VICE PRESIDENT VĚRA JOUROVÁ

MEETING WITH [redacted]
[redacted] GOOGLE

LOCATION: WEBEX

DATE AND TIME: 16 NOVEMBER 2020 AT 17H30

MEMBERS RESPONSIBLE: DANIEL BRAUN

Contents

STEERING BRIEF

Scene setter

On 16 November, you will have a 1-hour video call with [redacted] Google. [redacted]

[redacted] would like to discuss efforts to address the COVID-19 pandemic in the area of information quality, and exchange view on the upcoming European Democracy Action Plan as well as the Digital Services Act package.

The primary interest of Google lies in the DSA an [redacted] will likely mention the key principles in this regard. In this context, [redacted] may ask about the interplay between the DSA and EDAP. Google will be interested in the future measures on disinformation, in particular the Code of Practice.

[redacted] will take stock of the Covid-19 situation and Google's actions, with specific focus on vaccination.

[redacted] will share with you their first assessment US election experience and outline the main actions and intentions regarding political ads.

[redacted] met with Commissioner Reynders on 17 June 2020. They discussed the Digital Services Act, in particular online illegal content and hate speech. On Thursday [redacted] had a talk with Cssr Breton.

About your interlocutor

[redacted]

KEY MESSAGES

- Very good cooperation with your Brussels office.

On COVID-19 disinformation

- Thank you for helping promote authoritative content and for participating in the **reporting and monitoring programme** established under our June 2020 Communication on Tackling COVID-19 Disinformation.
- We recognise the substantial effort Google has made in preparing these reports. They are essential in helping us understand the incidence of authoritative information on COVID-19 as compared to harmful information.
- However, more work remains to be done to increase transparency and improve accountability. Here it means the provision of more quantitative data *(in line with the indicators set out in the June 2020 Communication and further elaborated in the monitoring letter sent in July – for instance how much user engagement there is with the authoritative content you promote in the COVID-19 information panels, or more granular information on Member State level).*
- The current COVID-19 monitoring programme is an opportunity to check how we could address the lack of key performance indicators in relation to the Code of Practice on Disinformation.
- Also, as you may know, **vaccines** are now on top of our agenda, and the success will to a large extent depend on the trust of people – which may be undermined by disinformation. We are **asking you to focus specifically on this area**, so that we can also draw from your reporting in this sense.

On the European Democracy Action Plan

- In December, the Commission will present its Democracy Action Plan, which will be constructed around the three integrated themes:
  - elections integrity and how to ensure electoral systems are free and fair;

  - strengthening freedom of expression and the democratic debate, looking at media freedom and media pluralism, including protection of journalists;
  - tackling disinformation in a coherent manner considering the need to look together at all the means used to interfere in our democratic system.

- The Commission will also present a Media and Audio-visual Action Plan focusing on the transformation of the European media industry.
- We welcome Google's launch of a Journalism Emergency Relief Fund. At the same time, we also expect Google to respect the new copyright rules which are now being transposed in Member States. The new publishers' right is also very important to support journalism.
- The EDAP will announce legislative proposals to ensure greater transparency of paid **political advertising**, alongside non-legislative measures. Ensuring transparency and accountability is essential in this context. I would be interested in **your actions and experience in this regard**, also in the context of the **US elections.**
- We will also look at next steps on the **Code of Practice on Disinformation**, use the assessment of the Code published in September outlining the Code's main shortcomings.
- Also, we get quite frequently reports that Google **ad services** are present on sites with ad-funded disinformation related to anti-vax disinformation narratives, or anti-semitism and globalist conspiracy theories.
- We are reflecting on setting out **basic requirements for content moderation, data access and transparency and oversight** mechanisms – I trust we count on your support to develop these.

On the Digital Services Act *(only if raised)*

- Google has improved our economy, societies and individual daily lives. With scale and reach come greater responsibilities – and consequently we will need greater due diligence obligations.

- DSA will propose to harmonise a clear set of due-diligence obligations for online platforms, including notice-and-action procedures for illegal content, redress mechanisms, accountability measures, and cooperation obligations with public authorities.
- The Digital Markets Act will focus on the fair competition and specifically target large digital gatekeepers, setting out a clear list of do's and don'ts in full compliance with the EU's international obligations.

- In the context of both EDAP and DSA, there are **structural questions** we should be discussing and I would like to raise these issues:
    - While there have been hugely positive changes in the Covid context since February, a study by JRC mentioned **YouTube's recommendations are drawing viewers into increasingly extremist content** – this is something that we need to address and maybe the revision of the Code could do that. Are you making changes? How do you intend to **control the virality of harmful content**?
    - For your digital advertising, the core is **behavioural profiling/ targeting**. Can you see a future with less of this?
    - Can we count on your clear support for legislation setting out rules on **transparency** related to spending and targeting in **political** context?

