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Competition and Consumer Policy in Digital Markets – Note by Denmark

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Ori SCHWARTZ
Email : Ori.Schwartz@oecd.org

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Denmark

Regulating ranking in digital markets: competition and consumer challenges

1. Digital platforms increasingly shape competition through their ranking systems, affecting both consumer choices and business opportunities. In the EU, such practices are regulated by a mix of competition law and transparency requirements, depending on a platform's market position. While stricter rules apply to designated "gatekeepers", most platforms are subject to transparency obligations. However, it seems uncertain if general transparency requirements genuinely help businesses or consumers understand and influence ranking outcomes. The rise of AI-driven search further complicates transparency. This raises the question of whether transparency alone is an adequate regulatory approach, or if stricter rules for platform ranking are needed.

2. The Danish Competition and Consumer Authority (DCCA) enforces both competition and consumer law in Denmark, and has published several reports analysing ranking on digital platforms both from a competition and a consumer perspective.

3. Drawing on this work, this note discusses issues related to ranking and considers how these challenges may persist, evolve and potentially expand as digital markets pivot towards AI-powered transactional models, as well as how well-equipped the competition and consumer regulatory toolboxes are to handle them.

4. Section 1 introduces the fundamentals of ranking on digital platforms. In Section 2, the DCCA briefly presents four different competition- and consumer-related concerns relating to ranking, whereas Section 3 discusses the regulatory tools available to address them. Section 4 concludes with a discussion of how the regulatory tools correspond to the concerns and points out some gaps – finishing off with a brief discussion on how AI may further impact the balance between concerns and the regulatory toolboxes.

1. The fundamentals of ranking on digital platforms

5. Digital platforms are online intermediaries connecting distinct user groups, such as sellers and buyers. Visibility on those platforms has become a competitive parameter for many sellers, while the ways offers are ranked and presented significantly impact consumers' choices.

6. Ranking is not only a choice-architectural tool capable of structuring consumer decision-making, but also a decisive competitive factor for the commercial success of business users, with potential profound implications on the ability of firms to compete.

7. The algorithmic ranking systems employed by digital platforms represent one of the impactful commercial innovations of the digital era. By analyzing combinations of multiple product attributes to generate ranked lists, ranking algorithms reduce the complexity of the decisions that consumers face and enable them to identify relevant products at lower transactional cost.

8. Multi-dimensional ranking necessarily involves a subjective decision about the weights and interactions between the relevant parameters. The order in which content appears is thus a deliberate product of the platform's algorithms and design choices. As such, any ranking system necessarily entails normative choices about which factors to prioritize and how to display the results.

9. Platform providers set up the ranking mechanisms that best serve their own commercial objectives. However, the ranking setup must consider how it impacts user participation (e.g. ensuring that both sellers and buyers find the platform attractive to use). The multi-sided business model may thus impose certain constraints on the platform's unilateral ranking decision-making power through competition. Therefore, while acting in its own interest, the platform provider has structural incentives to maintain a sufficient level of value (to money) to all sides.

10. These constraints do not, however, preclude adverse outcomes to business users or consumers. There may thus be instances where competition is weak and the platform's incentives are at odds with these two groups, and no guarantee of well-functioning markets or welfare optimization. When such tensions emerge, regulatory intervention may be warranted.

11. The need for intervention is likely higher when platforms are perceived as "unavoidable", since dependency weakens the constraints on the platform provider's unilateral decision-making power. In Denmark, around one in four Danish firms across several sectors of the economy sell their goods, services or applications via digital platforms.[1] In the Danish hotel and media sectors, around 70 per cent of firms offering their services via online travel agents or app stores consider their presence on specific platforms to be a "necessity".[2]

2. Competition and consumer concerns related to ranking

12. Recently, the DCCA has investigated four forms of potentially harmful ranking-related practices.

1. Self-preferencing by the platform provider, whereby the platform artificially promotes its own downstream products or services over those from third parties;
2. Opaque ranking parameters, which makes it harder for business users to make informed decisions to improve their commercial visibility;
3. The risk of competition on the merits being converted into competition for visibility by any means, when ranking boosts allow business users to purchase algorithmic visibility independently of improvements to price and quality;
4. The use of ranking infrastructure to indirectly facilitate or instigate the exchange of competitively sensitive information among competing business users, where ranking of relative price positions can reduce the uncertainty that is a precondition of effective price competition.

2.1. Self-preferencing by the platform provider

13. Some platform providers also act as sellers on the platform. Such providers may design the ranking algorithms to favor their own products or services over those of competing business users. This conduct can amount to a form of self-preferencing capable

[1] DCCA, 2026, *Danish businesses' use of online marketplaces* (in Danish). The sectors analysed in the report include accommodation, retail, media, finance and IT services.

