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Artificial Competition

A legal analysis of Article 6(5) DMA and potential self-preferencing concerns arising from Google's AI Overviews

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Summary

In 2022, the Digital Markets Act (DMA) entered into force as a regulation adopted by the European Union with the objective of safeguarding contestability and fairness in digital markets, in particular by addressing the conduct of very large undertakings that are able to leverage their economic position to the detriment of competitors. Such undertakings are designated as “gatekeepers” under the DMA and are characterized by their capacity to control access points, or “gateways”, between business users and end users in digital markets. In effect, the Regulation imposes obligations on designated gatekeepers without requiring the Commission to demonstrate a risk of negative market effects or to engage in an effects-based assessment of efficiency or contestability.

A core provision of the DMA is Article 6(5), which prohibits gatekeepers from utilizing their core platform services e.g. search engines, operative systems or intermediation services, to promote other businesses provided by the same economic beneficiary. The provision is comparable to the case law regarding Google Shopping, in which Google leveraged its search engine to favor its own comparison-shopping service over competing services, a practice that resulted in the imposition of a fine by the European Commission.

In March 2025, Google launched AI Overviews in the European Union. The tool is designed to generate synthesized responses by compiling information from multiple sources using artificial intelligence. When activated, AI Overviews are displayed in a prominent position on Google Search’s search engine results page, thus, demoting other websites that are often dependent on clicks to generate ad-revenue. This practice raises the question of whether such placement may fall within the scope of the prohibition on self-preferencing laid down in Article 6(5) of the DMA, an issue which this thesis seeks to assess.

First, the provision of self-preference is described as well as how it has been implemented thus far in case law and practice by the EU Commission. The

second part is an evaluation of the provision's requirements for applicability in relation to AI Overviews.

The last part of this essay analyses whether Google is engaging in self-preference because of how AI Overviews are used today. It also includes a discussion of the DMAs overall objective and if it is effective enough to counter potential market concerns regarding the integration of AI into other services provided by Gatekeepers.

Sammanfattning

År 2022 antogs förordningen Digital Markets Act (DMA) av Europeiska unionen. Syftet är att säkerställa konkurrensbarhet och rättvisa på digitala marknader, särskilt genom att reglera beteendet hos mycket stora företag som kan utnyttja sin ekonomiska ställning till nackdel för konkurrenter. Sådana företag benämns som grindvakter (gatekeepers) enligt DMA och kännetecknas av sin förmåga att kontrollera åtkomstpunkter, eller så kallade gateways, mellan affärsanvändare och slutanvändare på digitala marknader. Förordningen innebär i praktiken att skyldigheter åläggs utsedda grindvakter utan att kommissionen behöver visa på en risk för, eller realisation av, negativa effekter på marknaden som härrör från ett visst beteende. Kommissionen behöver inte heller bestämma ramarna för marknaden som anses utsatt.

En central bestämmelse i DMA är artikel 6(5), som förbjuder grindvakter att använda sina kärnplattformstjänster, såsom sökmotorer, operativsystem eller förmedlingstjänster, för att gynna andra verksamheter som tillhandahålls av samma ekonomiska aktör. Bestämmelsen är jämförbar med rättspraxis rörande Google Shopping, där Google använde sin sökmotor för att gynna sin egen prisjämförelsetjänst framför konkurrerande tjänster, ett förfarande som ledde till att Europeiska kommissionen påförde företaget en sanktionsavgift.

I mars 2025 lanserade Google ”AI Overviews” inom Europeiska unionen. Verket är utformat för att generera sammanfattande svar genom att sammanställa information från flera olika källor med hjälp av artificiell intelligens. När funktionen aktiveras visas AI Overviews i en framträdande position på Googles sökresultatsida, vilket i praktiken innebär att andra webbplatser, som ofta är beroende av klick för att generera annonsintäkter, nedprioriteras. Detta förfarande väcker frågan om en sådan placering kan omfattas av förbudet mot självpreferens i artikel 6(5) i DMA. Denna uppsats syftar till att analysera denna fråga.

Inledningsvis redogörs för bestämmelsen om självpreferens samt hur den hittills har tillämpats i rättspraxis och i Europeiska kommissionens praktiska tillämpning. Därefter följer en bedömning av huruvida förordningen är tillämplig på AI Overviews.

Avslutningsvis innehåller uppsatsen en analys av huruvida Google, genom den nuvarande användningen av AI Overviews, ägnar sig åt självpreferens. Avsnittet innefattar även en diskussion om DMA:s övergripande syfte och huruvida förordningen är tillräckligt effektiv för att motverka potentiella marknadsproblem som kan uppstå till följd av integrationen av artificiell intelligens i andra tjänster som tillhandahålls av grindvakter.

Abbreviations

(Gen)AI,	(Generative) Artificial intelligence
CPS	Core platform service
CSS	Comparable shopping service
DMA	Digital Markets Act
EU	European Union
OIS	Online intermediation service
OSE	Online search engine
P2B	Platform to Business regulation
SERP	Search engine result page
TFEU	Treaty of the Function of the European Union

1 Introduction

1.1 Background

The 6th of September 2023 the European Union Commission put forward a press release, demanding six designated gatekeepers¹ to comply with the Digital Markets Act (DMA)² which entered into force earlier the same year.³ Along with appointing Alphabet (the owner of Google) as a gatekeeper, the Commission also appointed Google search as a Core Platform Service (CPS).⁴ In short, this means that Alphabet has to comply with a new set of rules separate from ordinary European Union (EU) competition law. Gatekeepers and CPSs are appointed because the EU has stated that undertakings like Alphabet which own a large portion of the digital market can lead to imbalance and unfair business practices, harming both end users and other businesses on the digital market.⁵ An important part of complying with the new set of rules is to refrain from “self-preferencing” under DMA Article 6(5).

