

UDK: 339 : 004

346.546

Review paper

Simona Rudohradská, Teaching researcher

Faculty of Law, Univesity of Pavol Jozef Šafárik in Košice

E-mail: simona.rudohradska@upjs.sk

ORCID ID: 0000-0002-6711-2141

SELF-PREFERENCING PRACTICES OF ONLINE PLATFORMS*

ABSTRACT

This paper deals with the so-called self-preferencing practices of online platforms. Some specific practices can be perceived negatively from a competition law perspective. As the previous decision-making practice of national competition authorities and the European Commission shows, anti-competitive self-preferencing practices of online platforms have been sanctioned by standard competition law instruments. The currently applicable Digital Markets Act defines new obligations for online platforms that are in the position of gatekeepers. At the application level, the DMA aims to complement the enforcement of competition law without prejudice to Articles 101 and 102 TFEU. The aim of the paper is to compare the assessment of self-preferencing practices by standard competition law instruments and the assessment of these practices under the Digital Markets Act. In this contribution we intend to test the scientific hypothesis that the Digital Markets Act targets self-preferencing practices more effectively and will assist in eliminating those that are detrimental to the well-functioning of digital markets.

Keywords: *competition law, Digital Markets Act, online platforms, self-preferencing practices, abuse of dominant position*

1. INTRODUCTION

Digital platforms increasingly surround us in every area of the online world. From information search through internet search engines and browsers (e.g., Google, Bing), communication via social networks (e.g., Facebook, Instagram, LinkedIn), purchasing goods and services (e.g., Vinted, Facebook Market), to selecting and purchasing apps for our mobile devices (e.g., AppStore, Google Play). Ordinary users of these platforms rarely realize that the goods and services offered by other merchants through these platforms are often in a mutually competing position. The promoting platforms have a strategic position in relation to the placement of

products or advertisements for these products, which can significantly favour their competitive position in the online platforms without additional costs or greater effort. Data, primarily generated by the users of these platforms, play a key role. Naturally, each platform has its own terms of use and internal processes for handling personal data, or data that does not qualify as personal data under legal definitions, but from a business perspective, represents significant value.

The subject of this contribution is the fundamental definition and characterization of what we mean by self-preferencing practices of online platforms, how they manifest in practical application, and why and when they can be considered harmful phenomena from the perspective of competition law. Furthermore, the basic regulatory framework will be presented, both from the perspective of standard competition law tools and from the perspective of the Digital Markets Act, which is currently fully effective. From a practical point of view, selected case studies related to self-preferencing practices of platforms that have meaningfully resonated within the professional community and have had a major impact on shaping the decision-making practice in the defined area will be analysed.

Methodologically, the analysis will primarily use the legal text analysis method (relevant legislation and related decisions of administrative and judicial bodies), the comparison method (approaches to sanctioning self-preferencing practices with "standard" competition law tools compared to the Digital Markets Act), the deduction method (with regard to drawing general conclusions applicable not only to specific case studies but also to other similar cases in the future), and finally, summarization (of key findings arising from previous application practice). With respect to the defined area, the scientific hypothesis will be tested that the Digital Markets Act can respond more effectively to the self-preferencing practices of online platforms, which may have a negative impact on competition in the relevant (digital) markets. The main goal of the contribution is to compare the regulation of self-preferencing practices from the perspective of competition law and from the perspective of the Digital Markets Act, focusing on selecting key aspects that confirm or refuse the effectiveness of the new regulation.

2. WHAT ARE SELF-PREFERENCING PRACTICES?

2.1. Self-preferencing in general

Self-preferencing can be characterized as an effect in which a particular entity prioritizes its own goods or services over those of another entity. Self-preferencing could generally be considered a natural occurrence in society, both in the commercial and non-commercial spheres. In general, we consider self-

preferencing to be acceptable, taking into account the rationale of human and business thinking. Considering the fact that business activities are primarily carried out with the aim of making a profit, entrepreneurs will seek to maximize profits with the lowest possible expenses. Therefore, self-preferencing is not only an issue of commercial or competition law, but its implications can be seen across multiple branches of law. For completeness, it is important to note that the limits of self-preferencing practices are not only regulated by competition law but can also be observed in several branches of private law, such as consumer protection, anti-discrimination laws, and in public law reflecting basic rights enshrined in the Constitution, as well as selected criminal law aspects.