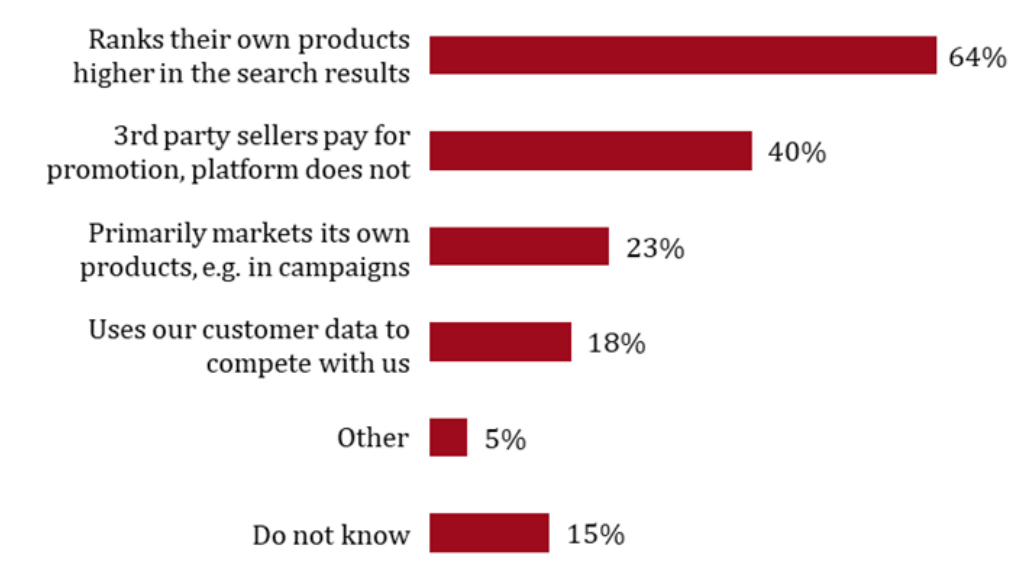
[2] Ibid. For Danish hotels who use digital platforms, above 90 per cent consider it necessary to be present on a specific platform.

of harming both business users and consumers, who receives a degraded and potentially less relevant set of options.

14. Empirical evidence indicates that self-preferencing is a widespread concern among Danish business users. Almost 30 per cent of Danish firms who sell or distribute products, services or applications via online marketplaces reported that the platform favors its own downstream products.[3]

15. Out of those 30 per cent, almost two thirds reported that self-preferencing leads to an artificial increase in the ranking of the platforms' own products in the search results, cf. Figure 1. The second-most prominent issue reported was that sellers have to pay extra for various forms of promotions on the platform, while the platform provider itself does not.

Figure 1. How does the marketplace provider favor its own products?



Source: DCCA, 2026, Danish businesses' use of online marketplaces (in Danish).
Note: n=146 (only those respondents who had previously responded that the platform they use favor its own products or services).

16. The mere occurrence of a platform provider's own products ranking higher than third party sellers' competing products does not in itself constitute a form of self-preferencing in the legal or economic sense. The platform provider could for instance offer the product at the lowest price, which may be what consumers are looking for. Self-preferencing is distinguished not by the outcome (that the platform's products appear prominently), but rather the process, namely whether this prominence is earned through competition on the merits or rather through the unilateral exercise of the platform's control over the competitive environment.

17. Self-preferencing may have negative effects on competition. It diverts consumer demand away from third-party sellers toward the platform's own products, reducing those sellers' revenues and weakening their ability to invest and innovate. Sustained self-preferencing may foreclose third-party sellers from the market or progressively marginalize them, reducing product variety and ultimately harming consumers through diminished choice and weakened competitive pressure on price and quality. These effects are

[3] DCCA, 2026, *Danish businesses' use of online marketplaces* (in Danish).

compounded when the platform is unavoidable for business users, since business users cannot credibly threaten to exit the platform or multi-home.

