



The Consumer Voice in Europe

# Fair Internet Search

## Remedies in Google case

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## Summary

Consumers use search engines on a daily basis to source the information most relevant to them and to access content of their choice. The fact that search engines select and rank results according to perceived relevance is, in general, of tremendous benefit to consumers. Consumers trust that search results are impartial and based solely on relevance to their query, without any manipulation of the order or results.

The ongoing Commission investigation into the practices of Google, the dominant search engine, is therefore of great concern to BEUC. Google continues to expand its areas of activities and develop its own services and products. Given its role as gatekeeper to the internet, Google is in a unique position to restrict access to its competitors and direct traffic to its own services.

This paper summarises the areas of concern identified by the Commission investigation and presents the consumer point of view on the possible remedies to restore the competition and effective consumer choice. Most importantly, Google must use an **objective, non-discriminatory mechanism** to rank and display all search results, including any links to Google products. This has to be combined with other behavioural remedies and an effective monitoring and enforcement mechanism on the part of the European Commission. Structural remedies also have to be considered given the huge proportion of the market dominated by Google and the inherent conflict of interest of neutral internet search and Google's constant expansion of services and products.

## **I. EU Investigation**

The ongoing investigation by the European Commission has identified four areas of concern where Google's business practices could be deemed abuses of online search market dominance.

### **1. Vertical search**

In its general web search results Google displays content from and links to its own vertical search services. Vertical search services are specialised search engines which focus on specific topics, for example: restaurants, news or products. Alongside its general search service, Google also operates several vertical search services of this kind, in competition with other players.

In its general search results, Google displays links to its own vertical search services differently than it does for competitors' links. This may result in preferential treatment over competing services, which can restrict consumer choice.

### **2. Indexing third party content**

The second concern relates to the way Google copies content from competing vertical search services and uses it in its own offerings. Google may be copying original material from the websites of its competitors, such as user reviews, and using that material on its own sites without their prior authorisation. In this way they are appropriating the benefits of competitors' investments. We are worried that this could reduce incentives for competitors to invest in creating original content for the benefit of internet users. This practice may impact on travel sites or sites providing restaurant guides for instance.

### **3. Search advertisements**

This concerns agreements between Google and partner websites on which Google delivers search advertisements. Search advertisements are those displayed adjacent to the search results when a user types a query in a website's search field. The agreements result in *de facto* exclusivity, requiring search advertisers to obtain all or most of their requirements of search advertisements from Google, thus shutting out competing providers of search advertising intermediation services. Potentially this impacts on advertising purchased for example by online stores, online magazines or broadcasters.

### **4. AdWords**

The fourth concern relates to Google restrictions on the portability of online search advertising campaigns run on its platform AdWords to the platforms of competitors. AdWords is Google's advertising platform on which advertisers auction bids to place search ads on Google search result pages. Google may be imposing contractual restrictions on software developers which prevent them from offering tools to allow the seamless transfer of search advertising campaigns across AdWords and other such platforms.

Our assessment of the four concerns is that the first is the most important, where Google should not display its own “vertical” content (e.g. Google Maps) in more elaborate or outstanding ways than competitors’ products. This is the potential stumbling block for an early resolution and the issue which could prevent a complete settlement of the case.

Google can relatively easily address items 3 and 4 on the above list. These are largely contractual issues and do not implicate Google’s presentation of search results. Number 2 also appears relatively easy to resolve. Google can refrain from indexing third party content (such as user reviews) for display in its vertical services or general search results. However, it does raise the question of whether Google would need to obtain authorisation to index other forms of content beforehand. It is noted that Google would have to agree to all of this.

## **II. Potential remedies**

As stated in our letter to Vice President Almunia, any remedies must focus on consumer welfare and should effectively eradicate anti-competitive behaviour and restore competition. Effective, empowered consumer choice is key and can be offered by Google provided it is guided by fairness and consumer-focused, non-discriminatory principles.