DETAILED THEMATIC FICHES

COVID-19 & INFORMATION QUALITY

Google is submitting regular reports on the measures it has taken towards responding to the COVID-related "infodemic". Google has thus far submitted three monitoring reports – a baseline report covering its actions from the inception of the crisis through July, as well as two monthly update reports on actions taken in August and September. We have made these reports available to the public on the Commission's website.

Google will claim that they are reporting in accordance with the monitoring programme called for in our COVID-19 Communication. While acknowledging Google's efforts, you should insist on the need for more granular data on some indicators, including data on users' engagement that should be public and not confidential, so as to improve transparency and public accountability and enable consistent monitoring.

Main messages

- Thank you for participating in the reporting and monitoring programme established under our June 2020 Communication on Tackling COVID-19 Disinformation.
- We recognise the substantial effort Google has made in preparing these reports. They are essential in helping us understand the incidence of authoritative information on COVID-19 as compared to false, misleading and harmful information, as well as the policies and actions Google is taking to "promote the good and demote or remove the bad."
- Google's reports indicate that the company is making continuing efforts to promote authoritative content and limit the distribution of false or misleading content around COVID-19. Google has launched over 200 new products, features and initiatives addressing the pandemic since its outbreak.
- However, more work remains to be done to increase transparency and improve accountability. Broadly, this means the provision of more quantitative data in line with the indicators set out in the June 2020 Communication and further elaborated in the monitoring letter sent by DG CNECT.

- For example, it would be very helpful to know how much user engagement – e.g. clicks – the COVID-19 information panels have garnered. Similarly, how much engagement has there been with work undertaken by fact-checkers in Search and Google News?
- Google has deemed certain information reported on to be confidential. However, this encompasses some of the most illuminating, concrete data it has provided. I would encourage you to consider if such information might be publicly disclosed. Some of the other platforms have reported on similar metrics (e.g. removal of videos, removal of text and image posts) without such confidentiality requirements. This is necessary to improve transparency and public accountability.
- The absence of meaningful key performance indicators (KPIs) capable of measuring the effectiveness of the Code of Practice on Disinformation is one of the Code's fundamental shortcomings. The current COVID-19 monitoring programme is an opportunity to check whether a structured monitoring programme is a pragmatic way forward to address the lack of KPIs. We all should take advantage of this opportunity.

Defensives

Given the current spread of the pandemic, does the Commission plan to extend the duration of the COVID-19 monitoring programme?

- The current monthly monitoring runs from August 2020 to December 2020. Following the publication of the last monthly report in January 2021 (covering December 2020), the Commission can assess the situation and decide whether this monitoring programme can be discontinued or needs to be extended, depending on the evolution of the COVID-19 crisis.

How does the Commission plan to go about the Code of Practice?

- Our assessment of the Code of Practice highlights that, in order to ensure a complete and consistent application across platforms and Member States, it should be further improved in several areas.
- Moreover, a more structured model for cooperation between platforms and the research community should be developed. At present, it remains difficult to precisely assess the timeliness, comprehensiveness and impact of platforms' actions, as the Commission and public authorities are still very much reliant on the willingness of platforms to share information and data.
- A structured monitoring programme may constitute a pragmatic way to secure platforms' accountability. The programme for monitoring disinformation around COVID-19 is an opportunity to verify the adequacy of such an approach and prepare the ground for further reflection on the best way forward in the fight to disinformation.
- A possible revision of the Code of Practice should be discussed under the European Democracy Action Plan. The upcoming Digital Services Act will also be relevant in this respect.

N.B. Google responded to the public consultation on European Democracy Action Plan and favoured a continuation of the Code of Practice on Disinformation enlarged to a wider range of signatories and combined with a permanent monitoring and reporting programme. At the same time, Google opposed the establishment of a regulatory framework fixing basic requirements for content moderation, data access and transparency and oversight mechanisms.

Background

Google's monitoring reports so far are structured along the lines identified in the June 2020 Communication, providing text descriptions and some supporting quantitative data with respect to: initiatives to promote authoritative content; initiatives and tools to improve users' awareness; information on manipulative

behaviour on their services; flows of advertising linked to COVID-19 disinformation on own services and third-party websites.

The first baseline report provides textual descriptions and some quantitative data on actions taken across Google's various services, including Search, YouTube, Google News, Maps, Google Play (Google's App Store for devices running on the Android operating system), Google Images, and Google's advertising network.

Initiatives to promote authoritative content

Google's Home Page promotes important guidance to prevent the spread of COVID-19, collated in cooperation with the WHO and governmental health authorities.

YouTube is elevating authoritative sources, including through information panels linking to global and locally relevant health officials on its homepage, and in panels that appear on videos and searches about COVID-19.

Google News includes a new COVID-19 section with links to up-to-date, relevant stories from the international to local levels from a variety of authoritative sources. The section is now available to users across 40 top impacted markets.

