

EU will be alert to 'subtle' self-preferencing tactics under DMA, Guersent says

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By [Tono Gil](#)

Digital gatekeepers that use “less detectable” ways of promoting their own products and services to circumvent the EU’s Digital Markets Act still run the risk of European Commission enforcement, the head of its competition department said today. Olivier Guersent said that the “most blatant forms of self-preferencing” won’t happen any more once the DMA enters into full force next March, but that officials might need to go “quite deep” to detect “even the most subtle ways” of favoring a platform’s own products.

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The EU’s digital regulation stipulates that platforms such as Amazon and Google Search must not “treat more favorably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party.”

“The likelihood is that [the gatekeepers] will try to achieve the same profit maximization through other means, trying not to infringe at least blatantly the letter of the DMA,” Guersent said at a conference.*

He said that not all DMA obligations have the same “self-incentive” to comply.

For example, if a gatekeeper breaches the obligation for stores to allow the side-loading of apps, the commission would have a large number of complaints the next day, so the likelihood is that gatekeepers won’t do that, Guersent said. However, “there are many ways to self-preference and some are less detectable than others, even by victims.”

According to Guersent, there is a risk that platforms will move to “less detectable” ways of trying to achieve the same results; ways that aren’t even caught by the DMA’s anti-circumvention mechanism.

If that happens, the commission might have to revert to classic antitrust enforcement under dominance-abuse rules, and it would be “back to square one,” he said.

Digital associations published a joint paper defending that Google should remove all its vertical boxes from its general search results to comply with the DMA’s self-preferencing rule (see [here](#)).

— High Level Group —

Guersent also said that the commission held a meeting yesterday with the DMA’s High Level Group. It comprises competition, privacy, consumer protection, telecom and media regulation watchdogs that advise the commission on the enforcement of the law.

The rise of artificial intelligence was one of the topics addressed by regulators, MLex understands.

* *How can the DMA reimagine and restructure general online search?, Brussels, Nov. 28, 2023*

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