

Applying the DMA's ban on self-preferencing: how to do it in practice?

How to identify self-preferencing practices based on concrete examples

5 December 2022

Why this discussion matters to eu travel tech?

eu travel tech is the European association representing the independent online travel intermediation services.



eDreams ODIGEO

Booking.com



The self-preferencing practices most directly affecting our members are those applied by Google on its Search Engine Result Page (SERP) to the benefit of its own travel verticals.

eu travel tech

The DMA: a new approach

It is **not a competition law text**: not a discussion on remedies between investigated party and competition authority.

The regulation is directly applicable: “The gatekeeper shall ensure and demonstrate compliance with the [DMA] obligations” (art 8.1)

As **third parties**, our role is to provide comments on possible compliance solutions, not to accept remedies

The ban on self-preferencing is set out in Article 6(5) of the DMA:

“The gatekeeper shall not treat more favourably, 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 gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking.”

What is the scope of the ban on self-preferencing?

*“(22) ‘**ranking**’ means [...] the relevance given to search results by online search engines, as presented, organised or communicated by the undertakings providing [...] online search engines, irrespective of the technological means used for such presentation, organisation or communication and irrespective of whether only one result is presented or communicated.”*

*“(23) ‘**search results**’ means any information in any format, including textual, graphic, vocal or other outputs, returned in response to, and related to, a search query, irrespective of whether the information returned is a paid or an unpaid result, a direct answer or any product, service or information offered in connection with the organic results, or displayed along with or partly or entirely embedded in them.”*

What is the scope of the ban on self-preferencing?

“(52) [...] the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, and related indexing and crawling, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, the conditions that apply to such ranking should also be generally fair and transparent. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results and should also include instances where a core platform service presents or communicates only one result to the end user.”

Recital 51 of the DMA provides a clear example of what may, among other practices, constitute a self-preferencing practice:

“(51) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper provides its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position, in terms of ranking [...], for their own offering [...]. This can occur for instance with products or services [...] which are [...] partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine”.

Google's self-preferencing in travel vertical
search (*Example with Google Hotel Finder*)

Query: *Hotel Barcelona (no date)*

First results: ads...

Google search results for "hotel barcelona". The search bar shows "hotel barcelona" with a search icon. Below the search bar, it says "About 265,000,000 results (0.71 seconds)". The first ad is from Booking.com, titled "Booking.com - Hotels - Hotels in Barcelona", with a subtext "Book your Hotel in Barcelona, Spain. Quick, Easy Booking. No Reservation Costs. Choose from a wide range of properties which Booking.com offers. Search now!...". Below this is a "Book Now" button and a "Book for Tonight" button. The second ad is from nh-hotels.com, titled "Hotels in Barcelona - No Reservation Costs - Instant Confirmation", with a subtext "Book direct on the official site to get the best price guaranteed. Instant confirmation. Stay...". The third ad is from sonder.com, titled "Barcelona, Spain rooms & apartments to stay | Sonder", with a subtext "Find places to stay in Barcelona. 24/7 guest support, modern service, and top amenities.". The fourth ad is from trivago.com, titled "Hotels in Barcelona - Compare Hotel Prices", with a subtext "Hotels in Barcelona - Search, Compare and Save with trivago™! Great Offer for Your Next...".

“Service offered by the gatekeeper” (Google hotel finder) “embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine”

...followed by a “carousel” and Google’s Hotel Box.

Google Hotel Box carousel for "Hotels | Barcelona, Spain". The carousel shows a list of hotels with their names, ratings, and prices. The hotels listed are: Generator Barcelona (4.1 stars, 2.9K reviews, €32), Inout Hostel (3.9 stars, 1.2K reviews, €33), Hotel Soho Barcelona (4.4 stars, 529 reviews, €114), and Rodamon Barcelona (4.5 stars, 557 reviews, €42). To the right of the list is a map of Barcelona showing the locations of the hotels. Above the carousel, there is a "Find results on" section with logos for Booking.com, trivago, TUI, Expedia, and TripAdvisor. A red box highlights the TripAdvisor logo, with an arrow pointing to it from a text box above that says "similar services [...] of a third party".