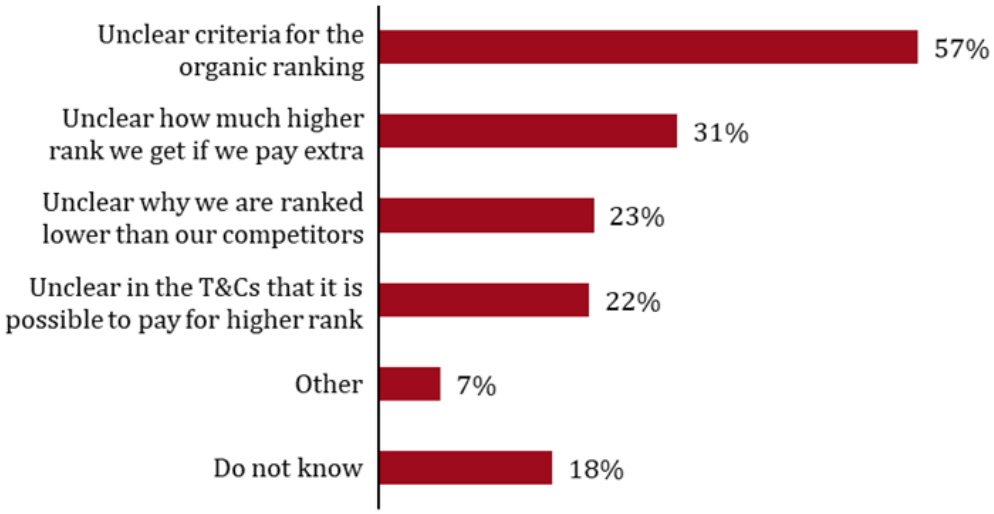
2.2. Lack of transparency regarding ranking parameters for business users

18. Asymmetric information on how products are ranked makes it difficult for platform users to evaluate how a given product's prominence is affected by various commercial decisions. Similarly, it makes the consumer choice less transparent. This gives platform providers an advantage when maximizing their own objectives which may be at odds with well-functioning competition between sellers as well as consumer welfare.

19. In a survey, 45 per cent of Danish firms that sell via online marketplaces report uncertainty about how the ranking works.[4] As illustrated in Figure 2, the opacity of "organic" or default ranking criteria is the most widely reported concern.

20. The second most frequently reported concern relates to the opacity of paid promotional tools. It is thus unclear to Danish firms by how much a paid promotion will improve their ranking in practice, nor how much they need to spend to achieve a certain ranking position. This opacity means that business users are purchasing services that are very difficult to value and assess.

Figure 2. In which ways are the ranking criteria on the platform unclear?



Source: DCCA, 2026, Danish firms' experiences with the P2B rules (in Danish)
Note: n=230 (only those respondents who had previously responded that the ranking of products/services on the marketplace is unclear.

2.3. Ranking boosts

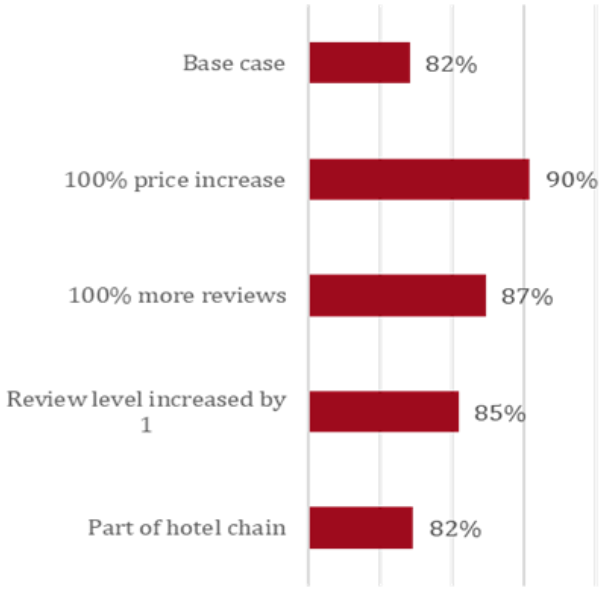
21. Algorithmically generated lists rely on a complex mix of attribute evaluations for their ordering, so while consumers may recognize that one option on a list is somehow superior to the one below, they cannot possibly know why, or the magnitude of difference,

[4] 16 per cent report that ranking is unclear to a large degree, while the remaining 29 per cent report that it is unclear to some degree. See DCCA, 2026, *Danish firms' experiences with the P2B rules* (in Danish), https://kfst.dk/media/5p2dmvtk/20260225-danske-virksomheders-erfaringer-med-p2b-reglerne.pdf.

as judged by the algorithm. This lack of transparency is a key difference between algorithmic- and one-dimensional ranked lists (e.g. on price or review scores) where the underlying logic of the ordering is apparent from the list itself.

22. The opacity of algorithmically generated lists is not necessarily a problem in itself, but may become significant when platforms allow business users to improve, or "boost", their ranking position though direct payments or higher commissions, rather than through improvements of the underlying product attributes such as price, quality, popularity etc.[5]

Figure 3. Predicted probability of a base case hotel having purchased a permanent ranking boost



Note: Different bars represent the probability of the base case hotel (a hotel that is average across all parameters) having a permanent ranking boost, modified by variations in price, amount of reviews, review score (scale of 1-10) and membership of a hotel chain.
Source: Source: DCCA, 2023: Do Ranking Boosts Harm Consumers and Competition – Indicative Evidence from Online Travel Agencies.

