



Workshop on ranking guidelines

Brussels, 12 December 2019 Conclusions

On 12 December 2019, a Commission workshop called for stakeholder input in relation to the guidelines required from the Commission on the ranking transparency obligation pursuant to Article 5(7) of the [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 (the 'Regulation', in force since 31 July 2019). This workshop gathered stakeholders from among search engines, app stores, social media, broadcasters, e-commerce platforms and businesses, tourism and banking. This second ranking workshop complemented an earlier workshop that took place on 21 November, which gathered stakeholders from the e-commerce, travel and accommodation as well as car rental sectors.

The Commission, represented by DG GROW and DG CNECT, introduced the meeting by explaining the background and process of the work on the ranking guidelines, which are planned to be published in spring 2020, i.e. before the entry into application of the P2B Regulation on 12 July 2020. Participants were also invited to complete an [online consultation](#) on ranking parameters, which had been available for further stakeholder input until the end of 2019d.

The workshop also briefly touched upon other issues relating to the implementation of the P2B Regulation, notably the relationship of ranking with differentiated treatment (Article 7(3)b), the issue of creation of organisations providing specialised mediators (Article 13) and the drawing up of industry Codes of Conduct (Article 17).

The discussions on the ranking guidelines were organised in three subgroups of stakeholders and touched upon six topics. Group 1 focussed on search engines and their users mainly from the media sector, Group 2 focussed on app stores and developers, and Group 3 focussed on search engines and their users for example from the banking and the tourism and travel sector.

This report sets out the main conclusions drawn by participants. It does not represent an official position of the Commission, nor does it bind the Commission in implementing the obligations imposed on it pursuant to Article 5(7) of the Regulation.

Topic 1: Meaning of Ranking (Article 2(8))

- All three groups considered that the notion of ‘ranking’ has a broad scope, such that all visibility features of a given service are covered, including possible elements such as editors’ picks, voice results, all ordering/sequencing interfaces, etc. The guidelines should therefore once more stress the technological-neutral and future-proof objective of this legal definition. At the same time, participants in group 2 felt that in order for the guidelines to be operational and help especially smaller platforms, these should provide as many concrete, illustrative examples as possible.
- All groups agreed on the new challenges arising from voice interfaces and the relationship of ranking parameters with the single result in voice search.
- A search engine asked to clarify the purpose and limits of the future ranking guidelines notably whether they could add more far-reaching burdens on stakeholders than the regulation. The Commission explained that the purpose of the guidelines was to provide practical guidance and best practice examples to facilitate compliance, without, however, being able to change the obligations as laid out in the regulation, or interpreting the regulation, which is the remit of the Court of Justice of the EU. Similar purpose and limits apply to the description of the main ranking parameters themselves: search engines and online platforms should provide useful explanations to businesses rather than offering a tool to optimise the ranking position of an individual business user or corporate website user.
- Various participants requested the notions of ‘relative prominence’ ‘saliency tools’ to be explained in more detail in the guidelines.
- While the search engines and media representatives in group 1 considered personalisation as having relatively limited impact on search results, this was of much greater concern for stakeholders in group 3, who emphasised the impact of personalised search on ranking. The guidelines should therefore clarify the intent of active search against attempts to influence ranking.
- The groups concurred that the explanations of parameters should be as broad as possible, including on how AI can affect ranking, to allow business users a clear understanding without, however, allowing gaming which leads to consumer detriment.
- The ranking guidelines should therefore be future proof and include examples.
- Participants felt it important to mention that parameters could have different weight not only in absolute terms but also in different contexts.
- Participants felt that the relationship between filters set by consumers and ranking needs to be explained.

- App developers called for clarity on the different channels/tools used to feature apps, for example paid ranking, editorial picks or apps offered for direct download through online search engines. This would be especially important for newcomers, who may need this type of predictability.
- Group 3 considered sector-specific guidance as potentially confusing, notably in view of increasing difficulties to distinguish between certain sectors, but felt that additional explanations in annexes could be useful.