2.2. Self- preferencing in the environment of online platforms

If we focus on the core of this contribution, it is essential to observe the self-preferencing practices of online platforms and their practical manifestations. For the purposes of this contribution, we will unify the term "online platforms" or "digital platforms," referring to entities providing a broad portfolio of information society services. We speak of self-preferencing practices of online platforms when large tech companies prioritize their own products or services over those of their competitors, or entities with which they are in a competitive position as competitors in the same relevant market. According to Hutchinson and Treščáková self-preferencing refers to a conduct of a large provider of core platform services which consists in favouring one's own products and services over those offered by competitors on the same platform.¹ From an economic perspective, the literature suggests that self-preferencing practices of online platforms are not always harmful to consumers or sellers.² Similarly, it is noted that self-preferencing can be discussed when these companies act as both platform operators and sellers on the platform, whereas they are in the position of a 'dual-role platform,' 'hybrid platform,' and 'vertically-integrated platform.'³ According to Bejček, self-preferencing also has a pro-competitive effect, because it is part of competitive pressure and the motivation of rivals to promote themselves (*survival of the*

* This contribution was processed as partial output of the projects APVV-23-0331 Capital Market Union Integration: Reshaping Corporate Finance and Rescuing Companies in Distress and APVV-21-0336 Analysis of Judicial Decisions using Artificial Intelligence.

¹ Hutchinson, C. S.; Treščáková, D., *Tackling gatekeepers' self-preferencing practices*, European competition journal, Volume 18, Issue 3, 2022, p. 567.

² Kittaka, Y; Sato, S.; Zenny, Y., *Self-preferencing by platforms: A literature review*, Japan and the World Economy, Volume 66, 101191., 2023, p. 1 and other there cited sources.

³ Ibid.

fittest).⁴ Heinz emphasizes that there are also critical voices, pointing out that self-preferencing practices by vertically integrated digital companies are not *per se* harmful, but could often lead to efficiencies, possibly also in ranking.⁵ In the professional literature, we also encounter the creation of toolkits used to identify self-preferential practices.⁶ Such conduct can be carried out in various ways, and a dual-role platform can arise from multiple factual situations. While self-preferencing concerns have recently increased in prominence, they can be seen as similar to traditional leveraging theories of harm in which firms leverage market power in one market (e.g. the intermediation platform) to foreclose competitors in a related market (e.g. a downstream retail market).⁷ Through this contribution, we will attempt to highlight those practices that we are most likely to encounter in the online environment. However, the outlined list of practices should not be viewed as exhaustive. It will rather be an exemplary enumeration of practices that resonate in application practice.

2.2.1. Displaying rankings in internet search engines and browsers

As the first example, we could consider the order in which individual products or services are promoted on online platforms. This can be most noticeably perceived by users, especially on internet search engines (which are used to search for specific information)⁸ or browsers that are designed to display specific content on websites.⁹ A common manifestation of self-preferencing is the display of a preferred product or service at the top of search results. Displaying search results at the top when searching, has a significant impact on the selection of a specific product or service by the consumer. Users may even perceive such product placement positively, as the platform often bases its display on their user data, which takes into account their usual choices and preferences. Ranking may or may not include a situation where the platform itself is also the seller.

This area is specifically addressed by Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and

⁴ Bejček, J., *Má DMA regulatorní a/nebo soutěžní „DNA“?*, *Časopis pro právní vědu a praxi*, Vol. XXXII, No. 3, 2024, p. 474.

⁵ Heinz, S. in: Podszun, R., *Digital Markets Act: article-by-article commentary*, Verlag, C.H. Beck, 2024, p. 170, citation referring to footnote 7.

⁶ Jürgensmeier, L.; Skiera, B., *Measuring self-preferencing on digital platforms*, available at: <https://arxiv.org/abs/2303.14947>, March 7, 2025.

⁷ OECD, *Competition Policy in Digital Markets*, Paris: OECD Publishing, 2023, available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/10/competition-policy-in-digital-markets_554eb7d5/80552a33-en.pdf, p. 8, April 11, 2025.