23. Given the large influence that ranking plays on consumers' choices, ranking boosts have been demonstrated as an effective commercial strategy for sellers, e.g. on online travel agencies. In the DCCA's own research,[6] boosts increased demand for a hotel room relative to a price discount by a factor of 4, making boosts the far superior marketing investment.

[5] Ranking boosts can be offered outright, or as part of broader "partner" schemes that may include additional commitments from sellers, such as using specific shipping options, or maintaining certain review score thresholds. Notably, Platforms may offer sellers both ranking boosts and more traditional ads within their product lists, but these work in quite distinct ways. Ranking boosts improve the platform's algorithmic score for a product, which in turn increases promotes its placement on the list of competing products. Traditional ad spots, however, disregard the algorithmic score entirely and are typically sold via auctions to the seller willing to pay the most for a specific spot on the list. In other words, platform advertising refers to buying ad inventory, whereas boosts directly alter the ranking algorithm.

[6] DCCA, 2023, *Do ranking boosts harm consumers and competition? Indicative evidence from online travel agencies*, https://kfst.dk/media/v0snxsvj/ranking-boosts.pdf.

The same research also found that ranking boosts were likelier to be used by more expensive hotels, and by hotels with large existing customer bases.

24. Overall, ranking boosts establish a wedge between ranking positions and product merits, which may negatively affect both competition and consumer welfare. First, boosts introduce a competitive dynamic among businesses in which visibility is not only determined by product quality and price, but also by the financial capacity of the business user. Thus, they may create barriers to entry for smaller or new firms. Secondly, boosts may incentivize business users to divert resources away from improving the price or quality of their offerings towards expenditures that increase platform visibility, thus ultimately promoting platform revenue over consumer welfare.

25. The documented large effect ranking boosts have on consumer behavior means that consumers pick products with lower organic algorithmic scores, than they would in the absence of boosts. But whether this translates to worse outcomes is difficult to estimate, since it depends both on how closely the organic ranking aligns with consumers' preferences, how much boosts distort the organic ranking and how widespread the use of boosts is on a specific platform.

2.4. Ranking facilitating indirect exchanges of sensitive information

26. The DCCA has recently become aware of a different type of possible anti-competitive conduct that involves ranking. The conduct does not relate to a traditional online marketplace, but rather to business software used by competing firms.

27. When businesses use commercial software services, such as accounting or financial software services, the software provider often gets access to sensitive financial data provided by multiple competing business users, like individual invoices. The provider is thus in a position to compare and rank data from the individual businesses. As an example, the provider could display the ranking of average prices across invoices from competing businesses.

28. If the software provider enables individual business users to understand how their average price-level compares to that of their competitors, it may reduce the uncertainty crucial for well-functioning competition. Further, it may lead to a price-normalizing effect in the market, even in the absence of any explicit collusion.

29. Thus, the indirect exchange of information could lead to coordination effects, similar to those that emerge in cases with agreements and concerted practices, which demonstrates that the competitive significance of ranking is not limited to just platforms connecting sellers and customers, but also platforms providing services solely to sellers.

3. Regulatory tools to tackle the concerns

30. The identified competition and consumer concerns originate from a combination of structural features of digital platforms and the markets where they operate. They stem from features such as:

- the conflict of interest inherent in the platform's dual role as platform operator and market participant,
- the platform's ability and incentive to exercise control over the ranking of products in a way that serves its own commercial objectives,
- the informational asymmetry between platform providers and their users, and

- the absence of effective competitive constraints, especially when the platform is perceived as unavoidable.

31. To address the concerns related to online platform ranking practices warrants a regulatory framework combining competition law, platform-specific regulation, as well as consumer law. These instruments target different dimensions of ranking conducts, from abuse of market power to lack of transparency and unfair commercial practices.

3.1. EU Competition law

32. In the EU, the prohibitions against anti-competitive agreements (art. 101 TFEU) and abuse of dominance (art. 102 TFEU), can address several of the ranking-related concerns identified in Section 2.

33. Self-preferencing through ranking is a form of vertical discrimination, where a platform gives preferential treatment to its own services over those of competitors. This practice can constitute an exclusionary abuse under Art.102 TFEU, where a dominant undertaking leverages its control over the ranking to favor its own downstream products services. This emerged as the central issue in the EU Commission's decision in *Google Shopping*,[7] where Google was found to have systematically positioned its own comparison-shopping service more prominently in search results, while competing services were demoted by Google's ranking algorithms. Both the Commission and the EU Courts concluded that the conduct departed from competition on the merits and constituted an exclusionary abuse of Google's dominant position in the market for general search capable of foreclosing competitors in the adjacent comparison-shopping market.[8]

34. Further, opacity in ranking parameters can fall within Art.102 where it amounts to a form of discrimination. In particular, horizontal discrimination arises when a platform treats competing business users unequally within the ranking without objective justification. This can take the form of offering some business users ranking advantages through preferential access to promotional tools or algorithmic parameters that are unavailable to others on equivalent terms. This concern is analytically distinct from self-preferencing but, similarly, stems from the platform's control over the ranking algorithm, which may enable it to distort competition among the business users whose commercial success depends on visibility.