Topic 2: Meaning of presentation and accessibility

- All groups considered the predictability of ranking as crucial while group 2 insisted in particular on the pre-contractual accessibility of information on ranking parameters to allow for comparison, notably for new entrants (pursuant to Article 3(1)(b) of Regulation (EU) 2019/1150).
- Certain business users suggested that search engines and platforms would need to adapt the description of their main ranking parameters to their target audience, e.g. e-commerce business users would require less technical language, while an average app developer may be able to process more technical explanations, and more experienced users might benefit from even more detail and precision. A list of technical terms could be useful in this context. Group 2 also considered that technical language is not necessarily at odds with clarity, that developers may inherently require more technical language, but that platforms should always cater to their various audiences, including both small and large, as well as new and experienced business users.
- All groups agreed that changes to main parameters must be clearly visible, some stakeholders also asked for changes to be traceable (on a durable medium) in order to allow for complaints, if necessary. However, most stakeholders thought that the present and future impact of ranking parameters was more important than the past.
- Moreover, participants asked that also search engines should notify any changes to main parameters in advance to allow users to adjust (the regulation requires search engines only to keep their descriptions 'up to date', whereas platforms need to notify changes to their terms and conditions, which include also the description of the main parameters).
- All groups deemed temporary changes as less important and as not necessarily requiring a change in the description of the main parameters, while admitting that this will require a case-by-case assessment. The guidelines could again help by providing illustrative examples.
- While most participants acknowledged the need for business users to inspect 3rd party notifications leading to a demotion or closure of account, some voiced concerns linked to GDPR or showed reluctance to use standardised notices for third party complaints to avoid abuse. Some also thought that notices from public authorities should altogether benefit from special procedures.

- Group 3 expected the ranking guidelines to provide a clear explanation of the different requirements for ranking transparency to be provided by either search engines or platforms, ideally by giving best practice examples.

Topic 3: Main parameters/Relative importance

- All groups agreed on the need for, and usefulness of, concrete examples of main parameters. Some group 2 stakeholders also expressed the need to understand the overall goal of the ranking mechanism, separately from the description of the main parameters. Group 2 participants also stressed the need for platforms to strike a balance between, on the one hand, providing sufficiently detailed information so that all business users can optimise their offering, and, on the other hand, undermining healthy competition between business users for whom investment in, for example, third-party app store optimisation (ASO) services is a business decision.
- Groups also agreed that an increasing personalisation of search results does not necessarily impact the main parameters as long as it is applied indiscriminately, but that search engines and platforms should nevertheless provide some degree of detail in their general description of personalisation acting as a main parameter, where applicable. App developers in group 2 considered in this regard that such a general description could be helpful by identifying 'unexpected' elements in particular, especially where the outcome of personalisation is difficult to explain.
- All three groups discussed the effects of experiments and testing and asked for guidance about the moment when an experiment or temporary change turns into a main parameter and needs to be described in the T&Cs and whether the description must reveal the objective pursued by the experiment. Some stakeholders voiced concerns about the administrative burden of having to describe temporary testing or experiments on specific target groups and therefore thought that it should not be covered by the transparency obligation. Participants in group 2 asked for examples to assist in understanding the notion of 'temporary', and most considered that a/b testing would not have a significant impact on ranking if done on a small sample. However, the example of regional, country-specific tests was mentioned as one where temporary changes would be highly impactful within that geographic area.
- In group 1, there were some doubts expressed as to whether an explanation of filters was necessary for the results in general search engines. The issue of randomisation also came up in this group, which intends to bring in freshness to search results, and some considered that it could be a main parameter that needs further explanation.
- An important open issue for participants in group 2 was the question of territoriality, and the guidelines could helpfully address this. It was mentioned that the legal and practical reality differ; app developers would be helped by understanding whether they operate partly under app store rules and ranking parameters that are tailored to their geographic area, or whether a pan-EU or global approach is applied.

- Group 2 in addition identified some examples for possible main parameters such as:
 - Key words, click-through rates, uninstalls
 - Parameters for editors' picks
 - 'Housekeeping' practices (e.g. deletion of old apps)
 - Interplay with fraud fighting, access rules
 - A/B testing with important impact (e.g. regional), but very much case-by-case
- In Group 3 it was said by some that the main parameters are rarely changed, whereas sub-parameters change more often. It was moreover mentioned that some parameters would be easy to explain (e.g. as regards security (https) - Y/N) whereas others are more complicated and where too much explanation or detail could enable manipulation and gaming. Groups 1 and 3 also found it difficult to communicate changes in the weighting of parameters which might also differ depending on the context.
- Group 3 insisted on clarity and transparency about advantages that platforms or search engines provide to affiliated businesses (self-preferencing).
- In Group 3 it was also considered that platforms should provide explanations of the verification method when customer reviews are a main parameter. As further areas for clarification were mentioned: the effect of temporary offers, thematic offers, promotion, targeted changes, etc.
- In group 3 it was suggested that platforms and search engines could get inspiration from existing examples of how ranking transparency is provided (e.g. existing industry guidelines, methodologies) and through dialogue with users.