⁸ We include here, for example, Google, Bing or Yahoo.

⁹ Internet browsers include Google Chrome, Mozilla Firefox, Apple Safari and others.

transparency for business users of online intermediation services.¹⁰ This regulation is referred to as the P2B regulation (Platform to Business) and, according to Article 1(2), applies to online intermediation services and internet search engines that are provided or offered to business users and users of corporate websites whose registered office or place of residence is located in the Union, and which, through such online intermediation services or internet search engines, offer goods or services to consumers in the Union, regardless of the place of establishment or residence of the providers of such services and irrespective of the applicable law. From the formulation of the purpose and objectives of the legal regulation, considering the formulation of individual obligations of online intermediation services, it is clear that this regulation primarily relates to the area of contractual law, specifically partial contract law, since the core part of the regulation is dedicated to attributes relating to the terms and conditions of the platforms. Busch and Mak state that Regulation 2019/1150 served as a significant model for the Digital Services Act.¹¹

The regulation defines online intermediary service providers in Article 2(3) as any natural or legal person who provides or offers to provide online intermediary services to commercial users. In Article 3, obligations are imposed on entities acting as online intermediary service providers concerning the terms and conditions of their services. In addition to the clarity, easy accessibility, and transparency of platform terms and conditions, this regulation also sets requirements regarding the order in which goods or services are advertised. Article 5 establishes obligations for online intermediary service providers, specifying that they must define the main parameters determining the ranking order and the reasons for the relative importance of these main parameters compared to other parameters. Entities acting as internet search engine providers must establish the main parameters that are individually or jointly most significant in determining the ranking order, as well as the relative importance of these main parameters. The terms and conditions must also be easily accessible to the public and drafted in clear and understandable language on the internet search engines of the respective providers. The possibility of influencing the ranking for direct or indirect compensation paid by commercial users or users of business websites is linked to the obligation of such an entity to specify the effect this compensation will have on the ranking in the published search results. In the legal conditions of the Slovak

¹⁰ 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, OJ L 186, 11.7.2019, p. 57-79 (hereinafter: Regulation 2019/1150).

¹¹ Bush, C.; Mak, V., *Putting the Digital Services Act into Context: Bridging the Gap between EU Consumer Law and Platform Regulation*, Journal of European Consumer and Market Law (EuCML), Issue 3/2021, p. 109.

Republic, the authority authorized to receive complaints regarding the application of this P2B regulation is the Council for Media Services.¹²

2.2.2. When the platform itself also acts as a seller

It is not uncommon in the online environment for a platform providing the promotion and sale of third-party products to be in a competitive position with those products. Let's illustrate a situation where a platform itself sells a certain type of goods while also providing third parties, on a commercial basis, the opportunity to present products that are on the same relevant market. This platform is in a strategically advantageous position because it collects data about users not only in relation to its own customers but also in relation to customers who are interested in the products of competing entities promoting their goods through this platform. An example from practical application could be the case of Meta¹³, which was fined €797.72 million for imposing unfair trading conditions on other online classified ads service providers.¹⁴ Based on the investigation by the Commission, it was found that Meta holds a dominant position in the social media market, as well as in national markets for online display advertising on social media.

According to available information, Meta has violated Article 102 TFEU, which applies within the markets for personal social networks, within the territory of the European Economic Area, as well as in the national markets for online display advertising on social media. The conduct it engaged in, in violation of competition law, was primarily based on two aspects – tying its online classified ads service Facebook Marketplace to its personal social network Facebook. According to this, Facebook users automatically have access to and are regularly exposed to Facebook Marketplace, whether they want it or not. The Commission found that competitors of Facebook Marketplace may be foreclosed, as the tie gives Facebook Marketplace a substantial distribution advantage that competitors cannot match. The second anti-competitive behaviour involved imposing unfair trading conditions on other online classified ads service providers who advertise on Meta's platforms, particularly on its very popular social networks Facebook

¹² Council for media services, available at: <https://rpms.sk/podanie-podnetu-na-preverenietykajuceho-sa-prostredkovatejskej-sluzby-podla-p2b>, March 5, 2025.

¹³ You can find information about February 25, 2025.