35. Ranking boosts raise more nuanced issues. Paid promotion is not inherently abusive, but it may become problematic if it for example systematically benefits financially stronger firms and decouples visibility from merit, especially if combined with opacity that prevents business users from assessing the value of the services purchased. In such cases, the conduct may give rise to barriers to entry into the market.

36. Besides abuse of dominance, the ranking-mediated (indirect) exchange of information can fall within the scope of Art.101 TFEU. The conduct, where a platform

[7] Case C-48/22 P, Google and Alphabet v Commission, 2024, upholding the Commission's Decision AT.39740.

[8] However, self-preferencing is not always necessarily abusive. In this sense, it should be noted the case *Google vs. Streetmap* (High Court case of *Streetmap.EU v Google Inc*., *Google Ireland Limited and Google UK Limited* [2016] EWHC 253 (Ch)), where the High Court was confronted with an issue similar to the one addressed by the Commission in *Google Shopping*, namely Google's display of "OneBox" map at the top of search results. Yet, in that occasion, the way in which Google Maps was shown was assessed as a form of product enhancement having pro-competitive effects for consumers.

provider ranks competing firms' pricing data and then discloses relative price positions to individual users, exhibits the features of a hub-and-spoke arrangement. In this context, the platform collects competitively sensitive information from multiple competitors and redistributes it in a way that, without any direct communication between the competing firms, reduces the strategic uncertainty on which effective price competition depends.

37. The application of competition law is, however, subject to certain evidentiary requirements. For instance, establishing a restrictive hub-and-spoke arrangement under Art.101 TFEU requires demonstrating, *inter alia*, the presence of concertation among the individual firms receiving the information, which may present evidentiary challenges.

38. Furthermore, a precondition for a finding of abuse under Art.102 TFEU is the fact that the platform holds a dominant position, which in turn may require a complex and resource-intensive assessment of the relevant market, especially given the multi-sided business model on which digital platforms generally rely.

39. Even when dominance is established, demonstrating that a specific ranking practice constitutes an abuse, rather than a legitimate exercise of the platform's design discretion and thus competition on the merit, is analytically difficult. As previously mentioned, there is no such thing as objectively neutral ranking of content on digital platforms. A platform's ranking algorithm necessarily embeds normative choices about which attributes to prioritize, blurring the line between a legitimate design choice and one that artificially disadvantages third-party competitors.

40. Besides these substantive hurdles, competition law enforcement is also characterized by lengthy proceedings, which may limit its effectiveness in fast-moving digital markets.[9] Notably, competition law limitations linked to high evidentiary thresholds, analytical complexity, and protected enforcement timelines, were central factors motivating the adoption of the Digital Markets Act.

41. To further complement the reach of competition law, the Danish Competition Act was amended in 2024 with a *market investigation tool* enabling the DCCA to investigate markets and impose behavioral remedies on undertakings, if competition is found to be clearly restricted due to inherent market features or structures, rather than anti-competitive conduct by one or more individual undertakings. For example, a market investigation could address non-coordinated ranking practices that restrict competition by a few powerful, but individually non-dominant, platforms operating in the same market.

3.2. The EU's Digital Markets Act

42. The Digital Markets Act (DMA)[10] represents a shift in the regulation of digital platforms, moving beyond the *ex post* nature of competition law by introducing *ex ante* conduct requirements for designated gatekeepers. The DMA targets certain concerns, in particular self-preferencing, but also transparency and, to a certain extent, ranking boosts.

43. Art. 6(5) DMA directly *prohibits* gatekeepers from treating their own products and services more favorably in ranking compared to those of third parties, within core platform services (i.e. addressing vertical discrimination), and requires the application of fair,

[9] A prominent example is the *Google Shopping* case (*op cit.*), where the Commission opened its investigation in 2010, adopted its infringement decision in 2017, and the final judgment by the Court of Justice was delivered only in 2024. This roughly 14-year enforcement cycle highlights the mismatch between ex post competition law and rapidly evolving digital markets, where competitive harm may materialize and become entrenched long before a final decision is reached.

[10] Regulation (EU) 2022/1925.

transparent, and non-discriminatory conditions to such ranking (i.e. addressing horizontal discrimination).

44. The obligation is framed in terms of conduct, and not of its effects, so that preferential treatment in itself is prohibited when applied by a gatekeeper. In doing so, the DMA goes beyond competition law by not requiring proof of dominance, including the relevant market definition, and of actual or potential anti-competitive effects.