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.

Earlier in March 2025, Google released AI Overviews as a tool for the end user to have its query answered or satisfied by an AI generated text, providing the user with the same, if not more, information with fewer clicks. The training of AI-models and potential decrease of traffic to competitors has already

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328 (Accessed November 19th 2025)

² Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act, DMA) [2022] OJ L 265/1, Article 3.

³ https://digital-markets-act.ec.europa.eu/gatekeepers_en (Accessed December 4th 2025).

⁴ Article 2(2) DMA.

⁵ Recital (1)-(4) DMA.

sparked debate, resulting in the European Union Commission opening an investigation on AI Overviews.⁶ Even though the development seems effective for the consumer, the integration of AI Overviews to Google Search raises a series of questions relating to market contestability and self-preferencing.

1.2 Purpose and Research Question

This paper aims to investigate whether the use of AI Overviews could be a matter of self-preferencing, prohibited under DMA Article 6(5). Subsequently, the purpose is to shine light on eventual infringements, deriving from potential steering effects to First-Party services outweighing third parties occurring as of today, and if so, is the DMA enough to regulate AI integration in Online Search Engines (OSEs)? The research question will be answered in three parts, wherein the last part includes a discussion and analysis of current law and potential market concerns.

1. How the DMA currently regulate self-preferencing by gatekeepers through CPSs?
2. Whether and to what extent Goggle's AI Overviews could constitute self-referencing prohibited under DMA Article 6(5)? Could AI Overviews be prohibited due to self-preferencing under DMA Article 6(5)?
3. To what extent could regulatory gaps in DMA Article 6(5)'s treatment of AI-generated content be identified, and what clarifications would improve enforcement effectiveness?

1.3 Delimitations

The thesis confines its analysis to self-preferencing as defined by the DMA Article 6(5). Other articles in named act will be included to limited extent. However, the research question will limit itself to Article 6(5) due to its relevance in past rulings in cases and investigations regarding self-preferencing

⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2964 December 9th 2025 (Accessed December 29th 2025). It is important to note that the investigation is not related to the DMA, but TFEU art. 102. See below 2.1.

search engines. Even though there are many versions of AI powered search engines the thesis will narrow its scope to only investigate Google's AI Overviews. This decision is due to Google's prominent placement as a gatekeeper among search engines. Market delineations and identification will not be part of this thesis, since it's not needed to enforce the DMA.⁷

The technical aspects of AI Overview and other AI-tools will be discussed on a level that's understandable to grasp Article 6(5). Further analysis of how the different algorithms powering a GenAI is not needed. Due to lack of past research in some parts, the research question will be answered from a theoretical and hypothetical standpoint. The legal consequences of an infringement, as well as the user and turnover thresholds set out in the DMA, fall outside the scope of this paper, as they are not relevant to the theoretical analysis of Article 6(5).

1.4 Methodology and Material

This paper adopts a legal dogmatic method, focusing on the interpretation and systematic analysis of EU law, with particular emphasis on the Digital Markets Act (DMA). The analysis is grounded in the wording of Article 6(5) DMA, its regulatory context, objectives, relevant case law, and how it's been applied this far. Within this framework, existing EU legal sources are examined to determine the scope of Article 6(5) DMA and to assess its applicability to AI Overviews.⁸

In the final part of the analysis, a critical perspective on the Regulation is introduced.⁹ To that end, elements of a legal policy approach are employed to support the interpretation of Article 6(5), in particular through an evaluation of the DMA's recitals. This supplementary perspective is used to identify

⁷ See below 2.1.

⁸ Kleineman, J, 'Rättsdogmatisk metod' in Maria Nääv and Mauro Zamboni (eds), *Juridisk metodlära*, (Nordstedts Juridik 2018)21 ff.

⁹ *Ibid.* p. 40.

and discuss potential regulatory gaps in the DMA, while remaining analytically distinct from the assessment of the law as it currently stands.¹⁰

Since the DMA was recently implemented, and the acceleration of AI-development is a new problem, there is a lack of accurate case-law that can provide exact answers to the research question. However, the European Union Commission has made statements through appointments that enforces the DMA and its scope of applicability. Said appointments, although not yet tried by court, combined with research by scholars in the field will be sources of information and interpretation when answering the research question.

The lack of statements made by the European Union General Court, makes it hard to draw definite conclusions with accuracy. Nonetheless, it's believed by scholars that the Google Shopping case¹¹ contains assessments that are applicable to the DMA, hence it will be the primary case for analysis of the presented issue.

1.4.1 Use of Generative AI

The generative AI-tool ChatGPT has assisted me in writing this paper through helping me translate Swedish to English and vice versa. I have also used the tool for language revisions to improve the stylistic quality of the text.

1.5 Past Research

As noted above, the DMA is a relatively recent regulatory instrument, and the development of AI-integrated online search engines for commercial use is even more recent. As a consequence, the body of academic literature addressing this intersection remains limited. Thomas Höppner's book, *Self-Preferencing in Online Search under Article 6(5) DMA* (2024), provides a comprehensive account of the origins of the DMA and its enforcement to date. While the book includes certain observations relating to the use of AI, it does not

¹⁰ Ibid. pp.37, 44.

¹¹ Case T-612/17 *Google LLC and Alphabet Inc v European Commission* EU:T:2021:763.

draw specific conclusions as to how AI-driven functionalities should be assessed under the Regulation. Nevertheless, the integration of AI into online search engines, together with the implementation of the DMA, has sparked an ongoing debate among legal practitioners and scholars, giving rise to a number of speculative contributions on how AI should be regulated. This debate has also prompted empirical research analyzing changes in internet user behavior in response to AI-generated content, hereinafter referred to as “click studies”.