### **Overarching principle:**

*Google must be even-handed. It must hold all services, including its own, to exactly the same standards, using exactly the same crawling, indexing, ranking, display and penalty algorithms.*

Adherence to this principle would immediately end any systematic favouring by Google of its own services by preferential placement and differing display formats in Universal Search.

Adherence to this principle would also end Google’s ability to systematically penalise, demote or exclude its competitors. But regulators will require a reliable method for determining when Google is failing to adhere to this principle by embedding insidious, anticompetitive factors into its penalty algorithms and ranking signals.

In addition to this overarching non-discrimination principle being the central means of restoring competition and ensuring effective consumer choice, it has an obvious precedent in the form of regulation of computerised reservation systems (CRS) for air transport products (principally purchases of scheduled flights)<sup>1</sup>. This regulation places obligations on a system vendor to prevent its parent carriers benefiting from preferential treatment in the operation of the CRS which, either separately or jointly, they own or effectively control. BEUC does not see why the same standards should not be applied in this case.

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<sup>1</sup> Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems [Official Journal L 220 of 29.07.1989]

## **Behavioural remedies:**

### Use of objective and non-discriminatory ranking mechanisms as a main remedy

Google must use an objective, non-discriminatory mechanism to rank and display all search results, including any links to Google products. This would prevent Google from giving preference to its own products in displaying search results outside of algorithmic search. Google should be required to crawl, index, and rank its own services in exactly the same way it does everyone else.

### Labelling

Google must clearly and conspicuously label its own content or services and should be prohibited from using enhanced display formats for its own services. As mentioned above, all search results must be subjected to the same standards.

However, labelling has to be jointly enforced with additional remedies outlined above and below to ensure fair competition and allow other parties to compete effectively on a level playing field. Simply requiring Google to label its own vertical search services would not prevent the company from manipulating search results and discriminating against competing services. Although the labelling of Google's own services is crucial in order to enable consumers to make informed choices, it cannot be the sole solution. Infringements of competition rules call for strong and rigorous remedies which go beyond consumer information.

### Remedies for demotion of competitors

Google must not be allowed to deploy penalties which demote legitimate websites for illegitimate, anti-competitive reasons. Where there are legitimate reasons, penalty or demotion criteria must be applied equally across all websites and services, including Google's own, and any exemptions (manual or automatic) must be applied legitimately and pro-competitively.

In addition, Google needs to be considerably more transparent about the existence and rationale of its various penalties. Sites subject to any kind of penalty must be notified about the status and expected impact of the penalty as well as provided with an explanation of the rationale.

### Exclusive advertising contracts

Google must not be allowed to coerce others into accepting exclusive terms in contracts or agreements related to Google's dominant products, including its search engine, paid search advertising services and its Android operating system.

### **Structural Remedies:**

Structural remedies must be considered given the substantial risk of repeated infringements due to Google's structure and constant expansion of services and products. Structural remedies are essential for restoring competition and promoting innovation in the online environment.

Google has developed a significant conflicting interest—to steer users, not to other site's services, but to its own growing stable of competing services in price comparison, travel search, social networking and so on. As with all conflicts of interest, the only certain way to deal with Google's inherent and growing conflict is to remove it.

BEUC calls for the functional separation of Google's different services and assets.

BEUC would be strongly opposed to any remedy which would require Google to license data it has obtained to other search engines. This would be against data protection rules and cannot be accepted.

### **Monitoring and Enforcement Mechanisms:**

It is vital that mechanisms are put in place for continuous monitoring and enforcement of these remedies, including:

1. Requiring Google to annually certify its compliance with the remedy obligations.
2. Require Google to establish a public point of contact for complaints about unfair treatment and to respond to such complaints in writing within a reasonable period of time.
3. Appoint a technical monitor with a right to audit and inspect. This could take the form of an independent technical oversight panel.
4. Provide significant penalties for failure to comply with its obligations, particularly if the violations are wilful or due to gross negligence.

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