

Brace for impact: the new bigtech rules from Brussels are here!



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21 March 2024



Frank de Vries

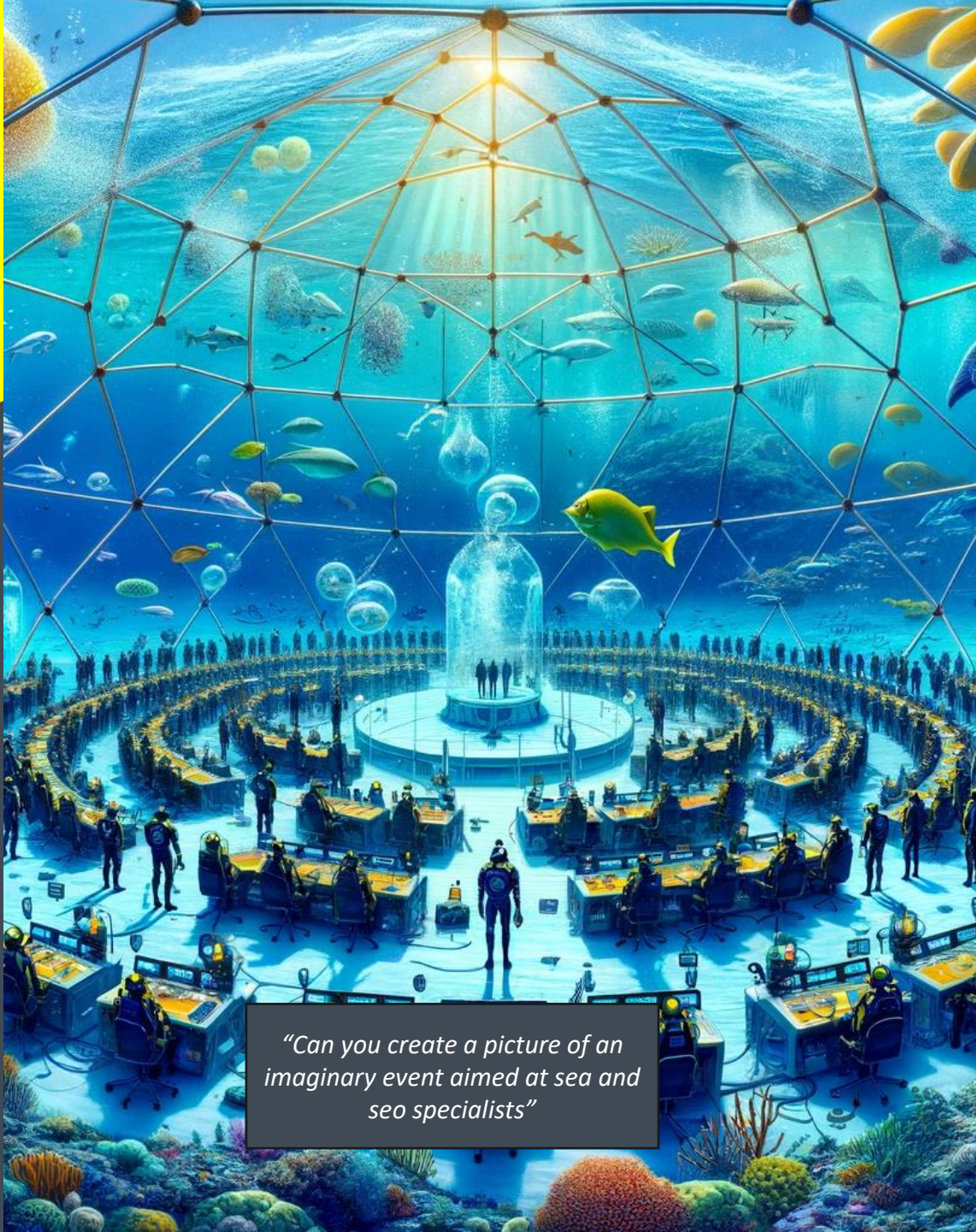
Team Lead Legal | Senior Legal Counsel

DDMA



Who is DDMA?

- DDMA = Data-Driven Marketing Association
- Non-profit knowledge platform based in Amsterdam
- Representing the data and marketing sector in the Netherlands
- With knowledge sharing, professionalization and self-regulation we bring the sector to a higher level



“Can you create a picture of an imaginary event aimed at sea and seo specialists”

Agenda

- US vs. EU approach to regulating bigtech
- Ranking & algorithmic transparency
- Ad transparency and search data access
- New consent rules and user choice

“The gatekeeper of the internet?”