1.6 Disposition

Chapter two outlines the purpose and scope of the DMA and provides an in-depth analysis of the function served by Article 6(5), including how the provision can be applied and how it has been applied in practice. The chapter further sets out the relevant compliance criteria and the regulatory framework within which core platform services may operate.

Chapter three applies the principles of self-preferencing as established by the DMA, relevant case law, and legal scholarship to Google Search and its integration of AI Overviews.

Chapter four concludes the thesis by assessing whether the criteria set out in Article 6(5) are fulfilled in relation to Google’s AI Overviews and by examining the relevance of the provision in this context. The chapter also includes a discussion of the legal policy considerations underlying Article 6(5) in relation to AI-driven services. Finally, concluding remarks are presented, reflecting the insights gained throughout the analysis of self-preferencing conducted in this thesis.

2 The Digital Markets Acts legal framework

2.1 The Purpose and Implementation of the DMA

The DMA targets major companies that through CPSs e.g. OSEs, web engines, Online Intermediation Services (OIS), operating systems etc.¹² intermediates business users with end users through gateways on the digital market provided by gatekeepers. The act's purpose is to protect the internal market from a list of tendencies harmful to the contestability of the Union market such as: lock-in effects, lack of multi-homing, and dependance from both end users and business users to the same platform.¹³ Due to the gatekeepers extreme advantage regarding both economics and data, they can leverage said advantages to expand to many different business areas. Consequently, a gatekeeper can exercise control over whole ecosystems in the digital economy, making it hard, if not impossible, for other businesses to break into the market. End users and business users of a CPS are adversely affected because they lose alternatives and become dependent on the platform, irrespective of the terms the gatekeeper may impose for its use. The Union has deemed the above-mentioned effects to produce negative outcomes, notably unfair practices and conditions for business users and end users at the expense of prices, quality, choice and innovation, among others.¹⁴

The Treaty on The Functioning of The European Union (TFEU)¹⁵, plays a major part in regulating the market to protect it from abuse.¹⁶ The DMA was adopted under Article 114 TFEU¹⁷ as a way of harmonizing the member states regulations of transnational companies' behavior on the internal market. This

¹² Article 2(2) DMA.

¹³ Recital (2) DMA.

¹⁴ Ibid. (3), (4).

¹⁵ Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C 326/47 .

¹⁶ See Article 101, 102 TFEU.

¹⁷ Article 114 TFEU.

could be seen as part of the overall goal of not allowing certain market abuse presented in TFEU art. 101 and 102,¹⁸ however, the DMA should be regarded as a standalone legislation, separate from art. 101 and 102. The Commission has likely adopted the DMA separately from ordinary Union competition law to shift the focus away from a consumer-outcome perspective and towards ensuring the contestability of the markets themselves. The DMA is a regulation that is applied *ex ante*, meaning risk for harmful tendencies or anti-competitive behavior is not a prerequisite for its applicability.¹⁹ Consequently, an undertaking that can be subject to the DMA as a gatekeeper cannot resort to arguments deriving from efficiency or market definition to avoid restrictions to their business as in traditional competition law.²⁰ Furthermore, the DMA is technology neutral.²¹ Some member states of the Union have prior to the DMA recognized the issues with gatekeepers and already implemented some restrictions on a national level. For that reason, the DMA was put into effect to harmonize the legislature and ensure a cohesive internal market.²²

2.2 Gatekeepers and CPSs

As stated above²³, Alphabet was appointed the status of gatekeeper resulting in the undertaking having to comply with the DMA. Apart from certain turnover thresholds deriving from the gatekeeper's business²⁴, there are three main criteria for being regarded as a gatekeeper:

- (a) it has significant impact on the internal market,*
- (b) it provides a core platform service which is an important gateway for business users to reach end users; and*

¹⁸ Articles 101, 102 TFEU.

¹⁹ Recital (11) DMA.

²⁰ Hedvig Schmidt, 'Goldilocks and the three laws – Competition law, the Digital Markets Act, and the Digital Service Act: Regulation of online safety', (2025), 62, Common Market Law Review, Issue 5, pp. 1391-1392, Accessed November 19th 2025 through <https://kluwerlawonline.com/journalArticle/Common+Market+Law+Review/62.5/COLA2025097>. See also DMA recitals (10) and (11).

²¹ Recital (14) DMA.

²² Ibid. recitals (7)-(9).

²³ See 1.1.

²⁴ Article 3(2) DMA.

*(c) it enjoys an entrenched and durable position in its operations, or its foreseeable that it will enjoy such a position in the near future.*²⁵

Gatekeeper status comes with several obligations stated throughout the DMA, including the prohibition of self-preferencing which will be discussed further throughout this thesis. Other notable regulatory obligations are, the prohibition against preventing businesses from offering their product through Third-Party intermediation services with different prices and terms than if they would provide them through the gatekeepers CPS,²⁶ the prohibition against requirements to sign up or register with other gatekeeper services to use the CPS.²⁷ The responsibility lies with the gatekeeper to comply with the DMA.²⁸

The gatekeeper's business is always linked to one or more CPSs. A CPS, acting as a gateway for businesses, is a prerequisite needed to designate an undertaking as a gatekeeper.²⁹ The relevant CPS for the purposes of this thesis is Google Search. Under the DMA, CPSs are further classified into specific categories, within which Google Search is designated as an "online search engine" (OSE).³⁰

2.3 Article 6(5) DMA

The contents of Article 6(5) is as follows:

*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.*³¹

The provision is meant to preclude gatekeepers from favorizing their own services over other similar services provided by a third party. As previously noted, the DMA is technology neutral³², and targets different types of online

²⁵ Ibid. Article 3(1).