¹⁴ Ibid.

and Instagram. This allows Meta to use ads-related data generated by other advertisers for the sole benefit of Facebook Marketplace.¹⁵

3. INITIAL LEGAL FRAMEWORK

3.1. Competition law

Competition law could be described as a universal tool for addressing unfair practices in the online space. Due to the more general formulation of the abuse clauses related to participation in competition, this area of law is capable of covering a wide range of actions that distort markets, whether to the detriment of competing entities, consumers, or end users of these platforms. Competition law is therefore significantly shaped by decisions made by competition authorities and also by judicial authorities, which provide contours to the generally formulated clauses. The structure of competition law is based on a three-pillar system consisting of the prohibition of agreements restricting competition, the prohibition of the abuse of a dominant position, and the control of concentrations. The first two mentioned institutions – agreements restricting competition and the abuse of a dominant position – are regulated at the EU law level in the primary law of the EU (Articles 101 and 102 TFEU). The control of concentrations is regulated by Council Regulation (EC) No 139/2004 of January 20, 2004, on the control of concentrations between undertakings.¹⁶

In relation to the various forms of unlawful restriction of competition, the most frequently used form was likely the abuse of a dominant position. However, as stated in the preamble of Article 5 of the Digital Markets Act, an online platform does not necessarily have a dominant position in every case from the perspective of competition law, but its actions can significantly distort the market in which it operates. Agreements restricting competition cannot be overlooked either. Concentrations in the context of digital markets also appear to be specific. In this regard, it is important to emphasize that regulation in the form of prohibiting the abuse of a dominant position and prohibiting agreements that restrict competition is based on the so-called *ex-post* principle, meaning that actions are penalized or sanctioned only after they have occurred. The control of concentrations, on the other hand, is based on the *ex-ante* principle, meaning that if a business transaction meets the parameters outlined in the regulation on the control of concentrations,

¹⁵ Commission fines Meta €797.72 million over abusive practices benefitting Facebook Marketplace, Press Release, November 14, 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801, March 5, 2025.

¹⁶ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1–22.

the involved parties are required to notify the relevant competition authority (whether it is a national competition authority in the case of domestic mergers or the European Commission) of their intention to initiate such a transaction.

The significant impact of digital technologies has not spared the field of competition law. The emergence of entirely new digital relevant markets has fundamentally transformed the traditional approach to market definition. This shift is evidenced, for example, by the necessity to revise the European Commission’s Notice on the definition of the relevant market from 1997¹⁷ prompted by the growing influence of digitalisation.¹⁸ The updated Commission Notice devotes specific sections to the definition of markets in the context of multi-sided platforms, aftermarket products, product bundling, and digital ecosystems. As stated in the Notice, the presence of indirect network effects in practice may complicate the assessment of demand-side substitutability particularly the application of the SSNIP test more so than in scenarios where such interdependence between user groups is absent. Furthermore, the Commission emphasizes that the fact a product is offered at zero monetary price does not imply that there is no relevant market for such a product. Where appropriate, network effects may also be taken into account in the assessment and delineation of the relevant market.¹⁹

Investigating practices that restrict competition is time-consuming. This is primarily evidenced by the length of individual proceedings. However, this fact is objectively determined by the need to verify a wide range of information that is crucial for initiating proceedings, as well as for clarifying the case. As an example, we could mention the definition of the relevant market in which the concerned entity holds a dominant position. Often, various economic approaches are also used, necessary for correctly determining the space in which competition takes place.

3.2. Digital Markets Act

The Digital Markets Act (specifically, the proposal for a regulation) was introduced in December 2020, alongside the proposal for the Digital Services Act regulation. Currently, this legal act in the form of a regulation is fully valid and in

¹⁷ Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5–13.

¹⁸ Whish, R.; Bailey, D., *Competition law*, Oxford University Press, 2021, p. 22-24.

¹⁹ Communication from the Commission – Commission Notice on the definition of the relevant market for the purposes of Union competition law, C/2023/6789, OJ C, C/2024/1645, 22.2.2024, ELI: <http://data.europa.eu/eli/C/2024/1645/oj>.

effect, and therefore fully applicable. The regulatory approach applied in the Digital Markets Act differs in several ways from competition law. The Digital Markets Act defines, based on qualitative and quantitative criteria, the category of so-called gatekeepers, imposing specific and detailed obligations on them, which contrasts with the general clauses typical of competition law. Competition law addresses anti-competitive practices only *ex post*, meaning after the affected party has caused a distortion in the conditions of a relevant market. The Digital Markets Act is an *ex ante* regulation with a predefined catalog of obligations (mainly Articles 5, 6, 7, and 8, which specify the conditions for compliance with these obligations).