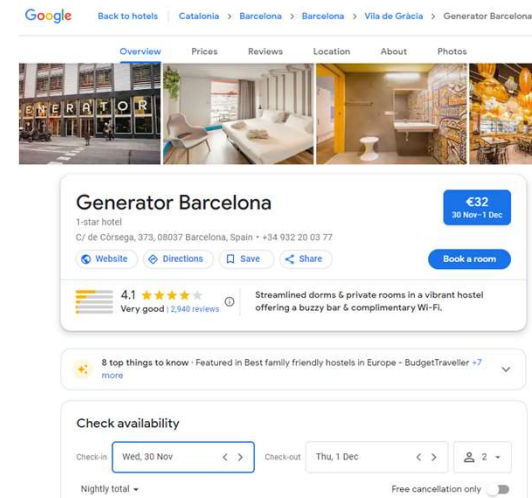
Further down the page are the SEO results

SEO results for Barcelona hotels. The first result is from booking.com, titled "De 10 beste hotels in Barcelona, Spanje (Prijzen vanaf € 20)", with a subtext "Meest geboekte hotels in Barcelona in de afgelopen maand · Catalonia Barcelona Plaza 4 sterren · Catalonia Sagrada Familia 3 sterren · Catalonia Atenas 4 sterren.". Below this is a "Welke hotels in Barcelona zijn goed voor gezinnen?" section and a "Wat zijn de beste hotels in Barcelona?" section. The second result is from trivago.be, titled "Hotels in Barcelona (Catalonië, Spanje) - Trivago", with a subtext "Hotels in Barcelona (Catalonië, Spanje) · NH Collection Barcelona Gran Hotel Calderón · Grand Hotel Central · Majestic Hotel & Spa · Baguès · NH Collection Barcelona ...". The third result is from tui.be, titled "Boek hier je hotel in Barcelona - TUI.be", with a subtext "Vind je vakantie in Barcelona · Waarom reizen naar Barcelona? · Hotel Ramblas Hotel Ramblas. Centraal op La Rambla · Hotel Ramblas. Centraal op La Rambla · Hotel 4 ...". The fourth result is from expedia.be, titled "Tophotels in Barcelona vanaf € 47 - Expedia.be", with a subtext "Travelodge Barcelona Poblenou · Hotel Bàrbara · Hotel Travelodge Barcelona Fira · Arc la Rambla · Barcelona Airport Hotel · Hotel Nuevo Triunfo · Centre Esplai Hostel.". A red box highlights the Trivago result, with an arrow pointing to it from a text box above that says "similar services [...] of a third party".

eu travel tech

Unclear what the value of the carousel is at this stage for either consumers or Google's competitors.

A click on the map leads to **Google's travel vertical**



avel tech

Google's self-preferencing in travel vertical search
(*Example with Google Flights*)

Query: *Flight to Berlin (no date or airline specified)*

First results: ads...

Ad · <https://www.brusselsairlines.com/flights/berlin>

Flights to Berlin - Book flights now

Find our best deals and discover your dream destination with Brussels Airlines®. Make the most of our global network and wide range of destinations. Book now! Loyalty program.

Baggage calculator

Check here how much checked baggage you may take on your next trip!

All our destinations

In need of a getaway? Check out all our destinations here

Brussels Airlines Lounges

Discover the new LOFT, more comfort before your flight!

UpGrade

Enjoy greater comfort on your upcoming flight!

Paid results

The whole search results page (SERP) is covered by the obligation of equal treatment

...followed by the carousel and Google's Flights Box.

Flights to Berlin : [Flights](#) [Airports](#) [Flight Status](#)

Find flights on

[Skyscanner](#) [eDreams](#) [Expedia](#) [Kayak](#)

Brussels (all airports)

Berlin, Germany (BER)

Sat, 21 January

Mon, 23 January

✓ Economy

✓ Round trip

Nonstop

Low emissions

Jan

Feb



	Ryanair	1h 30m	Nonstop	from €41
	Brussels Airlines	1h 25m	Nonstop	from €78
	Deutsche Bahn	6h 52m+	Train	from €80
	Lufthansa	1h 25m	Nonstop	from €84
	Austrian	7h 40m+	Connecting	from €132
	SWISS	4h 0m+	Connecting	from €144
	Other airlines	3h 10m+	Connecting	from €172

Show flights →

Further down the page are the SEO results

<https://www.skyscanner.net> · Germany · Berlin

Cheap Flights to Berlin Brandenburg BER from £37 Return

Looking for flights to Berlin Brandenburg Airport? Compare major airlines and travel agents for cheap Berlin Brandenburg flights at no extra cost.