45. As for transparency, the DMA indirectly addresses opacity by requiring fair, transparent, and nondiscriminatory conditions in ranking. In the context of ranking boosts, for example, this implies that paid promotion must not lead to unfair or discriminatory outcomes.

46. Overall, the DMA's central aim is to pre-empt harmful conduct without recurring to complex economic analysis, making it an efficient tool to address systemic issues such as self-preferencing and discriminatory ranking. However, its practical implementation has proved more challenging. This is illustrated by the Commission's ongoing non-compliance investigation against Alphabet, opened in March 2024, concerning a potential breach of the prohibition on self-preferencing under Art. 6(5) in relation to certain functionalities of Google Search.[11] Enforcement has proved to take longer in practice, leading the company eDreams to initiate private litigation in France in 2026 to seek national remedies. Thus, highlighting a gap between the DMA's ambition of swift intervention based on *ex ante*, self-enforcing obligations and the complex realities where such obligations need to be implemented.

47. More broadly, the DMA is intentionally limited in scope, confining its application to a small number of the very largest platforms. Therefore, for the many platforms falling outside its scope, competition law, with all the threshold and evidentiary constraints described above, remain the regulatory tools, complemented by transparency obligations in the Platform-to-Business Regulation.

3.3. The EU's Platform-to-Business Regulation

48. The Platform-to-Business Regulation (P2B),[12] which entered into force in 2020, was the first EU-wide instrument to directly regulate ranking transparency. The P2B seeks to reduce informational asymmetries between platforms and business users, which identifies as a primary source of competitive disadvantage. However, the P2B does not prescribe whether certain ranking or self-preferencing practices are lawful as such. Instead, the regulation primarily imposes transparency obligations.

49. In particular, Art. 5 P2B requires online intermediation services and search engines to disclose the main parameters determining ranking, as well as their relative importance. Art. 5(3) further requires platforms to explain the extent to which remuneration or other forms of payment influence ranking outcomes.

50. As for self-preferencing, Art. 7(3)(b) P2B requires platforms to disclose any differentiated treatment accorded to the platform's own goods or services compared to those of third-party users.

[11] https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1689

[12] Regulation (EU) 2019/1150.

51. Evidence regarding the effectiveness of these transparency obligations remains limited and surveys suggest persistent gaps in business users' understanding of ranking practices.

52. Thus, a survey conducted by the DCCA in December 2024[13] revealed that 26 per cent of Danish businesses using online marketplaces found the organic ranking criteria unclear, and 10 per cent were uncertain whether it was possible to pay the platform to improve their ranking position (such as via boosts or ad results). However, in a similar survey among Danish businesses from 2019,[14] the corresponding shares were 19 per cent and 13 per cent, respectively.[15]

53. Thus, the data do not indicate that there has been a significant improvement in businesses perceived ability to understand platforms' ranking criteria. Similarly, a supporting study for the European Commission's 2022 evaluation of the P2B Regulation reported that 29 per cent of business users found ranking criteria unclear,[16] and 28 per cent reported that platforms do not provide clear information regarding the effects of remuneration.

54. Concerns regarding self-preferencing also appear to persist. In the DCCA survey, 18 per cent of Danish business using digital platforms reported that the platform ranks its own products higher than third party products in 2024, compared to 9 per cent in the 2019 survey. 12 per cent reported that they have to pay for promoted ranking positions whereas the platform itself does not, compared to 6 per cent in 2019. Thus, also regarding self-preferencing, the data do not indicate that the situation has improved. In the Commission's supporting study, 11 per cent of business users had experienced "differentiated treatment" in ranking.

55. In the DCCAs view, these indicative data do not conclusively demonstrate that transparency obligations in general, and the P2B Regulation's obligations in particular, are without merits. First, it is too early to observe the full effects of the Regulation. Second, the Commission's supporting study noted that many P2B provisions are broad and vaguely formulated,[17] potentially limiting the practical effectiveness. Since it is not clearly defined when ranking criteria are not sufficiently transparent, enforcement may be challenged. Third, awareness of the P2B remains limited. The DCCA survey found that only 16 per

[13] DCCA, 2026, *Danish businesses experiences with the P2B rules* (in Danish), https://kfst.dk/media/5p2dmvtk/20260225-danske-virksomheders-erfaringer-med-p2b-reglerne.pdf.

[14] Incentive (for the DCCA), 2019, *Danish businesses sales via digital platforms* (in Danish), https://kfst.dk/media/cwao5pbi/20201013-danske-virksomheders-salg-p%C3%A5-digitale-plat.pdf.