Google Maps is attempting to make it easier to find authoritative information about local health resources, including COVID-19 testing sites, shelters, general mask availability, food banks and virtual healthcare options where available.

Google has provided USD 250 million in ad grants to help the WHO and more than 100 global government agencies provide critical information on how to prevent the spread of COVID-19 and other relief measures to local communities. Google has also given a total of USD 100 million to EU-based non-profits.

User awareness tools

For Search, Google's medical topics policy applies to information highlighted via its COVID-related search features.

Google supports COVID-19 fact-checking and verification efforts through more than USD 6.5million in funding from the Google News Initiative to fact-checkers and non-profits fighting misinformation around the world, with an immediate concentration on COVID-19, to several organisations including Correctiv, Maldita.es, Full Fact, First Draft and Science Feedback in Europe. Fact checks published by fact-checking organisations from EU27 Member States appear in Google Search more than 6 million times a week on average, which adds up to more than 202 million impressions from January through August 2020.

Manipulative behaviour

The reporting provides bullets for each month from January through September describing actions taken against coordinated behaviour. There are a few references to coordinated behaviour regarding COVID-19 misinformation as well as a few references campaigns directed at EU Member States. However, the reporting is global in scope and is drawn from its Quarterly Threats Analysis.

Advertising

Since January 2020, Google has blocked or removed over 85 million COVID-related ads from EU-based advertisers and buyers for policy violations including price-gouging, capitalising on global medical supply shortages and making misleading claims about cures. It has also suspended more than 1,400 accounts from EU-based

advertisers for trying to circumvent our systems, including for COVID-related ads and offers.

With respect to third-party publishers in its advertising network, Google has taken action on over 2000 URLs with COVID-related content under its dangerous or derogatory content policy, for harmful health claims.

Contact – briefing contribution: [redacted]

EUROPEAN DEMOCRACY ACTION PLAN

In its response to the public consultation on the European Democracy Action Plan, Google favours a continuation of the Code of Practice on Disinformation enlarged to a wider range of signatories and combined with a permanent monitoring and reporting programme.

On transparency of political advertising, Google does not support restricting broad targeting capabilities for election ads and prefers the use of verification tools and transparency measures, i.e. labelling and election ads repositories. Google claims it does not allow granular micro-targeting, only the targeting of election ads across age, gender, and location at postal code level.

On the promotion of independent media and trustworthy sources, Google prefers to rely on flexible mechanisms, such as ranking systems, rather than mandatory 'whitelists' of publications. It also notes that sometimes the most authoritative and trustworthy piece of information that is relevant to a user's intent will not be news information, and it is not always the case that the most authoritative and trustworthy sources are the most useful.

In April 2020, following the COVID-19 health crisis, Google launched the Journalism Emergency Relief Fund. The fund aimed at financing around 5,300 small and medium local newsrooms around the world, with the funding ranging from USD 5,000 to 30,000. Google announced that USD 39.5 million were distributed among 5,300 media outlets in 115 countries.

On 1 October, it announced a new service called Google News Showcase, a USD 1 billion initiative to feature high-quality journalism. Google will pay publishers to create and curate high-quality content that will appear initially in Google News and will come to Google Discover and Search in the future. Individual publishers will make editorial choices about which stories to show readers and how to present them.

Main messages

- The European Democracy Action Plan will be constructed around three integrated themes:
  - elections integrity and how to ensure electoral systems are free and fair;
  - strengthening freedom of expression and the democratic debate, looking at media freedom and media pluralism, including protection of journalists;
  - tackling disinformation in a coherent manner considering the need to look together at all the means used to interfere in our democratic system.

- Besides the European Democracy Action Plan and the Digital Services Act, which the Commission will present in December, the Commission will also present a Media and Audio-visual Action Plan by the end of the year. The aim is to provide for a solid plan to support both the short-term recovery and the longer-term transformation of the European media industry.
- In this context, we welcome Google's initiative launched in April, the Journalism Emergency Relief Fund. Especially in moments like this, we need reliable and independent journalism, employing professional standards, to provide accurate information and scrutinise the measures taken in response to the global health threat.
- The European Democracy Action Plan will announce legislative proposals to ensure greater transparency of paid political advertising, alongside non-legislative measures. Ensuring transparency and accountability is essential in this context.
- Developments by private companies should not lead to a distortion of the political debate. The funding of political messages and advertisements should be transparent. The targeting of advertisement and the algorithms that recommend content also needs to be transparent – and it has to be ensured that they are not discriminating. Progress on these matters will be closely linked to the Digital Services Act.
- A possible revision of the Code of Practice on Disinformation will be discussed under the European Democracy Action Plan. The Commission will use the assessment of the Code published last September to address the Code's main shortcomings.
- I note that Google responded to the public consultation and favoured a continuation of the Code of Practice enlarged to a wider range of signatories and combined with a permanent monitoring and reporting programme.