What is Google accused of doing?

The US government claims Google has rigged the market in its favour by signing deals to make its search engine the default on many different devices, thereby making competition more difficult.

The DOJ filed its lawsuit against Google in 2020, and alleged the company had used its internet search dominance to gain an unfair advantage. It called Google "the gatekeeper of the internet", and "a monopolist".

Government lawyers say Google spends billions of dollars each year to be the default search engine on web browsers such as Apple's Safari and Mozilla's Firefox.

"Google pays more than \$US10 billion (\$15.5 billion) per year for these privileged positions," litigator Mr Dintzer said.

"Google's contracts ensure that rivals cannot match the search quality ad monetisation, especially on phones ... Through this feedback loop, this wheel has been turning for more than 12 years. It always turns to Google's advantage."

How Google Search and ranking works, according to Google's Pandu Nayak

Learn how indexing, algorithms, deep learning systems, human raters, click and query data, and more shape Google's Search results.

by [Andy Goodwin](#) on December 5, 2023 at 10:00 am | Reading time: 24 minutes

[X](#)
[Email](#)
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[Reddit](#)
[Chat with SearchBot](#)

Pandu Nayak testified at the U.S. vs. Google antitrust trial back in October. The time was what felt like a PR puff piece published by the [New York Times](#).

March 5, 2024

March 2024 Core Update

Google's extensive March 2024 Core Update addresses low-quality content and introduces new policies on spam to combat manipulative practices.

Read:

[Google March 2024 Core Update: Reducing "Unhelpful" Content By 40% →](#)

[Google March 2024 Update: 4 Changes To Link Signal →](#)

[Google March 2024 Update: 6 Insights On Manual Actions →](#)

November 8, 2023

November 2023 Reviews Update

Google announced an algorithm update targeting review content on a page-level basis. It began on November 8 and is still rolling out.

Read:

[Google Rolls Out November 2023 Reviews Update →](#)

[Google Reviews Update Finished - What To Know →](#)

Google's response to antitrust case

"In fact, 'Google' is the number one search query on Bing worldwide. Contrary to the DOJ's theory, people know they have choices, and they make them," he said.

*We respectfully disagree with those who want to change antitrust law to promote the **welfare of competitors** rather than **consumers**."*

Also Google its 'adtech' is being targetted

DOJ antitrust case targeting Google's ad-tech business will go to trial in September, federal judge rules



By [Brian Fung](#), CNN

🕒 2 minute read · Published 3:01 PM EST, Mon February 5, 2024



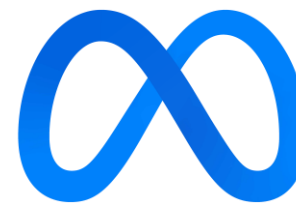
The European approach... more rules!



“Targets” of the DMA & DSA

DSA: online ‘intermediary’ providers

- Hosting, platforms, markets
 - Also SME / non-bigtech
- Designated platforms and SE:
 - Very Large Online SE (VLOSE)
 - Very Large Online Platform (VLOP)



- DMA: gatekeepers that may hinder fair competition
- Gatekeepers need to be designated
- Core platform services
 - Marketplace / app store
 - Operating systems
 - Video-sharing platform
 - AdTech services
 - Online social networking
 - Search engines



Ranking & algorithmic transparency

About ranking and algorithmic transparency

Discussed today:

- Algorithmic transparency and ranking of search results
- Guardrails on ranking and promotion of own services

Not discussed today, but also interesting:

- Algorithmic transparency in ad targeting (by Google and other online platforms)
- Prohibitions to use sensitive data for ad targeting



RecSys and search

Recommender Systems (RecSys):

- Fully or partially automate system
- ... used to suggest or prioritise specific information in its UI to consumers
- ... incl. a result of a search
- ... or otherwise determining the relative order or prominence of information

Search algorithm is a RecSys!


Note: similar – but stricter – obligation for ad targeting!

Source

friendsofsearch.com was first indexed by Google in July 2013

 More about this page

Personalised for you

A result is only personalised when it seems  helpful for you, based on your Google Account Activity. [Learn more](#)

 Privacy settings

 Manage personal results

Search algorithm transparency

Google / Bing need to explain

- To end-users
- main parameters used to rank search results.
- ...most significant criteria used to suggest
- ...reason why the criteria are important!