²⁶ Article 5(3) DMA.

²⁷ Ibid. Article 5(8).

²⁸ Ibid. Article 8(1). See also recital (68).

²⁹ Ibid. Article 3(1b).

³⁰ See footnote 1. See also DMA Article 2(2b).

³¹ Article 6(5) DMA.

³² See above 2.1.

services, e.g. intermediation services, web browsers, video sharing services etc.³³ However, this provision is highly actual when discussing search engines like Google due to its focus on crawling, ranking and indexing.³⁴ While an in-depth understanding of how search engines operate is not required to interpret the provision, a basic understanding of an OSE is useful to grasp why the regulation is formulated as it is.

Ranking, indexing and crawling are terms that describe how an OSE presents results on a search engine result page (SERP). Crawling is the process of Google scouting the internet for pictures, URLs, texts and videos. After identifying the websites available on the internet, Google analyses this information by indexing it, thereby determining and categorizing the content of each website to generate rankings that correspond to an end user's query. This is an automated and technical process driven by a bot.³⁵

The gatekeeper should not engage in this process in a way that provides worse opportunities for *similar services and products offered by a third party than those offered by the gatekeeper itself*. A search engine like Google search is linked to plenty of other economic activities that are related to, but still separate from, its core function of presenting a search engine result page (SERP), e.g. YouTube, Google Flights, Google Maps, Google shopping.³⁶ These are referred to in the literature as “First-Party services” since they belong to the same economic beneficiary, in this case, Alphabet.³⁷ Consequently, a service similar to the one provided by the gatekeeper but from another company is referred to as a “Third-Party service”.³⁸ The Google shopping case³⁹ is a prime example where, even though the DMA didn't exist at the time, the prohibition against self-preferencing was reflected in practice. In the case, Alphabet was fined for promoting their own intermediation service “Google

³³ Recital (14) DMA.

³⁴ Thomas Höppner, *Self-Preferencing in Online Search under Article 6(5) DMA* (Nomos 2024) 25, para 9.

³⁵ <https://developers.google.com/search/docs/fundamentals/how-search-works> (Accessed December 13 2025). See “ranking” definition in DMA Article 2(22).

³⁶ <https://about.google/products/>.

³⁷ <https://www.forbes.com/companies/alphabet/> (Accessed December 12th 2025).

³⁸ Höppner, p.25.

³⁹ Google and Alphabet v Commission Case T-612/17.

shopping” over other websites comparing prices in a similar way, without offering equal opportunity to access the preferable interface.⁴⁰

Lastly, *the gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking*. Ultimately, the gatekeeper is obliged to ensure that its compliance measures do not, in themselves, give rise to unfairness within its CPSs. This catch-all provision is intended to prevent gatekeepers from adopting measures that conceal or perpetuate underlying inequalities.⁴¹

2.3.1 Distinct Services

In order to assess whether a gatekeeper engages in self-preferencing, it is necessary to distinguish between the service that is being favoured and the service through which the preferential treatment is effected. First, it is necessary to determine (i) whether the activity is a service. Secondly, it must be determined (ii) whether the service is inseparable from the CPS or “distinct”.⁴² The CPSs listed in DMA Article 2(2) are regarded as distinct. However, it’s important to note that the list should not be read as exhaustive.⁴³ The broad scope of the Regulation is intended to ensure that gatekeepers maintain contestable markets through their CPSs and to prevent platform envelopment, whereby a platform offers adjacent services while leveraging its competitive advantages to lock users into specific products through inter-service dependencies or plain self-preferencing, thereby foreclosing Third-Party competitors.⁴⁴ Consequently, to identify platform envelopment, it’s necessary to identify its components to accurately enforce the DMA.

The crucial criteria for whether a service should be regarded as a distinct service is if it’s separable from the CPS. To determine this, one must outline the functioning of the CPS. If the different services are used for the same purpose

⁴⁰ Case C-48/22 P *Google LLC and Alphabet Inc v European Commission* [2024] ECLI:EU:C:2024:726. para. 24. See below 2.3.3.

⁴¹ Höppner, p.30.

⁴² Höppner, pp. 35, 52.

⁴³ Ibid. pp. 35-36, 46. See also DMA Annex D(2)(b).

⁴⁴ Hermes, Sebastian; Kaufmann-Ludwig, Jonas; Schreieck, Maximilian; Weking, Jörg; and Böhm, Markus, "*A Taxonomy of Platform Envelopment: Revealing Patterns and Particularities*" (2020). AMCIS 2020 Proceedings. 17. p. 1,2. The DMA does not use the term platform envelopment, see Höppner pp.46-47, 50, and Recital (3) DMA.

by either their end users or business users, or both, a service shouldn't be regarded as separate from the CPS. Nonetheless, some overlap between services, concerning shared users and purpose, is inevitable and should not be considered as standalone reasons to why two services should be classified as a single service.⁴⁵ Common technical features and interface as well as partial or entire embedding shared by different services does not constitute sole grounds for precluding the classification of a distinct service either. Such reasoning would counter the purpose of combating platform envelopment since gatekeepers are able to, through leveraging data advantages, provide the user with a bundle experience to generate as much traffic as possible to their own services instead of those of a third party.⁴⁶ In accordance with the purpose of the DMA being a separate legislation apart from Union competition law, the distinct service does not need to form a separate and distinct market.⁴⁷

Factors that imply a distinct service are if it's provided on a standalone basis or is marketed as a separate service from another CPS. Meta tried to make the argument that Facebook and Instagram should be regarded as a single CPS. The Commission maintained that since they are marketed separately and are accessed through different URLs, the social networking websites should constitute separate CPSs.⁴⁸ Furthermore, the users experience is regarded as an implicative of whether a service should be deemed distinct or single. The threshold for presuming a service to be distinct, with user experience as a determining factor, is low, as the relevant recital to the Regulation indicates that it is sufficient for "certain" users to "consider" or "use" the service as an addition to the core platform service.⁴⁹

The distinction between services has been tried by the Commission, especially regarding Google Search against other intermediation services. The Commission has then, in line with the Google shopping case, argued that an

⁴⁵ Höppner p.36. Annex D(2)(b) DMA.