[15] Sampling differences between the two surveys (506 firms in 2024, 293 in 2019, and slightly different sectoral coverage between the two) do however warrant caution when comparing the results, though the questions asked were precisely the same in both surveys.

[16] European Commission, 2023, Study on evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation) – Final report, https://op.europa.eu/en/publication-detail/-/publication/d6a287b5-5116-11ee-9220-01aa75ed71a1/language-en/. In November 2025, the European Commission proposed inter alia to repeal part of the P2B Regulation, in its Digital Omnibus Regulation,16 on the basis that several of its obligations overlap with the DMA and the DSA. At the time of writing, neither the Council nor the Parliament has adopted a formal position on the matter.

[17] Ibid, p. 198.

cent of Danish business users reported knowing the rules well.[18] The Commission's supporting study indeed points to "*weak enforcement and a lack of awareness*"[19] as central factors for its low effectiveness so far.

56. At the same time, the surveys may suggest limitations of the transparency-based approach. The European Commission's supporting study concluded that, "*[…] the problems with P2B relationships that were the intended focus of the policymakers who designed the P2B Regulation still persist*".[20] This may indicate that transparency measures are not sufficient to address the underlying issues of ranking opacity and self-preferencing.

3.4. EU Consumer law

57. Consumer law treats ranking broadly as a commercial parameter that, similar to other terms and conditions, consumers should be made aware of through disclosures. *The Modernisation Directive* specifies that platforms must inform consumers about their ranking parameters in general, and about any commercial influence on a product's rank specifically.[21] The EU's Digital Services Act (DSA) similarly requires that recommender systems must be transparent to users and that very large platforms include at least one alternative ranking option beyond just the default.[22]

58. Thus, consumer law treats commercial influences on algorithmic ranking, such as ranking boosts, as being similar to advertising. The question is, though, whether consumers should treat boosts as advertising, assuming they are clearly visible and easily understood.

59. In traditional advertisement, the role of disclosures is to enable consumers to clearly separate commercial (i.e. advertisement) from non-commercial information (i.e. editorial information). This allows them to evaluate the two types within two clearly demarcated categories. However, the clear separation of these two categories breaks down in the case of ranking boosts, where algorithmic merit-based (i.e. non-commercial) and commercially-determined values are mixed to determine the product's final position on a list.

60. Since the disclosure requirements for boosts is categorical consumers cannot use this information to determine the size of the commercial influence on the boosted product's final rank.

61. The incongruence between the nature of the commercial practice and the disclosure requirements risks leaving consumers worse off. If, for example, the ranking improvement by the boost is very small, consumers who categorically ignore boosted products might well end up with worse products as a result, since in this case, the base algorithmic rank plays a larger role in determining the final rank[23].

62. Paradoxically, as the number of boosted products increases, the ranking begins to revert back to the original, non-boosted, list since every product's algorithmic base score

[18] Only 16 per cent of the respondents to the DCCA's survey reported that they know the P2B rules well, and another 26 per cent that they have heard about the P2B rules but do not know them that well. In comparison, 39 and 37 per cent, respectively, said the same about the competition rules.

[19] European Commission, 2023, *op cit.*, p. 197.

[20] European Commission, 2023, *op cit*, p. 198.

[21] Directive (EU) 2019/2161 art. 3 (b)

[22] Regulation (EU) 2022/2065 art. 17

[23] Under the assumption that the score produced by the base algorithmic score approximates consumers' utility from the aggregated product attributes.

is increased by a similar amount. However, in this case and from the perspective of the consumer, the list would look like all adverts – the major difference being sellers paying a larger commission to the platform provider than in the non-boosted list, instead of competing on the merits.

4. Conclusions and looking ahead

63. The ranking-related concerns related to self-preferencing, opacity in ranking and ranking boosts, originate from platforms' control over visibility in markets where they simultaneously act as intermediaries and competing commercial participants. Ranking entails normative choices where the commercial interest of the platform may impact the societal objectives of competition law, regulations of digital platforms and consumer law.

64. The regulatory response to such concerns risks addressing only a portion of the issues. Competition law remains the primary instrument for addressing the most harmful forms of exclusionary or exploitative conduct.

65. Intervention in the case of abusive conduct is limited to instances where a dominant market position can be established. Under EU competition law, dominance is generally defined as the ability of an undertaking to act independently of competitors.[24] Yet, in cases involving digital platforms, the presence of network effects, single-homing behavior, data-driven advantages, etc., may lead platform providers to indeed reach a position of being able to "act independently", even when the competitive constrains exerted on that undertaking would normally not constitute a dominant position.

66. The effectiveness of traditional competition law may be limited for other reasons. These include the *ex post* nature of competition law, its evidentiary and procedural requirements, and lengthy proceedings, which may limit its ability to prevent the establishment of entrenched market positions and competitive harm in fast-moving digital markets.