3.2.1. Article 6 (5) of Digital Markets Act - Prohibition of self-preferential practices

The practices of self-preferencing are specifically addressed in Article 6(5) of the Digital Markets Act. It explicitly states that “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.” This provision essentially reflects three types of conduct where self-preferencing may occur, namely a) ranking, b) related indexing, and c) crawling. The interpretation and representation of this provision can be assisted by recital 51, which establishes that gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services or through commercial users, over which they have control, leading to a conflict of interest. In terms of ranking and related indexing and search indexing, such gatekeepers may ensure better positioning for their own offerings than for the products or services of third parties also operating on the same core platform service.²⁰

Ranking can be characterized as an act by which a specific online platform arranges content, products, or services, or when it prefers its own content, products, or services in search results or displays to users of the platform. The goal of such conduct is to increase the visibility of the given product or service, which occurs essentially at the expense of products and services that are substitutable from a competition perspective with the presented services. This practice can take place either during the process of searching for a generic product or service or may also be present when displaying ads for products or services. According to Derakshan, ranking products in decreasing order of their preference weights does

²⁰ Preamble 51 of Digital Markets Act.

not necessarily maximize market share or consumer welfare. Such a ranking may shorten the consumer’s consideration set due to the externality effect of high-positioned products on low-positioned ones, leading to insufficient screening.²¹

When we speak of the term related indexing, it primarily refers to the indexing (which can be understood as a form of categorization or sorting) of content, products, or services reflected in securing a better position in search results or recommendations within the online platform interface. In this way, online platforms favour their own content, services, or products.

The process of crawling could be described as a situation where an online platform automatically scans and indexes content from the internet (or content within its own ecosystem) so that it can subsequently be made available to users in various forms—most commonly in search results, recommendations, or other lists. In the case of search engines, this may manifest as the prioritization of its own content or websites over those of third-party external entities. In summary, we could state that the various practices described in the establishment of a ban on self-preferencing aim toward a single objective, which is better visibility and the preferential treatment of one’s own content, products, or services over those provided by third parties, which, from the perspective of competition law, can be considered substitutable.

3.3. Differentiation between standard competition regulation and the Digital Markets Act

If we were to characterize the key differentiating determinants or highlight the common denominators between competition law and the Digital Markets Act, we would begin by describing the nature of the aforementioned regulations. While competition law (i.e., the prohibition of agreements restricting competition and the prohibition of abuse of a dominant position) is based on *ex post* enforcement (since merger control also takes place *ex ante*), the Digital Markets Act operates *ex ante*. The practical effects of regulation are reflected in the fact that online platforms are sanctioned only after a violation of competition law, though similarly, the DMA also provides for sanctions that may occur after the breach of an obligation. However, in the case of the DMA, competition authorities will be in a more favourable position in terms of evidence, as they will not need to extensively investigate the platform's conduct, given that the regulation includes a catalogue of specific prohibited behaviours. A comparison of the form of *ex ante* and *ex post*

²¹ Derakhsan, M. et al., *Product ranking on online platforms*, Management Science, Vol. 68, No. 6, 2022, p. 4024-4041.

regulation is addressed in an OECD report within the jurisdiction of the G7 countries, which states that for other concerns, related for example to self-preferencing and tying practices, there is less certainty about the design and implementation of potential remedies, as a number of major investigations remain open. In these cases, traditional antitrust frameworks are likely to remain relevant, alongside *ex ante* regulation, in determining the ultimate outcomes in digital markets.²²

This brings us to the second aspect of the regulatory distinction, namely that the Digital Markets Act establishes specific and detailed obligations, whereas competition regulation is based on the principle of broadly formulated general clauses that are capable of encompassing a wide range of online platform behaviours. Both regulatory approaches naturally entail certain advantages as well as disadvantages. The broadly formulated general clauses of competition law are further refined through the decision-making practice of administrative and competition authorities, which play an exceptionally important role in this area of law. Conversely, specifically tailored obligations may function as a “catalogue” of prohibited conduct, providing obligated entities with clear guidance as to which behaviours will be regarded as unlawful.