⁴⁶ Höppner pp. 52-53. See also Recitals (51), (53) DMA.

⁴⁷ Commission decision of 5/9/2023, Cases DMA.100011, *Alphabet (designation)*, para. 19.

⁴⁸ Commission decision of 5/9/2023, Cases DMA.100020 *designating Meta as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector*, paras. 30, 44.

⁴⁹ Höppner, pp. 55-56. See also Recital (51) DMA.

OSE only mirrors the results that they are crawling, ranking and indexing through conventional methods, also described as presenting *generic search results*.⁵⁰ Other unconventional rankings and presentations on a SERP are deemed as providing “*specialized search results*”, which in turn is an argument for them being part of an additional or distinct service even though the access point remains the same.⁵¹ In these cases, the enforcer has through decisions of appointments, made a distinction between intermediation services that provides contractual relationships with Third-Party businesses, and those that are not bound by contract. A contractual relationship between an undertaking and a CPS can be used to provide non-public information, such as special deals through a comparable shopping service, rather than an OSE. By definition, such a contractual relationship, that imposes on how the OSE usually ranks and index public web information, precludes the service from being part of an OSE rather than an OIS.⁵² This classification is one way for the Commission to categorize different gatekeeper services and map out which distinct services that competes with third party businesses, and which services that belongs to the core functioning of an OSE.⁵³

2.3.2 Similar Service

If the service in question is distinguishable from the CPS it also has to be compared to another Third-Party service that is available through the same OSE, if a potential infringement is to be discussed. Consistent with its overall design, the DMA adopts a broad scope and correspondingly sets a low threshold for the obligation to refrain from self-preferencing, in that it suffices for the Third-Party service to be merely the “*same or similar*” to the gatekeeper’s own service. Furthermore, the service does not need to compete on the same

⁵⁰ Commission decision of 5/9/2023, Cases DMA.100011, *Alphabet (designation)*, paras. 92, 96. See also Höppner, p. 44, and p. 42 for an in depth explanation of “*generic search result*”.

⁵¹ DMA recital (51). See also *Alphabet and Google vs Commission* paras. 285-286, as well as Commission decision of 27/6/2017, Case AT.39740, *Google search (Shopping)*, para. 23-24. Höppner p.38.

⁵² Höppner pp. 68, 112. See also Commission decision of 5/9/2023, Cases DMA.100011 et sub., *Alphabet (designation)*, para. 96.

⁵³ Höppner, pp. 73-75. See also Commission decision of 5/9/2023, Cases DMA.100011 et sub., *Alphabet (designation)*, para. 75. As well as: Commission decision of 5/9/2023, Cases DMA.100020 et sub., *Meta (designation)* para. 248.

market. The determinative factor is if the end user regards the purpose of the service to be comparable to another, provided by a different party.⁵⁴ It is enough that one other similar service is identified to trigger the obligation to refrain from preferential treatment.⁵⁵ Furthermore, the prohibition in 6(5) does not limit itself to self-preferencing over similar businesses, but also over dissimilar businesses, due to the interpretation that Article 6(5) also targets discrimination in general which could apply to third parties that are dependent on representation on an OSE, if such discrimination derives from measures made to ensure equal treatment between similar businesses.⁵⁶

2.3.3 Preferential Treatment

Article 6(5) prohibits favorable treatment in “ranking and related indexing and crawling”. The general court confirmed the Commissions assessment that an internet user expects to have the whole web browsed, indexed and presented after relevance to their query. Consequently, the consumers choice is impacted by any distortions made to the traditional function of an OSE.⁵⁷ To counter such behavior the legislator specifically targeted this practice, thus, distinguishing results deriving from other than conventional OSE methods, from those that are presented based on specialized algorithms, contractual relationships or index. Ultimately this means that a gatekeeper needs to provide equal opportunity to a third party to provide its service through the OSE.⁵⁸

To determine whether a CPS favors its other services, it is necessary to initially identify any relevant treatment of service, the relevant treatment in this case being ranking and related indexing and crawling. Once the treatment is

⁵⁴ Article 6(5), recitals (46) and (49) DMA for “same or similar”, see above at 2.1 for regulation independent from other competition law. See also Höppner p.101,102 as well as footnote 238 for elaboration on what impact end user interpretation of similarity has.

⁵⁵ Höppner p.103.

⁵⁶ Höppner p.175-177. Article 6(5) DMA second sentence.

⁵⁷ Alphabet and Google vs Commission paras. 562 and 571. See also Höppner pp. 111 and 112. See also for statements made regarding ranking and consumer impact, Commission notice of 8/12/20, Guidelines on ranking transparency pursuant to regulation (EU) 2019/1150 of the European Parliament and of the council, Case 2020/C 424/01, paras 11,12.