Topic 4: Direct & Indirect remuneration

- Participants stressed that the guidelines need to require a causal link between payment and ranking, and the need to distinguish traditional 'banner' advertising from ranking. Some participants considered that this causal link should mean that the platform actually receives the monetary benefit. Therefore, where payment is made to third parties for a service, this should be considered out of scope. They also called for a better explanation of the fine line between advertising and sponsored ranking, which is a particular concern from the business perspective.
- Some participants questioned the relationship between the use of ancillary services and ranking, for example asking if there could be a difference if the options (e.g. fulfilment) are designed to make doing business easier on a platform. A similar concern was raised about the relationship between bundled services and ranking.
- In Group 2 it was acknowledged that delistings of business users can impact the ranking and that, therefore, platforms' fraud prevention mechanisms could constitute main parameters determining ranking. Group 2 however stressed that the guidelines should prevent legitimising or facilitating 'black hat' or bad faith

manipulation of rankings (e.g. through the acquisition of reviews, as a form of indirect remuneration, but of third-parties) by requiring a detailed description of how platforms' fraud prevention tools operate. At the same time, given the very high impact that delistings have on business users, clarity and predictability of platforms' access rules and 'community values' was considered key.

- Some participants in Group 2 also highlighted that for ecommerce stores, reserved spots in a ranking order, exclusivity and self-preferencing need to be transparent upfront. In Group 3, it was felt that explanations should also explain how free delivery and the use of the platforms' products/features (e.g. calendars or payment wallets) affect ranking.
- Many participants stressed that the guidelines need to explain clearly what indirect remuneration is particularly as this can be broad and may require case-by-case assessment. Participants in group 2 considered that the guidelines should try to delineate the scope of 'indirect payment' through providing concrete examples, as this notion would potentially capture a broad set of - potentially unrelated -commercial arrangements between business users and platforms. The example of certain actions triggering chains of indirect effects that ultimately affect ranking were mentioned (e.g. business users' actions on review fora). In Group 1, it was suggested a guiding principle could be that the description provided should mean that there are no surprises. Examples given in Group 2 included package deals for sellers of goods that can give rebates to app store etc. as part of a broader e-commerce deal or a cross-platform deal, editors picks and housekeeping (e.g. deletion of old apps). Within Group 3, a concern was raised about how to balance the disclosure of specific contractual agreements, which contain business secrets, with the obligation to explain indirect remuneration. Groups 1 and 2 also considered the relationship between exclusivity deals and ranking, particularly if they can lead to a better ranking, could be considered indirect remuneration.
- Group 3 thought that sector specific guidance could be particularly useful to explain further direct and indirect remuneration. The guidelines could go into what needed to be explained in the ranking parameters where the lines between the different services are blurred. For example, where a search engine's results also includes displays of integrated services (e.g. flight comparison, shopping comparison).

Topic 5: Adequate understanding

- In all groups, it was felt that the level of detail shared should not open the search engine or platform to targeted gaming or disclosure of trade secrets. It was suggested that the explanation should clarify the general characteristics.
- In Group 1, the discussion questioned whether the information given to businesses should only be those main parameters that could be acted upon (e.g. quality of the product description). For businesses however, knowing both the factors that they could influence as well as those that could not be influenced by a change in their behaviour was considered useful.
- In Group 2, it was considered necessary for the information shared to strike a balance between establishing a level playing field among business users while maintaining some ability for them to compete (including in their choice of ASO

strategies), so the explanation should not entirely remove the incentive to compete by fully commodifying ranking (which arguably could result from a too paternalistic approach, which could involve a platform offering its own free ASO tools, tutorials and tailored advice to all business users).