The third factor is that competition law applies to all entities capable of fulfilling the definition of an undertaking, whereas the Digital Markets Act targets a specific category of gatekeepers, whose thresholds are contained in Article 3, paragraphs 1 (qualitative criteria) and 2 (quantitative criteria).

Ex post sanctioning of harmful self-preferencing practices through the standard instruments of competition law, primarily concerning the prohibition of abuse of a dominant position, has proven effective, though it is more time-consuming from a procedural perspective. When deciding on competition law violations, it is necessary to define the relevant markets and assess the harmful effects on specific markets, which often requires considerable time from competition authorities and the European Commission. In contrast, the Digital Markets Act formulates an *ex ante* prohibition of such conduct with respect to the three forms of self-preferencing (indexing, etc.).

Lastly, we highlight the difference in which body is competent to enforce the rules of the Digital Markets Act. Competition law, in general, can be divided into national and European aspects. In the application of national competition rules, the competition authorities of individual Member States are competent, and

²² OECD, Competition Policy in Digital Markets, *op. cit.*, p. 5.

according to Article 3(1) of Regulation 1/2003²³, national competition authorities, as well as national courts, are authorized to apply Articles 101 and 102 TFEU, provided that the agreements or abuse of a dominant position affects trade between Member States. In contrast, enforcement of the Digital Markets Act is exclusively the responsibility of the European Commission (primarily with reference to Articles 17 and 18 of the Digital Markets Act).

The European Commission began applying the Digital Markets Act on May 2, 2023. On September 6, 2023, the Commission designated six entities as gatekeepers for 22 core platform services, including Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft²⁴. These entities are required to inform the Commission of their status and provide all relevant information within two months of reaching the specified thresholds. As of the time of drafting this article, publicly available information does not indicate any specific proceedings that the Commission has initiated based on this act. Within the scope of the Digital Markets Act (DMA), the Commission has addressed preliminary findings to Alphabet regarding self-preferencing practices in connection with Google Search and Google Play. At present, no additional official documents or decisions have been made publicly available.²⁵ According to publicly available information, Alphabet is alleged to be favouring its own services in ranking, placing them more advantageously than similar services offered by third parties. Under the Digital Markets Act (DMA), such ranking must be conducted in a transparent, fair, and non-discriminatory manner.²⁶ However, in relation to the Digital Services Act, a legal case involving Zalando against the European Commission (T-348/23) is currently pending before the EU Court of Justice. In this case, the plaintiff requests the General Court to annul the Commission's decision of April 25, 2023, arguing that Zalando was incorrectly classified as a so-called very large online platform and that the Digital Services Act does not apply to it, as it allegedly is not an intermediary service, nor a hosting service, nor an online platform under the Digital Services Act.²⁷

²³ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1–25.

²⁴ European Commission, Digital Markets Act: Commission designates six gatekeepers, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328, March 10, 2025.

²⁵ European Commission, Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers, Mar 19, 2025, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_811, April, 12, 2025.

²⁶ *Ibid.*

²⁷ Currently, only information on the lawsuit filed by the company is publicly available. Cast T-348/23 Zalando against the European Commission, OJ C 314, 4.9.2023, p. 9-11.

4. CASE STUDIES

4.1. Google Shopping

The Google Shopping case significantly resonated with both the general public and legal professionals. In 2017, the European Commission initiated proceedings against Google on suspicion of breaching competition law.²⁸ The practices in question concerned Google Shopping, a service that allows users to search for products online and compare prices of different products from various online stores. Within the framework of competition law's core institutes, Google was alleged to have abused its dominant position in the search engine market by favouring its own price comparison service (Google Shopping) over competitors in search results. As a result of this anti-competitive conduct by Google, competitors had more difficult access to users, and their products were less visible. The public's interest in this case was likely heightened by the fact that the Commission imposed a fine of €2.42 billion on Google. Since Google disagreed with the Commission's findings, it decided to appeal to the General Court of the EU. Google argued that its search algorithms did not target illegal favouritism of its own services but aimed to provide the best results for users. In 2021, the General Court of the EU dismissed Google's appeal, confirming that Google had abused its dominant market position. The General Court ruled that Google favoured its own products by prioritizing them in advertisements and search results, thus harming competitors such as independent price comparison services. The court also upheld the imposed fine of €2.42 billion. Even after this ruling, Google appealed the decision of the General Court to the Court of Justice of the EU (C-48/22 P).²⁹

