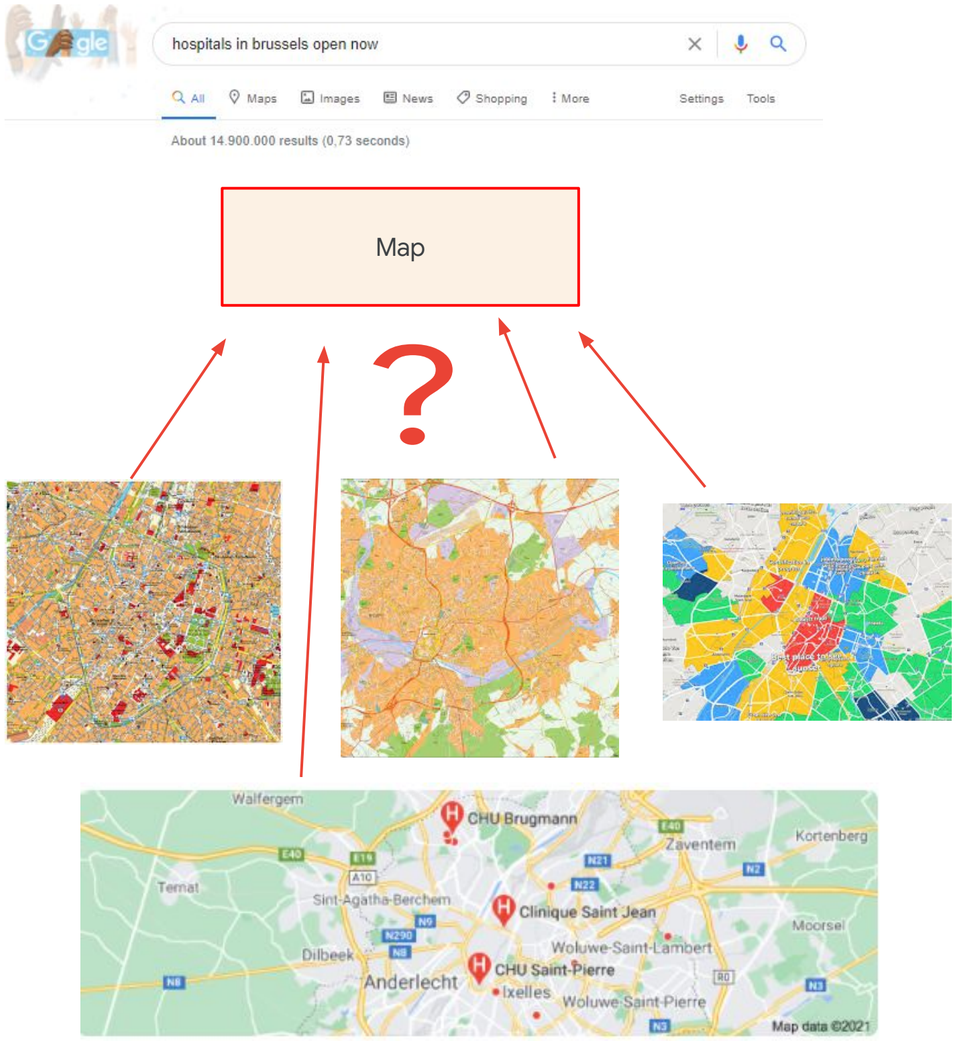
Article 6(1)(d)

Gatekeepers must "*refrain from treating more favourably in ranking*" their own products and services compared with third-party products and services and "*apply fair and non-discriminatory conditions to such ranking*"

Recital 49

Gatekeepers should not engage "*in any form of differentiated or preferential treatment in ranking*" for "*all forms of relative prominence, including display, rating, linking or voice results*"

A rigid equal ranking rule would damage result quality



The DMA should clarify that it does not preclude legitimate differentiation of results

- Rules on ranking should distinguish between artificial different treatment that has no merit *vs.* legitimate differentiation that has benefits
- By drawing this distinction, the rules can preserve the benefit of useful formats (like a map in response to a query for a location) while preventing harmful manipulation

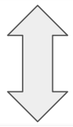
Potential for unintended consequences: Interoperability

Article 6(1)(f)

Gatekeepers must enable "*interoperability with the same operating system, hardware or software features*"

Scope is not well specified

Recital 52 identifies concerns only with regard to gatekeepers' possible "*dual role as developers of operating systems and device manufacturers*"



But Article 6 applies to a gatekeeper "*in respect of each of its core platform services*" and Article 6(1)(f) does not seem to be limited to OSs

Scope should be limited more clearly to OSs in line with stated concern

- Interoperability obligation for OSs makes sense because OSs are by design meant to operate with 3P services
- But the same obligation may create problems for other products because they are not designed for interoperability
- By delineating the scope of the interoperability obligation to OSs, regulatory rule can address the stated concern while avoiding adverse consequences

Potential for unintended consequences: Search data disclosure

Article 6(1)(j)

Gatekeepers must provide 3p search service with access to anonymized "*ranking, query, click and view data*" generated by end users when they search

Current provision is disconnected from a competitive need

- Disclosure obligation is not bounded by any demonstrable competitive need for data that must be disclosed
- Search data and search services are singled out for sharing with rivals in contrast to all other types of data and platforms, without obvious reason

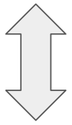
Current provision does not account for risks from disclosure

- **Risk to privacy**: Anonymization is insufficient to protect privacy
- **Risk of manipulation**: Disclosing search data enables bad actors to reverse engineer and manipulate algorithms
- **Risk to innovation**: Disclosing search data enables rivals to copy Google's results and dulls incentives to innovate

Provide for a general safeguard against adverse consequences

Some provisions in Art 6 contain safeguards, while others don't

Article 6(1)(c) provides safeguard against danger to "*integrity of the hardware or operating system*"



But Article 6(1)(f) has no safeguard even though the dangers are the same or greater

Selective safeguards do not protect against dangers

- Presence of safeguards in some provisions attests to the potential for unintended consequences
- But it is hard to predict all possible risks *ex ante*
- Lack of safeguards in other provisions is inconsistent with equality and proportionality

General safeguard prevents harm without undermining objectives

- Need not involve competition-type efficiency analysis
- But would consider substantiated and concrete harm, *e.g.*, security, quality, functionality, privacy
- There would be no delays because gatekeeper would bear burden of proof

Giving full effect to Art. 7(7)

Recitals 33 and 58 envisage regulatory dialogue to ensure effectiveness and proportionality of the regulatory rules. This dialogue is meant to take place via Art. 7(7)

But Art. 7(7) suffers from limitations

- Even if a firm notifies under Art. 7(7) it remains exposed to fines
- This means firms have no incentive to notify
- Art. 7(7) does not apply to Art. 5 obligations, even though compliance may be complex (*eg* Art. 5a - data processing; Art. 5g - fee transparency)

Resolving the limitations to Art. 7(7)

- Make clear that firms that notify will not be exposed to fines
- Apply Art. 7(7) to Art. 5 or move complex provisions (*e.g.* Art. 5a and 5g) from Art. 5 to Art. 6

THANK YOU