Search results (0.18 seconds)

Maps Shopping More Search tools

0 results (0.18 seconds)

Ads ⓘ

Gas Grill
www.ama
★★★★★
Low Prices
Free Shipp

Cheap G
www.grou
★★★★★
Save 50-9
Thousands

gas grill
www.appl
★★★★★
1 (800) 291
Huge Varie
Price Matc

BBQ Gri
www.who
1 (888) 61
Quality BE
Come See

DCS Ga
www.ajma
★★★★★

Alternatives

Backtop 360 Party Hub Gas 57cm... £299.00 Garden Gift...
OUTBACK £127.99 Outback ...

Supaprice Best stock of gas grills from £150.00

Kelkoo Great deals on gas grills from £129.00

Shopzilla Best prices on gas grills from £180.00

Weber® Grills - Gas
Shopping Tools: 0 Grill Comparison Grill Finder. Spirit® ... 4 or 6
Burners • Backlit LED tank scale • Grill Out® handle lights.

Shop at Sears for Your Outdoor Cooking Gear
Gas grills with a wide variety of features, including multiple burners and
Entertain outdoors year round with gas grills.

Grills - Home Depot

Fair ranking

Ranking is:

- Relative prominence given to good or services in socials, video-sharing app/sites, marketplaces and other services
- Relevance given to search results by search engines in communication or UI

Don'ts for Google (and Bing):

- No self preferencing of own good or services
- Condition that apply to ranking should be generally fair and transparent

Ad transparency and data access

Ad transparency and data access?

Discussed today:

- Access to Google Search data
- Access by advertisers and publishers to advertising performance measurement tools and data

Also, but not discussed today:

- Transparency in advertising pricing and fees
- Platform observability (e.g. Meta Ad Library)

Access to Google Search data

Google needs to provide access to other 'Search Engines':

- Ranking, query, click and view data
- Personal data shall be anonymised

Goal: empower other search engines to compete with Google Search.

