DG GROW

Meeting between Kristian Hedberg and [redacted] (Google Public Policy) and [redacted] (Legal Product Director for Google Play)

Brussels, 15 February 2018

Name of Cabinet Member: Kristian Hedberg
Name of the Director who has cleared the briefing: Hubert Gambs
BASIS request ID: CAB BIENKOWSKA/1159
Room, time: BERL, 10:00
Participants: Kristian Hedberg
Name of main contact person: [redacted]
Telephone number: [redacted]
Directorate/Unit: GROW E4

MINI BRIEFING NOTE *(Commission Internal)*

Scene setter/Context of the meeting/ Objective of the meeting:

You are meeting [redacted], of Google's public policy and government relations team, and [redacted], Legal Product Director for Google Play. The meeting will provide Google the opportunity to provide you with their views on the forthcoming platform to business initiative. In particular, Google will advise how its app store deals with complaints from its business users about the harmful practices that are the focus of this initiative.

Google is in favour of a light touch approach based on self-regulation, which would allow industry to find solutions to potential unfair trading practices. Recent press reports will have alerted Google to the proposed widening of the scope of the P2B initiative to cover transparency on ranking in search results. This meeting should allow you to present GROW's ongoing work and test Google's reaction to the proposed extension of the scope of the initiative to cover search.

KEY messages

- The Commission recognises the efforts that Google has made to be more transparent to its users on both search and Google Play and the concerns that going too far exposes search to gaming or other potential abuses.
- Due to the possible dependency of small business users on platforms we need to be sure that **platforms behave in a responsible, fair and transparent way**.
- The fact-finding underpinning the exercise has shown that certain **unfair practices** manifest themselves particularly in the online environment. It has also shown that the practices cannot be effectively addressed using competition rules.
- Our approach in this exercise is **light-touch** and problem-targeted, focussing on **transparency** and effective means of **dispute resolution**. We are also mindful of the need to avoid extra burdens on stakeholders, be they private or public.
- We continue to work on the impact assessment and do so bearing in mind the positive impact of platforms on the economy and innovation.

Question for the interlocutor:

- *What does Google do, or what could it do, to improve users understanding of ranking mechanisms?*

- *What information on relevance standards in ranking could be provided to help users understand how ranking works without giving away too much?*

Defensives / Q&A

Question: When does the Commission envisage coming out with a proposal?

Answer: Work on the impact assessment continues. The exact adoption date is still to be confirmed, but given the inter-institutional calendar a proposal will come at the latest by April 2018.

Questions: Why is the Commission only now considering extending the scope to cover Google search?

Answer: Questions concerning the scope of this initiative have been, and continue to be, examined as part of the Commission's process. It is too early to say exactly what form and which actors the initiative shall cover.

Background information

Google is interested in the initiative on B2B relations on online platforms, and is in favour of a self-regulatory approach. In its response to the Inception Impact Assessment in November 2017, Google considers itself to be transparent with its business users, including on key issues such as criteria used for ranking search results and changes to terms and conditions. However in workshops and individual meetings, business users expressed frustration with Google's lack of transparency on the impact of its advertising placements.

Our fact-finding has shown that almost half of surveyed businesses experienced problems to varying degrees with online platforms such as platforms imposing unfair terms and conditions; or platforms refusing market access (delisting) or unilaterally modifying the conditions for market access. This is amplified by a lack of effective redress for platforms' business users, due to their fear of retaliation and the length/cost of court proceedings.

The existing legal framework at both EU and Member State-level does not effectively address the problems identified in the fact-finding and an emerging regulatory fragmentation of the Digital Single Market has been identified, as Member States start to regulate or consider regulating specific aspects of the platform economy.

The adoption of the proposal will include: (1) a legislative proposal; and (2) a decision for the establishment of an expert group for an EU Observatory on the Online Platform Economy (EU Observatory).

The principal aim of the proposal is a light-touch and principles-based co-regulatory approach to improve transparency and bilateral conflict resolution in a first step, focusing on internal complaint-handling and mediation, subject to transparency-enabled monitoring of their effectiveness. The second step will be an amendment or extension of legislation if necessary, using the information collected by the EU Observatory on the evolution and emergence of issues in the digital platform economy.

The proposal strikes a balance between creating a more predictable environment for business users to grow their business on online platforms. By increasing trust in the online environment, this shall attract more business users to use online platforms, which is of particular benefit given their role as enablers of cross-border trade and as a key gateway to the Single Market for many SMEs.

The Regulation shall address three main elements.

1. High level transparency obligations will provide clear principles on changes to terms and conditions, the grounds for suspension or termination of use of a platform, ranking including the use of any mechanisms that allow business users to influence their prominence against remuneration, any preferential treatment of a platforms' own products or services, access to personal and other data and the use of most favoured nation (MFN) clauses.

2. Improved internal, external and judicial redress for business users, by for example, encouraging platforms to voluntarily set set-up platform-specific independent mediators (who would comply with effectiveness principles set out in the regulation) or requiring platforms to put in place internal complaint-handling systems.

3. Monitoring of the evolution and emergence of issues in the digital platform economy, through the EU Observatory.

The adoption is scheduled for **25 April.**

CVs of the interlocutors