⁵⁸ Höppner p.112.

identified, the second step is to assess whether said treatment confers an advantage upon the First-Party over a Third-Party service.⁵⁹

Ranking is, as described above⁶⁰, a technical term describing the automated process of an OSE deciding and presenting the relative prominence of a result for its SERP. The platform to business (P2B) regulation, an earlier regulation meant to promote fairness in the digital platform economy, uses a similar wording.⁶¹ However, the DMA widens the scope of self-preferencing to include “*all forms of relative prominence*”, and “*to any measure that has an equivalent effect to the differentiated or preferential treatment in ranking*”.⁶² In other words, the provision is meant to prohibit the conduct of presenting search results in an unfair way, irrespective of how the result was achieved. For example, in the Google shopping case, Google made the argument that they hadn’t used different mechanisms to promote their own service before other comparison-shopping services (CSSs). The general court dismissed this argument, submitting that the question regarded more favorable positionings and display of Google shopping, not available to Third-Party services, thus not a question of technicality.⁶³ To conclude, any presentation on a SERP that is favorable to the First-Party service, not available to the Third-Party, that includes a direct answer, a product or service, no matter how its embedded or integrated, unpaid for or paid for, no matter organic links or in connection with the result, is prohibited by article 6(5).⁶⁴

⁵⁹ Höppner p.113.

⁶⁰ See chapter 2.3.

⁶¹ Regulation (EU) 2019/1150 of the European Parliament and of the council of 20 June 2019 *on promoting fairness and transparency for business users of online intermediation services*, (P2B-regulation) recitals (2), (24) and Article 2(8). See also Höppner p.115.

⁶² Recital (52) DMA.

⁶³ Alphabet and Google vs Commission T-612/17 para. 284.

⁶⁴ Höppner pp.116, 117.

3 Could AI Overviews be unlawful due to the DMA?

As of December 2025, Google AI Overviews are available in Sweden among other countries across the world. Google promotes this service as a way of having your queries answered fast and effortlessly, collecting information from a multitude of sources available on the web and assembling them for the user.⁶⁵ In line with how the DMA regulates different digital services today, this change to user experience of Google Search begs the question if this practice is lawful under the DMA.

3.1 AI Overviews legal status under the DMA

As described in past chapter⁶⁶ the DMA regulates how CPSs may promote additional and distinct services to prevent self-preferencing. To assess whether AI Overviews constitutes self-preferencing it has to be determined if it (i) constitutes a First-Party distinct service, (ii) is it similar to any Third-Party services and (iii) is it operating on unequal terms in relation to other services?⁶⁷

3.1.1 Separability of AI Overviews and Google Search

There is no question to whether AI Overviews is a service provided by Alphabet through Google search, thus making it a First-party service. When assessing if it should be regarded as a distinct service, it is necessary to evaluate whether the AI Overview is part of a core function of Google search as an OSE, or if it's an additional service. As stated before⁶⁸, an OSE should only mirror the results that they get from crawling, related indexing and ranking. Following that premise, answering a query through modifying or substituting

⁶⁵<https://blog.google/products/search/generative-ai-google-search-may-2024/>
<https://search.google/ways-to-search/ai-overviews/> (Accessed 27th December 2025).

⁶⁶ See 2.3.

⁶⁷ Höppner p.35.

⁶⁸ See chapter 2.3.1.

generic search results, AI generated consolidated material is beyond the functioning of an OSE.⁶⁹ Furthermore, it can be argued that end or business users uses AI Overviews and Google search for different purposes since its generally expected from an OSE to browse the web and provide search results while the other one provides direct answer to the query.⁷⁰ Google search also implemented an AI-mode that can answer queries directly in another page than a traditional SERP, implying that the AI Overview is a separable service from the OSE.⁷¹ In turn, the DMA Annex definition of a distinct service puts a presumption on services that are used for different purposes to be distinct from the CPS.⁷² There is no unified answer to if AI Overviews are a distinct service, since there are different views to what role the embedding to an OSE plays. In an essay written by Tom Davies, he argues that AI Overviews should be regarded as a new feature in a search engine that is not a standalone service.⁷³ Höppner on the other hand submits that such reasoning should be considered circular due to the fact that it's based on the premise that because it is integrated to the OSE it is part of the OSE.⁷⁴ Google has used the following the words to explain AI Overviews as a complement:

*AI Mode and AI Overviews may use different models and techniques, so the set of responses and links they show will vary. AI Overviews are only shown when our systems determine that it is additive to classic Search, and as such, often don't trigger.*⁷⁵

3.1.2 AI Overviews compared to similar services

⁶⁹ Höppner pp. 61-63.

⁷⁰ Höppner pp. 61-62 and 66.

⁷¹ <https://search.google/ways-to-search/ai-mode/> (accessed 27th December 2025) See also, Annika Witte Paz and Natalie Setz, "Artificial overview, genuine abuse? Google's AI overviews as abuse of search engine power", (2025) Neue Zeitschrift für Kartellrecht (NZKart), pp. 576-583, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5716744 (Accessed 27th December 2025) p. 7.

⁷² DMA Annex (D)(2)c.

⁷³ Todd Davies, "Innovation or infringement? Generative AI and the Potential for Exclusionary Abuse under Article 102 TFEU", (2025) Faculty of Laws University College London Law Research Paper No. 10/2025, p. 14.

⁷⁴ Höppner p. 41.

⁷⁵ <https://developers.google.com/search/docs/appearance/ai-features> 10th december 2025 (accessed 28th December 2025).