Ad market: vertical integration by Google

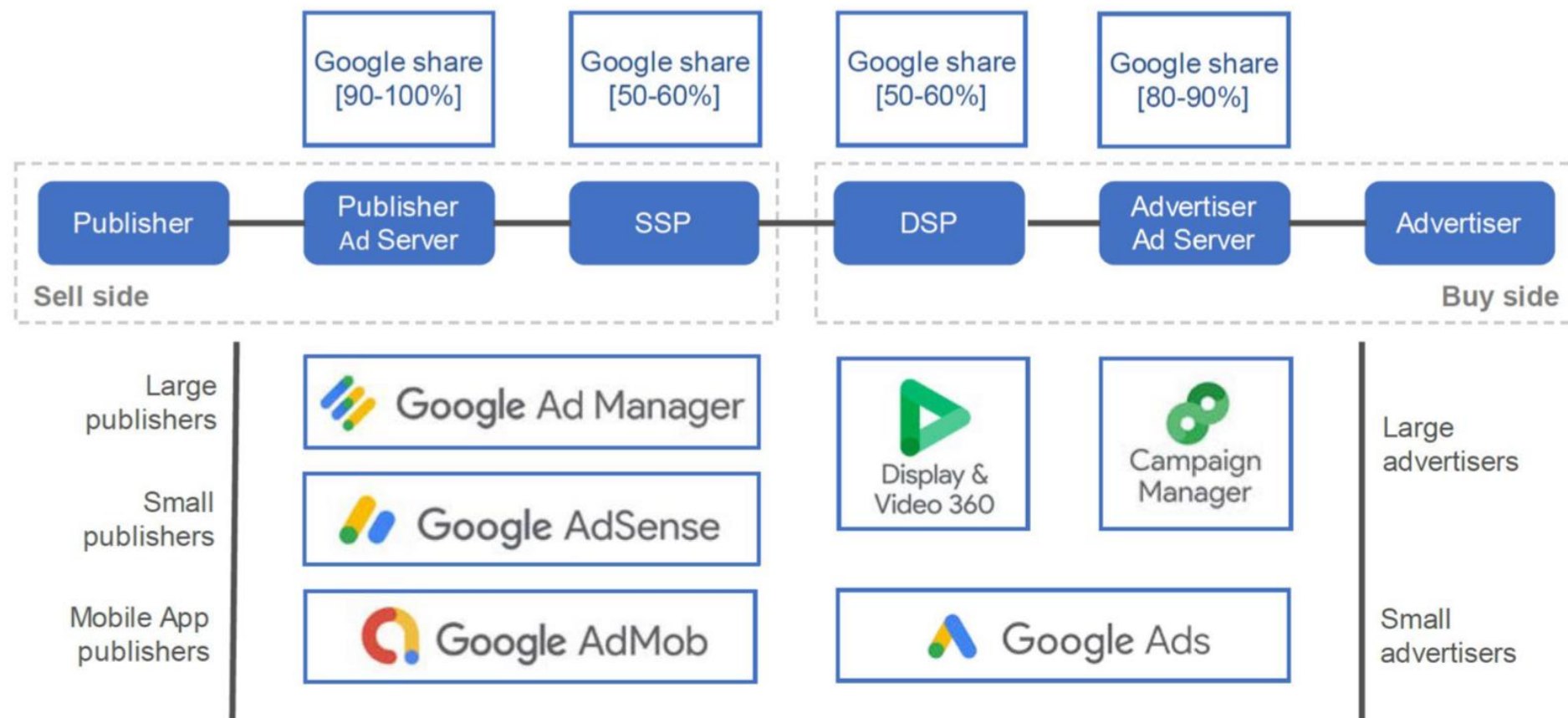


Figure 2: Google's role in advertising intermediation (Source: CMA, 2020)



Final Report

Expert Group for the Observatory on the Online Platform Economy

Market power and transparency in open display advertising – a case study



“Without access to the underlying raw data and the ability to have full independent verification, advertisers and media agencies have the perception that Google and Facebook have the freedom, in effect, to ‘mark their own homework’.”

This generates an incentive for them to overreport. For example, in September 2016, Facebook acknowledged that it had overreported the average ‘watch time’ metric for videos. It was reported that the extent of the overstatement was estimated to be between 60-80% for around two years”

Access to advertising performance measurement tools and data

Transparency with the aim to allow more fair competition 🙌

NEW: Gatekeepers (Google, Amazon & Meta) shall provide advertisers and publishers (and third parties):

- Access to ‘performance measuring tools’ or aggregated and non-aggregated data (impressions, clicks, pricing metrics etc.)
- Goal: Independent verification of the Google advertisements inventory.
- Facilitate the effective use of users own verification and measurement tools (API’s, files etc.)

Access to Google Ad Manager logs?!

Divestment is inevitable?

EU regulator orders Google to sell part of ad-tech business

Competition commission accuses firm of favouring its own services to detriment of rivals

The Commission's preliminary findings have shown that Google is **dominant** in the European Economic Area-wide markets: (i) for **publisher ad servers** with its service 'DFP'; and (ii) for **programmatic ad buying tools for the open web** with its services 'Google Ads' and 'DV360', and that, since at least 2014, Google abused its dominant positions by:

- Favouring its own ad exchange AdX in the ad selection auction run by its dominant publisher ad server DFP.
- Favouring its ad exchange AdX in the way its ad buying tools Google Ads and DV360 place bids on ad exchanges

New consent rules and consumer choices

Consent and choices?

- Consent as counter-measure to market power
- Search engine and browsers options to counter vendor lock-in

2. The gatekeeper shall not do any of the following:

- (a) **process**, for the purpose of providing **online advertising services**, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;
- (b) **combine personal data** from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;
- (c) **cross-use** personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice versa; and
- (d) **sign in** end users to other services of the gatekeeper in order to combine personal data,

unless the end user has been presented with the specific choice and **has given consent** within the meaning of Article 4, point (11), and Article 7 of Regulation (EU) 2016/679.

Where the consent given for the purposes of the first subparagraph has been refused or withdrawn by the end user, the gatekeeper shall not repeat its request for consent for the same purpose more than once within a period of one year.

This paragraph is without prejudice to the possibility for the gatekeeper to rely on Article 6(1), points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable.

DMA: The bar to enter the 'AdTech service market' is unfairly high

Google may use and collect personal data from:

- Interaction on website / apps
- Customer lists (hashed emails etc.)
- From signing end-users to different Google services
- Cross-using or combining data from Google Search, Gmail, Youtube and other Google services

Solution: DMA requires consent to combine personal data of different (Google) services!





CONSENT

(AdTech) gatekeepers need to offer a ‘higher level of consent’

Google need to offer:

- Consent as a “free choice”
- Refusal button on the first-layer
- Less personalised, but equivalent, alternative (upon refusal of consent)

Google (Ads) need to obtain consent via “third parties” that:

- Integrate the Google Ads script and cookies on the website or app

```
'consent', 'default
storage': 'denied'
user_data': 'denie
personalization':
analytics_storage': '
```

Thus: Consent Mode (V2)

Consent mode in a nutshell:

- Required when EEA/EU presence
- CMP, TCF or custom implementation
- Basic or advanced mode

About making the choice between basic or advanced mode:

- Basic: Google tag no data w/o 'consent'
- Advanced: Google tag will send cookieless pings.