Cheapest flight found: £29

Flights per week: 812

Cheapest month to fly: January

Most popular airline: British Airways

How much are return flights to Berlin Brandenburg?

Which airlines offer direct flights to Berlin Brandenburg?

<https://www.skyscanner.net> · Belgium · Brussels

Cheap Flights from Brussels to Berlin Brandenburg - Skyscanner

Compare cheap flights and find tickets from Brussels (BRU) to Berlin (BER). Book directly with no added fees.

Cheapest flight found: £23

Cheapest month to fly: January

Flights per week: 79

Flight Status

Mon, 26 Nov Tue, 29 Nov Wed, 30 Nov **Thu, 1 Dec**

09:40

SN 2581

SCHEDULED Berlin BER

16:25

SN 2587

SCHEDULED Berlin BER

Show all flight updates →

<https://www.connections.be> · flights · germany · berlin

Cheap flights to Berlin | Connections.be

Searching for cheap flights to Berlin! Connections offers cheap air fares to Berlin from Brussels, Amsterdam or Paris!



Unpaid results

eu travel tech

First results: ads...

Ad · <https://www.brusselsairlines.com/flights/berlin>

Flights to Berlin - Book flights now

Find our best deals and discover your dream destination with Brussels Airlines®. Make the most of our global network and wide range of destinations. Book now! Loyalty program.

Baggage calculator

Check here how much checked baggage you may take on your next trip!

All our destinations

In need of a getaway? Check out all our destinations here

Brussels Airlines Lounges

Discover the new LOFT, more comfort before your flight!

Upgrade

Enjoy greater comfort on your upcoming flight!

Equal treatment?

- Space

- Features

- Positioning

- ...

...followed by the carousel and Google's Flights Box.

Similar services

Flights to Berlin : Flights Airports Flight Status

Find flights on Skyscanner eDreams Expedia Kayak

Brussels (all airports) Berlin, Germany (BER)

Sat, 21 January Mon, 23 January

Economy Round trip Nonstop Low emissions

Jan Feb

Ryanair

1h 30m

Nonstop

from €41

Brussels Airlines

1h 25m

Nonstop

from €78

Deutsche Bahn

6h 52m+

Train

from €80

Lufthansa

1h 25m

Nonstop

from €84

Austrian

7h 40m+

Connecting

from €132

SWISS

4h 0m+

Connecting

from €144

Other airlines

3h 10m+

Connecting

from €172

Show flights →

Service offered by Google

Further down the page are the SEO results

https://www.skyscanner.net › Germany › Berlin

Cheap Flights to Berlin Brandenburg BER from £37 Return

Looking for flights to Berlin Brandenburg Airport? Compare major airlines and travel agents for cheap Berlin Brandenburg flights at no extra cost.

Cheapest flight found: £29 Flights per week: 812

Cheapest month to fly: January Most popular airline: British Airways

How much are return flights to Berlin Brandenburg?

Which airlines offer direct flights to Berlin Brandenburg?

https://www.skyscanner.net › Belgium › Brussels

Cheap Flights from Brussels to Berlin Brandenburg - Skyscanner

Compare cheap flights and find tickets from Brussels (BRU) to Berlin (BER). Book directly with no added fees.

Cheapest flight found: €23 Cheapest month to fly: January

Flights per week: 79

Flight Status

Mon, 26 Nov Tue, 29 Nov Wed, 30 Nov Thu, 1 Dec

09:40

SCHEDULED

SN 2581

Berlin BER

16:25

SCHEDULED

SN 2587


Berlin BER

Show all flight updates →

https://www.connections.be › flights › germany › berlin

Cheap flights to Berlin | Connections.be

Searching for cheap flights to Berlin! Connections offers cheap air fares to Berlin from Brussels, Amsterdam or Paris!



eu travel tech

And on mobile (and tablet)...