If AI Overviews has similar counterparts provided by third parties is a difficult question to answer due to the lack of statements made from the Commission or general court. Once again, the purpose of the service, and how it is perceived by the user is a crucial factor.⁷⁶ On the one hand, it may be argued that the only truly comparable counterparts are other generative AI tools, such as ChatGPT⁷⁷, that is, GenAI tools which aggregate and process the information on which they are trained in order to generate context-based responses.⁷⁸ On the other hand, it may be contended that a substantial share of online information publishers constitutes “similar services”. The latter statement is based on the argument that AI Overviews and Google Search are functionally comparable, as receiving a direct answer to a query via the web is functionally comparable to obtaining that answer from an independent website displayed on a traditional SERP.⁷⁹

3.1.3 The identification of preferential treatment of AI Overviews

When identifying a preferential treatment, it is necessary to identify the relevant treatment and assess if it confers an advantage and unequal opportunity upon a first party, not available to the third party.⁸⁰ Although the Google Shopping case was decided under Article 102 TFEU⁸¹, the DMA is designed to address comparable forms of conduct when identifying preferential treatment⁸², thereby making that case-law a relevant point of reference when assessing whether AI Overviews may raise concerns under Article 6(5) DMA on similar grounds.

⁷⁶ See above 2.3.2.

⁷⁷ Chatgpt.com.

⁷⁸ https://www.edps.europa.eu/data-protection/technology-monitoring/techsonar/large-language-models-llm_en (Accessed December 28th 2025).

⁷⁹ Witte Paz and Setz, p.15.

⁸⁰ See above 2.3.3.

⁸¹ TFEU art 102, Alphabet and Google vs Commission, para. 703.

⁸² Recitals (51), (52) DMA. See also Höppner p.122.

In the Google Shopping case, the Commission argued that Google's own CSS was more prominently positioned in a way that was unavailable to competitors with similar services, leading to its own service being promoted and others demoted. The argument in question was confirmed by the General Court.⁸³ The Commissions critique is based on how Google Shopping was presented in comparison to other CSSs, they argued specifically...

*...that while results from competing comparison shopping services could appear only as generic results, that is to say, simple blue links that were also prone to being demoted by adjustment algorithms, results from Google's own comparison shopping service were prominently positioned at the top of Google's general results pages, displayed in rich format and incapable of being demoted by those algorithms, resulting in a difference in treatment in the form of Google's favouring of its own comparison shopping service.*⁸⁴

When using Google Search, the user inputs its query in the search bar and Google presents results on a SERP. A subset of the SERP includes AI Overviews, the occurrence of which varies depending on how a search query is formulated and which keywords are used. In one study examining approximately 146 million keywords, around 21% of queries were found to trigger AI Overviews.⁸⁵ When the AI Overview appear, it compiles information about the user's query from different publishers on the web with links on the side to where you can read more. The generic search results appear below as blue links.⁸⁶

The design of AI Overviews, including its placement and format, may raise questions as to whether such presentation may confer an advantage on Google's own services compared to Third-Party services if they lack equivalent opportunities to present similar compilations.⁸⁷

⁸³ Alphabet and Google vs Commission T-612/17, paras. 184, 185

⁸⁴ Alphabet and Google vs Commission T-612/17, para. 168

⁸⁵ <https://ahrefs.com/blog/ai-overview-triggers/> November 10th 2025 (Accessed 28th of December 2025).

⁸⁶ See Appendix 1 for picture. See also <https://developers.google.com/search/docs/appearance/ai-features> (Accessed December 28th 2025).

⁸⁷ Witte Paz and Setz p. 15. Höppner p. 123.

4 Analysis and Discussion

4.1 The Concept of Ranking under article 6(5)

The relevant treatment when evaluating the compliance of AI Overviews with article 6(5) is how it is ranked on the SERP. Article 6(5) DMA obligates the gatekeeper to refrain from ranking a First-Party service more favorably than a service from a third party. The term “ranking” has been given a broad definition in the DMA recitals to include “*any measure that has an equivalent effect to the differentiated or preferential treatment in ranking*”.⁸⁸ Thus, the evaluation of the presentation of AI Overviews does not require further technical analysis of how the ranking was achieved. If the concept of ranking under Article 6(5) is understood to encompass presentation formats that influence user attention through higher placement on a SERP or richer presentation, the prominence of AI Overviews compared to Third-Party results may be sufficient to bring such presentation within the scope of the provision.

Google claims that AI Overviews leads to more clicks on a greater diversity of websites.⁸⁹ Despite this, studies on onward clicks show a decrease in further engagement with websites when AI Overview appear.⁹⁰ Thus, the narrative shifts depending on who is asked. Irrespective of how the available data regarding click behavior is interpreted, there is still a requirement that no measures or treatment should leave “*a remaining imbalance of rights and obligations*”.⁹¹ In other words, the legislator suggests little, if any, room for gatekeepers to use their OSEs to favor and rank First-Party services over Third-Party services.⁹² Furthermore, favorable ranking is to be analyzed in relation to the CPS in question, in this case, Google search, not AI Overviews,

⁸⁸ See 2.3.3 and Recital (52) DMA.

⁸⁹ <https://blog.google/products/search/generative-ai-google-search-may-2024/> May 2024 (Accessed January 3rd 2025).

⁹⁰ See 3.1.3. See also <https://ahrefs.com/blog/ai-overviews-reduce-clicks/> April 17th 2025 (Accessed December 28th 2025).

⁹¹ DMA Article 8(8). See also Höppner p.35.

⁹² DMA recital (52). See also Höppner p. 145, as well as footnote 352 “*Note that this Article [8(8)] deals with the specification of obligations under Article 6(11) DMA and 6(12) DMA. However, the same must apply for specifying Article 6(5), as lex specialis to Article 6(12) DMA*”.

and the market effects of a practice are not relevant for assessing the legality of a practice regulated under Article 6(5). The key element of favorable ranking is the practice of reserving certain prominence for First-Party services, not available to third parties. It follows that concerns about the provision of self-preference could potentially arise.