Considerations when implementing Consent Mode V2

Advanced or basic mode?

- Cookie rules require consent for non-functional cookies
- Do ‘cookieless pings’ fall within scope of the ePrivacy directive cookie rules?
- EDPB opinion on “technical scope of the cookie rules”.

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Thus: platform consent banners

← Connected Google services

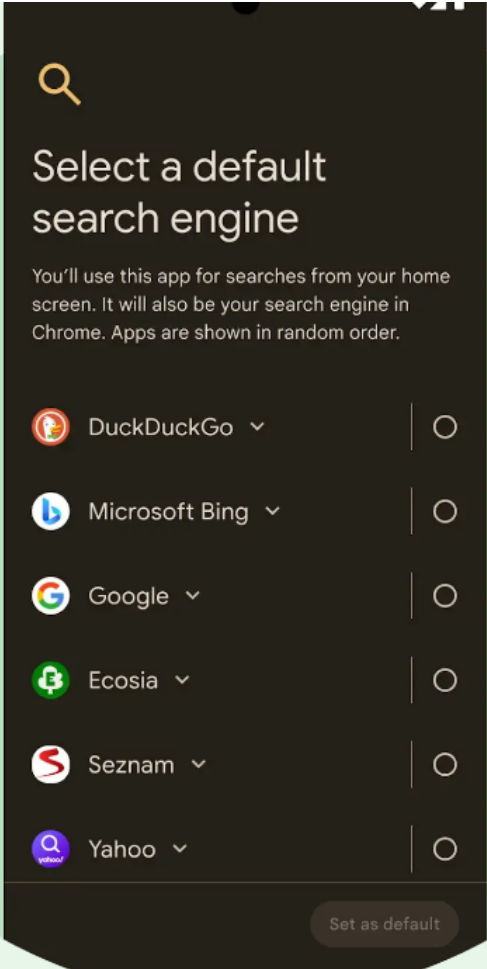
Choose whether you want to link the Google services listed.

[Learn more about connected services](#) ⓘ

Google services you can connect

- | |
|--|
| <input type="checkbox"/> |
|  Seek <input type="checkbox"/> |
|  YouTube <input type="checkbox"/> |
|  Google Play <input type="checkbox"/> |
|  Advertising Services <input type="checkbox"/> |
|  Chrome <input type="checkbox"/> |
|  Google Shopping <input type="checkbox"/> |
|  Google Maps <input type="checkbox"/> |

Default search engine in Android?



The screenshot shows the 'Select a default search engine' screen. At the top, there is a magnifying glass icon and the title 'Select a default search engine'. Below the title, a subtitle reads: 'You'll use this app for searches from your home screen. It will also be your search engine in Chrome. Apps are shown in random order.' A list of search engines is displayed, each with its logo, name, a dropdown arrow, and a radio button to its right. The options are: DuckDuckGo, Microsoft Bing, Google, Ecosia, Seznam, and Yahoo. At the bottom of the screen, there is a 'Set as default' button.

Search Engine	Radio Button
DuckDuckGo	<input type="radio"/>
Microsoft Bing	<input type="radio"/>
Google	<input type="radio"/>
Ecosia	<input type="radio"/>
Seznam	<input type="radio"/>
Yahoo	<input type="radio"/>

Search choice screen

The user is required to choose one search provider from the choice screen during setup. The effect of a user selecting a search provider from the choice screen is to (i) set the search provider in a home screen search box to the selected provider, (ii) set the default search provider in Chrome (if installed) to the selected provider, and (iii) install the search app of the selected provider (if not already installed).

[Learn more →](#)

PRESS RELEASE

January 25, 2024

Apple announces changes to iOS, Safari, and the App Store in the European Union

For developers, the changes include new options for app distribution and payment processing

For users, the changes include new controls and disclosures, and expanded protections to reduce privacy and security risks the DMA creates

Take-aways

1. More search algo transparency (for consumers)
2. Access to search data for competitors of Google?!
3. Access to 'performance measurement tools and data'
4. Consent to counter 'market power' in AdTech space
5. Consumer choices for browsers and SE to counter vendor lock-in

Questions?

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