Defensives

What are the main shortcomings of the Code of Practice?

- The Code has been an important and necessary first step towards creating a more transparent and accountable online platform ecosystem. However, the Code have shown limitations inherent to its self-regulatory nature.
- The Code only applies to online platforms and advertising sector stakeholders that agree to subscribe to its commitments, establishing an inherent "regulatory asymmetry" between Code signatories and non-signatories.
- The existing self-regulatory framework does not establish an independent oversight mechanism for monitoring the completeness and impact of the signatories' actions in tackling disinformation.
- The European Democracy Action Plan as well as the Digital Services Act, which will aim to fix overarching rules applicable to all information society services, will give us the opportunity to adjust our policy to address the limitation of the self-regulatory approach and the shortcomings of the Code.

What will the future relationship between public institutions and internet giants look like if they often pursue different interests?

- The Commission welcomes policy changes that some platforms have been recently implementing to curb disinformation and other types of harmful content, in particular relating to COVID-19 disinformation.
- These self-regulatory efforts are an illustration of the growing commitment of big platforms to assume more responsibilities in keeping users safe from certain abusive practices online, such as the dissemination of disinformation.

- However, it is also important to bring on the table the interest and fundamental rights of users and the challenges that platforms and algorithms they use have on our democratic society. We cannot let the solutions be driven solely by economic interests.
- I am thinking for instance about information and data, which can be used to assess the effect of what platforms have done to promote information from trustworthy sources or their polices to inform users when they interact with disinformation.
- Platforms should also report much more in detail all instances of social media manipulation and malign influence operations or coordinated inauthentic behaviour detected on their services. We also need to have more information on the impact of policies that limit advertising placements on third-party websites using disinformation.
- Further measures beyond self-regulation will be necessary, including of regulatory nature. The Commission will propose by the end of the year a new rulebook for platforms modernising the e-commerce framework with its forthcoming Digital Services Act.

Background

Achievements of the Code of Practice on Disinformation

The Code has been an important and necessary first step towards creating a more transparent and accountable online platform ecosystem. Broadly:

- It has provided a framework for a structured dialogue between relevant industry actors, the Commission, and the European Regulators Group for Audiovisual Media Services (ERGA) authorities, and greater transparency of platforms' policies against disinformation within the EU.
- It has set general policy objectives, identified relevant requirements for appropriate measures, and enabled public disclosure of information relating to the implementation of those measures.
- The signatories have introduced new policies aimed at achieving the agreed objectives, modified accordingly their terms of service, and engaged in supporting activities, such as collaborations with fact-checkers and media literacy initiatives.

Shortcomings of the Code

The assessment has also identified a number of shortcomings. These can be grouped in four broad categories:

- Inconsistent and incomplete application across platforms and Member States:
  - On the scrutiny of ad placements, no evidence of restrictions on ad accounts sponsoring verifiably false or misleading information on platforms' own services, as well as of how scrutiny has been effective in limiting ad placements on third-party websites that do not misrepresent themselves but persistently purvey disinformation.
  - On transparency of political and issue-based advertising, not all platforms ensure identification and public disclosure of issue-based ads. Furthermore, libraries for political ads have limited functionalities of the APIs.
  - On integrity of services, the level of transparency at Member State level around measures addressing manipulative online behaviour (e.g. malicious use of fake accounts, bots), is still inadequate.
  - On empowering consumers, policies aimed at enhancing users' awareness, including cooperation with fact-checkers, have not been implemented consistently in all Member States and in all EU languages.
  - On empowering the research community, access to platforms' data for research purposes remains a major concern.
- Lack of uniform definitions: the Code would benefit from further scoping of the concept of disinformation and more precise definitions of certain operational terms, e.g. disinformation, misinformation, influence operations, scrutiny of ad placements, political and issue-based advertising, inauthentic behaviour, and trustworthiness indicators.
- Areas so far not covered by the Code:
  - Platforms' reporting report predominantly on actions taken against coordinated inauthentic behaviour, fake accounts and misuse of bots.
  - The signatories to the Code have failed to develop measureable and effective Key Performance Indicators and release data for monitoring and oversight of the Code.
  - The Code does not prohibit micro-targeting of political advertising or restrict the range of targeting criteria that platforms may offer with respect to paid-for political content.
  - In order to ensure fairness in online political advertising, there is a need to consider options for social media to ensure fair exposure of users to paid-for online political advertising in the context of European elections.
- Limitations inherent to the self-regulatory nature of the Code – these include:
  - Limited participation. The voluntary nature of the Code entails an inherent "regulatory asymmetry" between Code signatories and non-signatories.
  - Oversight, monitoring and enforcement. The self-regulatory framework does not establish an independent oversight mechanism for monitoring actions and

attributing consequences in case of breach. It establishes an oversight system based on peer review, and the sole sanction for non-compliance is expulsion.