4.2 Limits of the self-preferencing prohibition

The self-preferencing prohibition laid down in Article 6(5) DMA requires an assessment of whether a gatekeeper's own service is treated more favourably in comparison to at least one relevant third-party service. While the threshold for the provision to become applicable is relatively low, the identification of an appropriate point of comparison remains a central issue. In the context of AI Overviews, this raises the question whether the relevant comparator should be other generative AI tools or independent publishers of online information. The answer to this question is significant, as it may affect the scope of the self-preferencing prohibition and the range of potential corrective measures under the DMA.

If AI Overviews were to be regarded as a GenAI service only comparable to other GenAIs, a potential corrective measure under Article 6(5) DMA could consist in granting such models equivalent treatment on the SERP. However, such an approach may raise concerns as to whether it adequately addresses the position of independent publishers of online information, whose services may still be affected by the presentation of AI Overviews. Nonetheless, the DMA remains technology neutral, valuing user perception of a service as an indicator of what is considered similar.⁹³

Even though it is hard without extensive data to evaluate how the comparable services are perceived by end users in relation to each other, the above-mentioned study⁹⁴ shows that the amounts of clicks that leads to other webpages decreases when an AI Overview appears. The reduction in follow-on clicks may indicate that, from a user perspective, AI Overviews may function as

⁹³ See 2.3.2.

⁹⁴ See footnote 90

substitutes for other publishers. Such findings may become a relevant indicator to assessing Article 6(5)s scope of similarity.

This problem illustrates how a narrow interpretation of similarity may limit the effectiveness of the self-preferencing prohibition in addressing the competitive concerns that Article 6(5) seeks to prevent. The legislator has been thorough in ensuring applicability despite technological advancement, through valuing end user perspective and substitutability. While Article 6(5) DMA primarily concerns the preferential treatment of similar services, its objective of preventing discriminatory self-preferencing practices is also relevant where compliance measures adopted in relation to comparable services indirectly result in unequal treatment of other Third-Party services. Despite this wide scope of similarity, GenAI presents potential challenges due to its few limits to its functioning and substantial overlap with the listed categories of CPSs in article 2(2), highlights the complexity of applying the self-preferencing prohibition consistently considering its underlying objectives.

4.3 Legal Policy Perspective: Market Considerations as Interpretative Support under Article 6(5) DMA

Although negative market effects do not need to be established for the ex ante enforcement of the DMA, the recitals provide insight into the types of conduct the Regulation seeks to prevent and the objectives it pursues. From a legal policy perspective, these objectives remain relevant when assessing whether the current regulatory framework is capable of addressing new forms of integration, such as the incorporation of GenAI functionalities into online search engines.

From this perspective, the integration of AI Overviews into an OSE may risk undermining certain objectives of the DMA, in particular those relating to contestability, barriers to entry and platform envelopment. Where an AI-based overview satisfies a substantial part of the user's informational needs directly on the search results page, this may reduce incentives to engage with

independent publishers, potentially affecting their revenue models and long-term viability. Such dynamics, if left unaddressed, could contribute to increased barriers to entry and reinforce interface dependency, thereby raising concerns that are closely aligned with the regulatory rationale underlying Article 6(5) DMA.

These considerations do not determine the legality of specific practices under Article 6(5), but they illustrate why the self-preferencing prohibition may play an important role in preventing the consolidation of OSEs into “one-stop shops” in a manner that undermines the DMA’s overarching objectives.

5 Concluding Remarks

The provision in Article 6(5) DMA against favorable treatment to First-Party services use a broad scope to combat gatekeepers leveraging advantage and interface dependency to promote their own CPSs and distinct services. Based on the analysis conducted in this paper with the Google shopping case, the wording of 6(5), as well as the DMAs objectives and recitals, in mind, it is well substantiated to question if the prominent placement of AI Overviews on Google's SERP constitutes an act of self-preference. However, it remains unclear what remedies would be appropriate to ensure compliance with the DMA as well as its objectives, regarding what services should be deemed similar. Furthermore, to classify AI Overviews as distinct from Google Search would require an appointment from the Commission or a court judgement.

Throughout the process of writing this thesis, more problems with AI Overviews integration to Google Search have surfaced. The legality of a service that effectively risks replacing a wide range of Third-Party services operating through Google Search, raises concerns if an integration of GenAI to an OSE is compatible in any case without being self-preferent. Although, the DMA contains effective tools for its enforcement, it is a viable concern whether it can remain so without defining an accurate legal framework for GenAI to operate as a CPS in the future. A clarification of how GenAI may be integrated to CPSs that problematizes the functions technical nature and purpose could ensure effective use of Article 6(5) DMA. Consequently, accurate statements regarding a diverse, fair and contestable digital market and its relation to GenAI could be made.

Appendix 1

← → ↺ 🌐 google.com/search?q=The+digital+markets+act+explained&rlz=1C5CHFA_enSE943SE943&oq=The+digital+markets+act+... 🔍 ⚙️ 📄 📁 📌 ⌵

Google

The digital markets act explained ✕ 🗃️ 🗣️ 📷 🔍

AI-läge Allt Nyheter Videor Bilder Korta videor Webb Fler ▾ Verktyg ▾

🌟 AI-översikt

The **Digital Markets Act (DMA)** is a landmark EU regulation designed to create fairer, more contestable digital markets by imposing strict rules ("dos and don'ts") on large tech companies designated as "gatekeepers," such as Google, Apple, Meta, and Amazon. It stops these dominant platforms from abusing their market power by self-preferencing their own services, forcing users into their ecosystems, or hindering competition, ultimately boosting innovation, choice for consumers, and opportunities for smaller businesses. Key requirements include allowing app uninstallation, enabling third-party payment systems, and improving interoperability between messaging apps, with significant fines for non-compliance. 🌐

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