Results on mobile

Sponsored · See hotel barcelona

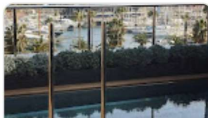
Barcelona, Spain · 30 Nov – 1 Dec



Hotel Catalonia
Passeig de...

€148

Booking.com
4,6 ★ (456)



Serras Hotel
Barcelona

€317

mrandsrsmith.c...
4,6 ★ (695)



Apari
Barce

€81

Booki
4,6 ★

Sponsored



Sonder
<https://www.sonder.com>

Sonder DO Plaça Reial - stay in Barcelona, ES

Book now for the best rates. Choose from unique vacation rentals and hotel rooms. Flexible cancellations and exclusive member pricing. Plan your next trip.

Business and group travel

Example

Sonder.com

Sponsored



Booking.com
<http://www.booking.com> · barcelona · hotels

Hotels in Barcelona - Best Price Guarantee.

FIND RESULTS ON



Booking.com



trivago



TUI



Exp

Hotels | Barcelona, Spain



Barcelona, Spain

2

Wed, 30 Nov

Thu, 1 Dec

Top-rated

Budget options

Luxury stays

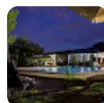


Generator Barcelona

€34

4.1 ★★★★★ (2,9K)

Popular with guests from Belgium



Inout Hostel

€30

3.9 ★★★★★ (1,2K)

Pool



SmartRoom Hotel Barcelona

€49

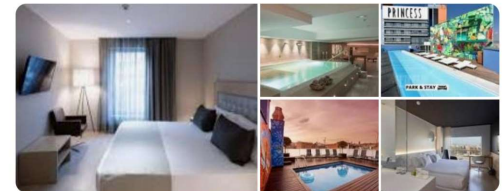
4.3 ★★★★★ (916)

Eco-certified



Booking.com
<https://www.booking.com> · city · b...

De 10 beste hotels in Barcelona, Spanje (Prijzen vanaf € 20)



Meest geboekte hotels in Barcelona in de afgelopen maand · Catalonia Barcelona Plaza 4 sterren · Catalonia Sagrada Família 3 sterren · Catalonia Atenas 4 sterren.

You visited this page on 11/29/22.

Welke hotels in Barcelona zijn goed voor gezinnen? ▾

Wat zijn de beste hotels in Barcelona? ▾

<https://www.booking.com> · city · b...

The 10 best hotels & places to stay in Barcelona, Spain

Most booked hotels in Barcelona in the past month ; Catalonia Barcelona Plaza · 8.3 ...



trivago.be
<https://www.trivago.be> · nl-BE · odr

Hotels in Barcelona · Vind & Vergelijk

eu travel tech

The box is non-compliant.

- ✓ Google embeds its own travel vertical search product in its general search results.
- ✓ The Google Box gets a differentiated and more favourable treatment in ranking versus the SEO results where links to similar services appear.
- ✓ The Google Box has also more features (banner with dates, maps, hotels' names, airlines' logos, prices...) than the links to similar services in the SEO results.
- **Based on the DMA text, the presence of the Google box in its current form (meaning both its position in ranking and features) would constitute self-preferencing.**

How to determine whether ranking conditions are transparent, fair and non-discriminatory?

Art 6.5 (last sentence) : “*The gatekeeper shall apply **transparent, fair and non-discriminatory** conditions to such ranking*”

Transparent: art 6.5 shall be considered in conjunction with art 6.2 regarding data availability for business users in competition with the gatekeeper.

Fair: no advantage to gatekeepers nor disadvantage to business users who provide similar services

Non-discriminatory: equal treatment for similar services, through inclusion and placement based on objective criteria

To monitor compliance with all these conditions, **an independent expert** may be appointed by the Commission in accordance with Article 26(2) of the DMA.


Thank you!

Emmanuel Mounier
SECRETARY GENERAL

Avenue Marnix 17
B – 1000 Brussels

M +32 499 80 13 74
T +32 2 669 42 53

www.eutravelttech.eu

 **@eutravelttech**

emounier@eutravelttech.eu

eu travel tech