- Protection of fundamental rights and mechanisms for redress. The does not address the need for complaint procedures or other remedies to prevent or redress the erroneous treatment of content (e.g. demotion) or unwarranted actions against users (e.g. suspension of accounts) which platforms consider in violation of their policies on disinformation.

The Media Action Plan

The objective of the Media Action Plan is to help the European media sector to be a protagonist of the digital decade that is starting. The economic recovery and competitiveness of the media sector is a precondition for a healthy and pluralistic media environment, which in turn is fundamental for the quality of our democracy. That is why the Media Action Plan will complement the measures in the Democracy Action Plan, particularly those aiming at protecting and enhancing media freedom and pluralism across Europe.

The Media Action Plan will be structured along three action areas, aiming at tackling the above-mentioned criticalities from three different main policy angles:

- Recover – with the objective of supporting the recovery of the industry, compensate for revenue losses and provide liquidity;
- Transform – the aim is to provide transformative investments to help industry face the twin transitions of environmental sustainability and digitisation;
- Enable and empower – the aim is to set the conditions allowing more innovation for the sector, whilst ensuring a true level-playing field, and empowering citizens to access content more easily and take informed decisions.

COPYRIGHT

Main messages

- Press and quality journalism are not for free.
- The Directive gives press publishers a new right to strengthen their bargaining position and improve their remuneration when they negotiate the use of their content by online platforms (Article 15).
- The new right granted to press publishers will give them the possibility to authorise and prohibit online uses of their press publications by platforms. Publishers will be free to set the conditions to authorise the use of their content: they can do it for free or against the payment of remuneration, in accordance with their own business models.
- Any publisher, small or big, wishing to give free licences for the use of their content will be able to keep doing so.
- The Commission has published a consultation document to gather additional feedback from participants to the stakeholder dialogue to finalise the Commission's guidance on Article 17 of the Copyright directive.
- Six meetings of this group took place between October 2019 and February 2020. Participants were invited to give their written views on this document, by 10 September. The Commission received around 110 replies.

- This dialogue is part of the agreement on the Copyright directive, providing that the guidance will be issued in consultation with service providers, right holders, users' organisations and other relevant stakeholders.
- This guidance will be published by the end of the year to accompany the transposition of the Directive into national law, by 7 June 2021.

Background

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market pursues **three main objectives**: (i) to adapt certain key exceptions to copyright to the digital and cross-border environment; (ii) to improve licensing practices and ensure wider access to content; and (iii) to ensure a well-functioning marketplace for copyright.

Member States have until **7 June 2021** to adopt their national laws transposing the Copyright Directive. The Commission is following closely the implementation in Member States.

Article 15 is a new press publishers' right which will apply to online uses of press publications by information society services providers, such as news aggregators or media monitoring services. The objective of this right is to help the press publishing industry benefit from a fairer market place and to promote the best possible environment to develop innovative business models. The new right strengthens the bargaining position of press publishers when they negotiate the use of their content by online services.

Journalists, as authors of the contributions - the articles- in press publications, are essential in the press sector for providing reliable and quality journalistic content. By facilitating the online exploitation of press publications and making the enforcement of rights more efficient, the Directive will have a positive impact on them. And, in order to make sure that the journalists will benefit economically from the press publishers' right, the Directive provides that they will receive an appropriate share of the revenues generated by it. By ensuring the sustainability of the press sector, the new right will foster plural, independent and high-quality media, which are essential for the freedom of expression and the right to information in our democratic society.

According to the text, the use of individual words and very short extracts of press publications does not fall within the scope of the new right. This means that information society service providers will remain free to use such parts of a press publication, without requiring an authorisation by press publishers. When assessing what very short extracts are, the impact on the effectiveness of the new right will be taken into account.

The Directive does not target individual users, but online uses of press publications by large online platforms and services, such as news aggregators. Internet users will continue to be able to share content on social media and link to websites and newspapers (acts of hyperlinking), just as it is the case today.

Moreover, the acts of hyperlinking and the re- use of single words or very short extracts by online platforms and services will be excluded from the scope of the new right granted to press publishers of press publications.

In France, which has already transposed the Directive, Google has tried to by-pass the new right. This lead to a complaint by the French publishers who notched up a critical win in April.

France's competition watchdog ordered the U.S. tech giant to negotiate "in good faith" with French publishers and news services over the licensing fees it should pay for press content. The Autorité de la Concurrence said the talks should result in a "remuneration" scheme for the publishers.

Google's refusal to pay for press content has risen right to the top of the French political agenda and even drew in President Emmanuel Macron, who cast the debate as a matter of national sovereignty and declared last year: "Some actors, such as Google, wish to free themselves from those [copyright] rules. We won't let them."