67. Market investigation tools, such as the one recently introduced in the Danish Competition Act, offer an alternative route, insofar as ranking practices that harm competition can be established to be the outcome of market structures or features. While a market investigation tool also applies *ex post* and requires extensive analysis, it does not require a finding of either dominance or abusive conduct.

68. The DMA in some way represents a more interventionist approach, imposing *ex ante* conduct requirements on designated gatekeepers, yet its scope is narrow and its application to concrete ranking design choices still requires significant operationalization through enforcement action. Furthermore, and although applying the DMA does not require a finding of dominance, the DMA only applies to platforms that have reached entrenched gatekeeping positions (or are likely to reach such positions in the near future).

69. The P2B applies to the majority of platforms regardless of their size or market position. It seeks to enhance transparency and directly targets informational asymmetries regarding ranking on platforms, but has thus far not resulted in comprehensive enforcement that directly addresses the harmful behavior.

70. Finally, consumer law is designed to enable consumers to understand the nature of the commercial transaction they are engaged with, but leaves it up to consumers to use that information (if they understand it) as they see fit.

[24] See e.g. Case 27/76, *United Brands*, EU:C:1978:22, para.65.

71. Taken together, these regimes form a multi-layered framework in which different tools address different dimensions of the same phenomenon. Their combination is necessary precisely because no single instrument is capable of fully capturing the economic and behavioral complexity of platform ranking.

72. Yet, concerns persist.

73. Given the complexity of ranking on platforms and the current dichotomous approach to commercial influences on the ranking, it is unclear how informed consumers are supposed to make use of the information. Furthermore, even when made aware of the presence of boosts, it does not seem, on average, to change the products they end up choosing.[25]

74. Similar concerns would presumably also apply for the P2B since it too is based on transparency measures, unless businesses somehow are more able than consumers to make use of increased transparency.[26]

75. If consumers and businesses are unable to recognize and react properly to disadvantageous commercial practices, it reduces the competitive pressure on platforms and disincentivizes other platforms to compete on merit-based ranking strategies.

AI may lead to compounded or new concerns

76. The challenges related to ranking – and the limitations of competition and consumer law to comprehensively address them – are likely to intensify with the integration of artificial intelligence (AI) into ranking and intermediation systems.

77. Thus, in platforms such as online marketplaces and OTAs that integrate AI models into their ranking systems, the ranking output may be decided not only by "ranking algorithms", but rather by multiple opaque layers, such as the underlying foundation model, the model training and fine-tuning process, the system orchestrating the model's outputs, and the application built on top of it – none of which may be fully transparent even to the platform provider itself.

78. Perhaps more fundamentally, many user-facing AI-based services such as chatbots typically do not even present users with a ranking of content in a traditional sense. Yet, the underlying system still processes user input and selects relevant responses, effectively performing a ranking that remains entirely hidden from the user. As a result, AI-assisted consumers often see just one or at most a few results, rather than a full list in a falling order of relevance. Existing regulatory transparency requirements may be inapplicable in these situations, and/or unfeasible given the AI owners inability to access the models "thought process" in any detail.[27]

79. In the short term, there is good reason to believe that the EU's Digital Markets Act is formulated in a way to capture AI-based threats to fairness and contestability, when deployed via or within designated core platform services. The DMA is technology-neutral, thus ensuring that gatekeepers cannot restrict fairness or contestability when deploying AI-powered features or services. Such adaptability is important, but it remains to be seen how

[25] Authority for Consumers and Markets (2021): Sponsored Ranking – An Exploration on its Effect on Consumer Welfare

[26] In essence, the P2B Regulation is a consumer law-style regulation, for business users.

[27] See for example section 5.3 in Bostoen, F., and Krämer, J., 2025, *Is the DMA ready for agentic AI*, https://cerre.eu/wp-content/uploads/2025/07/Is-the-DMA-Ready-for-Agentic-AI_Final.pdf.

far existing legal concepts, such as the notion of ranking itself, can be stretched without further clarification or adaptation.

80. Nevertheless, looking further ahead, concerns about well-functioning competition and consumer protection are compounded in a world where AI agents carry out commercial transactions on behalf of their users, with varying degrees of independence. It is not unthinkable that providers of AI agents will have both the incentive and ability to engage in practices that can be understood as acts of self-preferencing or operating with a lack of transparency for businesses or consumers who are impacted by them. Similarly, there may be both competition and consumer concerns relating to individual sellers' ability to pay AI agent providers for preferential treatment or visibility (boosts).

81. A question that should thus be further explored is how the existing regulatory instruments should evolve when ranking is no longer a visible list, but an increasingly opaque, AI-mediated selection process shaped by the provider's commercial incentives.