In 2023, the Court of Justice of the EU made its final decision, once again confirming the General Court's ruling, thereby upholding the fine imposed on Google for abusing its dominant position in the price comparison market. This case had a wide impact on digital markets and the way in which large technology companies (such as Google) can operate within the relevant markets in which they hold a dominant position.

²⁸ Documents concerning the proceeding before the European Commission are available here (AT.39740) <https://competition-cases.ec.europa.eu/cases/AT.39740>, March 10, 2025.

²⁹ Genesis of the proceeding of case Google Shopping available at <https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&for=&jge=&dates=&language=sk&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&parties=google%2Bshopping&lg=&page=1&cid=4578138>, March 10, 2025.

The Google Shopping case is an example of how specific practices of digital giants evolve and highlights the important role of competition law in regulating digital giants. In the digital age, traditional competition models may not always adequately reflect the specific business practices of online giants. In response to these regulations, Google had to adapt and modify the way it displays its own products in search results. Google also had to change its business practices within Google Shopping to ensure that competing services would have the same opportunities for visibility of their content or products. For the sake of completeness, it should be noted that similar proceedings were also conducted against Google by the US Federal Trade Commission, but in the absence of arguments determining the abuse of Google's dominant position, it was discontinued.³⁰

4.2. Amazon

In 2019, the European Commission formally initiated an antitrust investigation to assess whether Amazon was using sensitive data obtained from independent retailers in a manner that violated competition rules. In November 2020, the European Commission preliminarily concluded that Amazon holds a dominant position in the French and German markets for online marketplace services in relation to third-party sellers. On the same day, the Commission opened a second investigation, in which it was to assess whether the criteria set by Amazon for the selection of the Buy Box winner and the ability for sellers to offer products within their own Prime Programme led to preferential treatment for merchants selling through Amazon and those utilizing Amazon's logistics and delivery services.

In the second investigation, the Commission concluded that Amazon had abused its dominant position in the relevant French, German, and Spanish markets with respect to providing online marketplace services to third-party sellers. Amazon voluntarily proposed commitments to cease using non-public data, ensure equal treatment for all sellers, and took further measures. Due to the cooperation provided and the findings regarding compliance with these commitments, the Commission did not impose any fines. However, if Amazon breach its commitments, the Commission is authorized to impose a penalty of up to 10% of Amazon's total annual turnover, or alternatively, impose a periodic penalty of 5% of daily turnover for each day of non-compliance.³¹

³⁰ Kostecka-Jurczyk, D., *Abuse of dominant position on digital market: is the European Commission going back to the old paradigm?*, European Research Studies Journal, Volume XXVI, Special Issue 1, 2021, p. 122.

³¹ Investigation proceedings against Amazon were registered under numbers AT.40462 and AT.40703.

5. CONCLUSION

Self-preferencing practices do not necessarily always have a negative competitive effect. The *ex post* enforcement of harmful self-preferencing practices through standard competition law instruments, particularly with regard to the prohibition of abuse of a dominant position, has proven to be effective; however, it tends to be more time-consuming. When determining whether there has been an abuse of a dominant position, the competition authority must conduct investigations concerning the relevant market and verify whether the particular competitor actually holds a dominant position in the competition law sense. If this essential condition is not met, the platform cannot be penalized. In cases involving the violation of competition rules, both the definition of the relevant markets and the assessment of harmful effects in those markets require a careful evaluation of significant economic and law aspects, which often necessitates more time from the competition authorities or the European Commission. In contrast, the Digital Markets Act formulates an *ex ante* ban on such practices in relation to three forms of self-preferencing (indexing, related indexing, crawling), which may have a deterrent effect on platforms, especially considering the fact that identifying such practices *ex post* is more circuitous. For the reasons mentioned above, it is necessary to conclude that the new regulation under the Digital Markets Act targets the specific practices of digital giants more effectively, as these practices have a significant impact on the markets in which they operate. However, competition law remains an vitally relevant legal instrument for the area of digital markets.