Article 17 of the Copyright Directive provides that certain online content-sharing service providers (such as YouTube, Facebook) need to obtain an authorisation from the relevant rightholders for the content uploaded on their website.

It also establishes a specific liability regime for the service providers for cases where no authorisation is obtained. In order to avoid liability for copyright infringements, the service providers have to demonstrate that they have made their best efforts to obtain an authorisation and to ensure the unavailability of specific works that rightholders have identified in advance.

Article 17 also introduces safeguards for legitimate uses of content, which need to remain unaffected by the technologies used by the services to avoid infringing content.

Article 17 also requires the service providers to put in place a complaint and redress mechanism allowing users to challenge the blocking or removal of content.

After the adoption of the Directive, the Commission has been organising a stakeholder dialogue as required by the Directive.

In order to ensure that the dialogue process is transparent and inclusive, the Commission published a call for interest to participate in the stakeholder dialogue. 65 organisations were invited to participate to the physical meetings in Brussels. The list of the organisations invited is available online. The selection ensured a balanced representation of different stakeholders directly impacted by Article 17. A few ad-hoc participants were invited to some of the meetings in order to contribute with their particular experience on the topic. All the meetings have been web streamed.

Six meetings took place between October 2019 and February 2020. The first two meetings were dedicated to the general overview of the current practices for the cooperation between rightholders and platforms (both with regard to licensing and preventing unauthorised content). At the third and fourth meetings, we had detailed technical presentations on current market practices for licensing and tools used for the management of content, including content recognition technologies. The fifth and sixth meetings were dedicated to the future application of Article 17. To facilitate the exchanges at the 5th and 6th meetings, we circulated a discussion paper to stakeholders ahead of the meetings. The topics discussed include: authorisation regime, best efforts required from platforms to avoid liability, safeguards for legitimate uses of content, and transparency to rightholders.

To finalise the consultation process, the Commission launched a written consultation for the participants in the stakeholder dialogue. The consultation is based on a document, which outlines the preliminary proposals by the COM for the guidance. The deadline for replies was 10 September.

Contacts – briefing contribution: [redacted]

DIGITAL SERVICES ACT PACKAGE

Google replied to the open public consultation to the Digital Services Act package, submitting a 135-page paper on both legs, and another 84 pages responding to the separate consultation on DG COMP's New Competition Tool.

In parallel, [redacted] published an accompanying blogpost stating that the Digital Services Act package should focus on three pillars:

- A more responsible internet: introducing clearer rules for notifying platforms of illegal content while protecting fundamental rights of expression and access to information;
- A more innovative internet: encouraging economic growth and innovation by enabling Europeans to build the next generation of apps, businesses and services, and exporting European creativity and culture around the world;
- A more helpful internet: competition regulation, which supports product innovations, helps people manage their data and provides businesses with the tools to grow.

In an article dated 28 October 2020, Le Point (French weekly political and news magazine) claimed to have gotten hold of Google's alleged lobby strategy – "Digital Service Act 60-Day Plan Update" on the deployment of major resources against the Commission's digital legislation proposals. Other international media outlets (e.g. Reuters) confirm the story.

Strategies mentioned in the article include (amongst others) influencing smaller Member States with big investment projects, sensitising the American government and mobilising transatlantic allies, and encouraging inter-service discord within the Commission, notably DG Competition.

Main messages

- A main goal of the Digital Services Act package is to ensure a fair, competitive and innovative digital economy.
- Google has improved our economy, societies and individual daily lives tremendously.
- We thank you for your help in dealing with the COVID-crisis. Concerns remain about (new) malpractices that have arisen during the crisis (pricing, disinformation, etc.).
- With scale and reach come greater responsibilities – and consequently we will need greater due diligence obligations.

- To improve the ability of businesses to operate across the EU responsibly, the Digital Services Act will propose to harmonise a clear set of due-diligence obligations for online platforms, including notice-and-action procedures for illegal content, redress mechanisms, accountability measures, and cooperation obligations with public authorities.
- Certain practices that have proven harmful will be regulated. The Commission is determined to restore contestability in digital markets.
- The Digital Markets Act will focus on the fair competition and specifically target large digital gatekeepers, setting out a clear list of do's and don'ts in full compliance with the EU's international obligations. It will also provide for a market investigation regime to address digital markets that may be prone to market failures.
- The Commission was shocked to learn that Google is preparing an aggressive campaign against the Digital Services Act. We expect Google to change its approach. The Commission has worked constructively with Google on many issues over the years. We expect Google not to undermine the Commission's work under this package.

Defensives

Europe should keep the internet open and global, but instead it builds new digital walls – is that what the Digital Decade is about?

- Europe remains open: any company – small or large – is welcome to do business here.
- The benefits of operating in the Single Market come with the responsibility of sticking to its rules. Our market, our rules.
- Rules reflecting a global consensus that platforms need to take more responsibility.