- In Groups 1 and 3 it was felt that the guidelines should consider how much platforms and search engines can explain ranking determined by artificial intelligence. However, it was felt that this should not be an excuse to hide behind to avoid the obligation to explain the main parameters.
- In Group 3, it was felt that an adequate understanding should include an explanation of: (a) the positive and negative impact of changes in ranking parameters; (b) the different layers (e.g. where search results show integrated platforms/widgets) and how these move organic search results down; and (c) the applicable consumer behaviour (e.g. the degree of consumers' reluctance to scroll down results/go beyond the initial few results).
- In Group 3, practical experience had shown that written explanations of ranking parameters were more useful than video tutorials/explanations. Similarly, some inspiration could be taken from the media sector.
- In Group 3, little was known about tools to help businesses verify the accuracy of the description of the main parameters. It was instead questioned whether platforms need to be able to prove how historic parameters performed. For example, if a business made a complaint in 2020 that say in 2016, the description of the main parameters was inaccurate, how could a platform disprove this? This could be especially problematic if in 2020 the main parameters had changed, meaning that the platform was no longer capable of simulating what the result would have been in 2016.

Topic 6: Interplay with complementary and other EU legislation

- The groups identified that the guidelines should explain the relationship of the ranking transparency obligation with: consumer legislation; initiatives on illegal content; fighting disinformation online (in particular obligations to demote or delete certain content); the Copyright Directive; the Geoblocking Regulation; price indication rules (e.g. GROW monitoring system for prices); digital contracts; labelling requirements (GS1 (2011 food labelling), national differences, cosmetics and food); PSI; open data in general; trusted stores; and sustainability criteria. In addition, the guidelines should look at how platforms should deal with complementary obligations and also, what happens in the grey zones.
- The groups all called for consistency between this ranking transparency obligation and future initiatives, in particular on artificial intelligence and algorithms. In addition, consistency should be ensured with the future development of possible national (e.g. FR) or EU-wide authorities, with the power to order the removal or block access to content.

- Group 3 suggested that the UK Competition and Market Authority’s “*CARE principles*”¹ that are not mandatory but which provide useful guidance, could be be inspiration.
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Roundtable 1 – Relation between the Regulation’s Article 5 on ranking and Article 7(3)(b) on differentiated treatment

COM introduced Article 7(3)(b) and explained that it applies to a specific scenario where platforms would need to provide transparency of ranking, i.e. where a platform could discriminate among its business users.

Roundtable 2 on Article 13 – specialised mediators

COM asked how industry would comply with the provision under Article 13 to identify specialised mediators and pointed out that although mediation is widespread in all MSs, including in the area of B2B commercial relations, no specialised mediation for platform-to-business relations currently seems to exist. Industry action therefore remains needed. COM also emphasised the voluntary nature of mediation under the Regulation.

- Participants pointed to the UK Groceries Adjudicator as a best practice as she works in practice like a mediator, but is considered very effective.

Roundtable 3 on Article 17 - Codes of Conduct

COM suggested that Codes of Conduct could be useful, particularly in helping industry comply with the requirements on internal complaint-handling under Article 11 of the Regulation.

- A participant advised that there has been a discussion in the UK’s Competition and Markets Authority to develop a Code of Conduct, but nothing is developed as yet.
- In Group 3, it was suggested that inspiration for Codes of Conduct could come from the discussion on the protection of minors online in the form of a vision of how things should be. In addition, to be effective, it was felt that the Commission should play an active role to encourage participation and should chair meetings.

¹ <https://www.gov.uk/government/publications/digital-comparison-tools-summary-of-final-report/digital-comparison-tools-summary-of-final-report>

ANNEX

List of participating organisations:

- ACT - The App Association
- AIM
- Amazon
- Apple
- Axel Springer SE
- BEUC - The European Consumer Organisation
- CCIA
- Channel 4
- Developers Alliance
- Digital Europe
- Ecosia
- EGTA - Association of television and radio sales houses
- EU Strategy
- European Broadcasting Union
- European Games Developer Federation (EGDF)
- European Publishers Council
- Google
- ING bank
- Microsoft
- Nielsen
- Schibsted
- Seznam
- Skyscanner Limited
- SMEunited
- StepStone GmbH
- Vodafone