REFERENCES

BOOKS AND ARTICLES

1. Bejček, J., *Má DMA regulatorní a/nebo soutěžní „DNA“?*, Časopis pro právní vědu a praxi, Vol. XXXII, No. 3, 2024, p. 474.
2. Bush, C.; Mak, V., *Putting the Digital Services Act into Context: Bridging the Gap between EU Consumer Law and Platform Regulation*, Journal of European Consumer and Market Law (EuCML), Issue 3/2021, p. 109.
3. Derakhsan, M. et al., *Product ranking on online platforms*, Management Science, Vol. 68, No. 6, 2022, p. 4024-4041.
4. Heinz, S. in: Podszun, R., *Digital Markets Act: article-by-article commentary*, Verlag, C.H. Beck, 2024, p. 170.
5. Hutchinson, C. S.; Treščáková, D., *Tackling gatekeepers' self-preferencing practices*, European competition journal, Volume 18, Issue 3, 2022, p. 567.

6. Jürgensmeier, L.; Skiera, B., *Measuring self-preferencing on digital platforms*, available at: <https://arxiv.org/abs/2303.14947>, March 7, 2025.
7. Kittaka, Y; Sato, S.; Zenny, Y., *Self-preferencing by platforms: A literature review*, Japan and the World Economy, Volume 66, 101191., 2023, p. 1.
8. Kostecka-Jurczyk, D., *Abuse of dominant position on digital market: is the European Commission going back to the old paradigm?*, European Research Studies Journal, Volume XXVI, Special Issue 1, 2021, p. 122.
9. Whish, R.; Bailey, D., *Competition law*, Oxford University Press, 2021, p. 22-24.

LEGAL ACTS

1. Digital Markets Act
2. 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, OJ L 186, 11.7.2019, p. 57-79.
3. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Consolidated version of the Treaty on European Union Consolidated version of the Treaty on the Functioning of the European Union Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Tables of equivalences, OJ C 202, 7.6.2016, p. 1–388.
4. 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 and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1–66.
5. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1–102.
6. Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5–13.
7. Communication from the Commission – Commission Notice on the definition of the relevant market for the purposes of Union competition law, C/2023/6789, OJ C, C/2024/1645, 22.2.2024, ELI: <http://data.europa.eu/eli/C/2024/1645/oj>
8. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1–25.
9. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1–22.

COURT DECISION

1. Cast T-348/23 Zalando against the European Commission, OJ C 314, 4.9.2023, p. 9-11.

NETWORK RESOURCES

1. Commission fines Meta €797.72 million over abusive practices benefitting Facebook Marketplace, Press Release, November 14, 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801, March 5, 2025.
2. Council for media services, available at: <https://rpms.sk/podanie-podnetu-na-preverenie-tykajuceho-sa-sprostredkovatelskej-sluzby-podla-p2b>, March 5, 2025.
3. Documents concerning the proceeding before the European Commission are available [here](https://competition-cases.ec.europa.eu/cases/AT.39740) (AT.39740) <https://competition-cases.ec.europa.eu/cases/AT.39740>, March 10, 2025.
4. European Commission, Digital Markets Act: Commission designates six gatekeepers, [available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328), March 10, 2025.
5. European Commission, Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers, Mar 19, 2025, available [at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_811](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_811), April, 12, 2025.
6. Genesis of the proceeding of case Google Shopping available at <https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&for=&jge=&dates=&language=sk&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&parties=google%2Bshopping&lg=&page=1&cid=4578138>, March 10, 2025.
7. OECD, Competition Policy in Digital Markets, Paris: OECD Publishing, 2023, available [at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/10/competition-policy-in-digital-markets_554eb7d5/80552a33-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/10/competition-policy-in-digital-markets_554eb7d5/80552a33-en.pdf), p. 5, 8, April 11, 2025.
8. Proceeding under number AT.40684, available at: <https://competition-cases.ec.europa.eu/cases/AT.40684>, February 25, 2025.