The EU wants to hit out against US tech because it isn't able to have its own successful platforms.

- The Digital Services Act package is not aimed at specific country; it is about establishing objective, non-discriminatory rules for the Single Market. The EU is exercising its sovereign right to establish its own rules for its informational space, through a democratic process.
- These rules are grounded in objective, non-discriminatory criteria that will apply regardless of the origin of the companies. US, European, Asian: the European internal market online remains open to all tech companies, provided they respect our rules.
- Just like the internal market before digital services – nothing new under the sun.

The Digital Services Act will ultimately harm consumers (and businesses) because you will be deprived of [example of great content or great apps].

- The Digital Services Act will make consumers safer more empowered, better protect their rights online, provide new rules for fighting illegal content online, give new rights to consumers, and provide new governance tools to Member States and the Commission.

Regulatory cost will be passed down to consumer.

- The costs will be proportionate to the size of the platforms. The Commission ran an analysis of impact and it shows that platforms would lose out if they pass the costs onto the consumers.

Europe wants to supervise and censor what you say, and put an end to anonymity.

- The Digital Services Act will strengthen fundamental rights online, by giving users new tools, for example for disputes when their content is removed by platforms.

- It will not modify the balance of fundamental rights that is well established in current rules, and not change the principles of the liability provisions, nor the general prohibition on monitoring of user content.
- Instead, it will rebalance the responsibilities between platforms, a new oversight structure, and end users.
- The Commissioner is on record for saying that freedom of expression will be protected, and it will continue to be possible to be online anonymously or through a pseudonym.

Content creators are being penalised.

- Content creators will get additional tools to challenge content decisions under the Digital Services Act, and greater transparency about how their tools are being used.
- They will not be penalised in any way. [*If necessary*: the issue of value distribution was the subject of the copyright directive, and this will not be affected in any way by the rules of the Digital Services Act].

The EU is wrong to target European platforms such as Booking.com, who are amongst the few success stories. The new rules will make it harder for these companies to compete with non-EU rivals, who don't have these obligations.

- We are not targeting any specific company, or any specific list of companies, no matter where they are from.
- We are working on the basis of clear criteria that reflect the problem at hand. We are asking simple questions: do you have a very large user base, both for businesses and consumers? Can a business reach their market realistically without the gatekeeper? Are you entrenched in your position as a gatekeeper?
- These parameters reflect the network effects of the data economy. Nobody believes that "competition is just a click away" anymore.

The EU's plans under the Digital Markets Act will lead to less safety, less privacy, and higher costs.

- Platforms are making supra-normal profits due to unfair business practices. The Digital Markets Act attempts to correct those unfair business practices.
- For example, Apple is posting revenues in the range of USD 240 billion per year; Google in the range of USD 160 billion. These are supra-normal profits that are extracted because of a series of unfair business practices.
- They exploit the gatekeeper role they have to extract these enormous profits, to the detriment of the business they run. They are unavoidable access routes, and their special responsibility needs to be regulated.
- Many tech companies themselves are calling for such rules – from tourism start-ups in Germany, to Spotify, to Games companies such as Epic. We can and must expect companies to open up their ecosystems while simultaneously keeping users safe and their data protected.

Is competition law not enough? Republican Senator K. Buck said that he prefers "the scalpel of anti-trust to the chainsaw of regulation" after the US House Report made similar proposals, and warned of overregulation and unintended consequences.

- Competition law is not sufficient, since it is too slow and not all-encompassing enough. The Digital Markets Act will tackle and prevent systematic abuses.
- The US House Report confirms what the EU has been saying and doing for some time already. Competition law is here to stay, but it is not enough.

- What we are proposing under the Digital Markets Act is a game changer. From the competition law experience and from taking a close look at these gatekeepers, we see a clear pattern emerging. Choking off access to essential data. Favouring your own service over that of others. Imposing your own identification services to build more walled gardens.
- If this were a football match, the platforms are now playing on the field, but also providing the stadium, the referee, the rulebook, and the sausage stand. We need clear rules here.

Background

Google's position on Digital Service Act package

1. Digital Services Act (DSA)

In Google's view, the DSA should retain cornerstone principles of the Single Market, such as the country-of-origin principle, the guarantee of the freedom of establishment and freedom to provide digital services cross-border in the Union, as well as the respect for fundamental rights.

Google argues that the DSA should clarify the legal framework for digital services to reflect the nature of today's services. Google proposes to update the harmonised, graduated, and conditional exemption scheme by expanding the current three-level system of mere conduit, caching and hosting service to explicitly include other services.

Google asks that the liability regime be continued to be based around clearly-defined illegal content to ensure that fundamental rights are respected. Lawful-but-harmful content should in Google's view continue to be addressed through separate initiatives, such as the Code of Practice on Disinformation.

Google stresses that clarity on the notices they receive is essential for the review process. Google recommends that the DSA introduce notice formalities, such as a URL and a requirement to state the law at issue. This, in Google's view, is especially important given that the boundaries of illegal content can vary significantly across EU Member States.

Google makes the point that machine review cannot replace human expertise, arguing that – although breakthroughs in machine learning and other technology are impressive – such technology is still unable to discern differences in context that can be critical to determining whether or not content is legal. Google therefore recommends that its responsible use should be encouraged by policymakers, but not mandated.

2. Digital Markets Act

Google supports an ex-ante regulatory instrument, which focuses on promoting consumer welfare, innovation and fit-for-purpose regulation as technologies and markets evolve. Google stresses that designating firms as "gatekeepers" should be based on clear definitions and supported by evidence. It should not discriminate against particular business models or technologies. Google argues that the ex-ante regulatory instrument should take account of existing measures, initiatives and tools. Any gaps should be evidenced before moving to consideration of potential solutions.

Google asks the Commission to consider the ex-ante rules for platforms alongside its other initiatives, including the creation of a New Competition Tool and revisions to the Market Definition Notice. Google emphasises that the New Competition Tool could help identify targeted, proportionate approaches for tackling specific concerns, while avoiding blanket new prohibitions and overlapping regulatory frameworks that would limit economically and socially beneficial innovation.

On advertising especially, Google says it is in favour of making online advertising fair, transparent and accountable, as this is necessary to restore trust in the online advertising ecosystem. In the advertising sector, Google argues that intervention measures should apply to all online platforms (not just 'gatekeeper' platforms). In Google's view, any intervention measures that seek to improve transparency in online advertising should:

- be carefully designed to avoid inadvertently limiting the ability of online advertising tools to deliver value that publishers and advertisers have come to expect.
- limit harm to users and competition resulting from the disclosure of personal data and partners' commercially sensitive information or from the disclosure of data signals that allow 'bad actors' to game the system or rivals to copy innovations.

Commission position on Digital Services Act package

1. Digital Services Act – clarifying responsibility of digital actors

The Commission will up-date the existing rules under the e-Commerce Directive on the exemption of liability for illegal content and goods and define a common, EU wide set of rules for the digital economy:

- ensuring digital services benefit from a borderless Digital Single Market; and
- defining clearer responsibilities and accountability for online platforms such as social media and marketplaces.

The main principles of the E-Commerce Directive remain valid today, but need to be modernised and adapted to the needs of Member States who need to cooperate better to ensure that the rules are respected.

There is no Single Market without the country of origin – but the whole burden of ensuring rules are respected cannot be put exclusively on the country of origin. We need stronger cooperation between Member States and we need the EU to step in as well. We are ready to do that and we will propose a clear cooperation mechanism.

Increasing fragmentation, due to the proliferation of national rules applicable to online platforms, only cements the position of the tech giants, which can afford the legal costs of legal fragmentation.

Liability exceptions should also be maintained – but again, not without clearer definition of responsibilities platforms should take on.

These rules must ensure an adequate safeguard of our fundamental rights, especially freedom of expression and information online. This will be ensured through a combination of transparency and reporting obligations on online platforms as regards their content moderation activities and careful public oversight by competent authorities.

The net result will be that consumers will be safer, European SMEs should find it easier to expand, and large platforms will be under proper supervision.

2. Digital Markets Act – ensuring fair & contestable digital markets

To ensure a contestable and fair Digital Single Market, where commercial relations are fair, businesses thrive and innovators have a chance to scale up we need to address the issues that are impeding the healthy and competitive development of the online economy.

To achieve this, the Commission will – besides continued vigorous enforcement of the existing competition rules – propose a Digital Markets Act that addresses:

- currently identified problems in digital markets through a system of identification of gatekeepers that are subject to listed prohibitions and obligations;
- (through more open ended means of investigation) structural competition problems in all digital markets.

Through its first pillar, this instrument will ensure that markets characterised by large online platforms with significant network effects acting as gatekeepers remain fair and contestable for innovators, businesses, and new market entrants by specifying gatekeeper do's and don'ts.

The Commission will draw up a list of prohibited or mandated conduct by gatekeeper platforms to facilitate quick and easy implementation. It cannot be that a stronger, and unavoidable, partner uses the data of its business user to undercut them. It cannot be that businesses are not allowed to advertise their services outside the intermediating platform.

Through its second pillar, this instrument will also deal with structural competition problems across digital markets, which cannot be tackled or addressed effectively on the basis of the current rules (e.g. preventing markets from tipping).

This will be achieved by allowing the Commission to: investigate structural competition problems in all digital markets; allow the Commission – and possibly also Member States – to identify structural or conduct features that individually, or in combination, harm competition on the market; and if appropriate, impose suitable and proportionate remedies addressing the sources and effects of the structural competition concerns.

Contacts – briefing contribution: [redacted]