

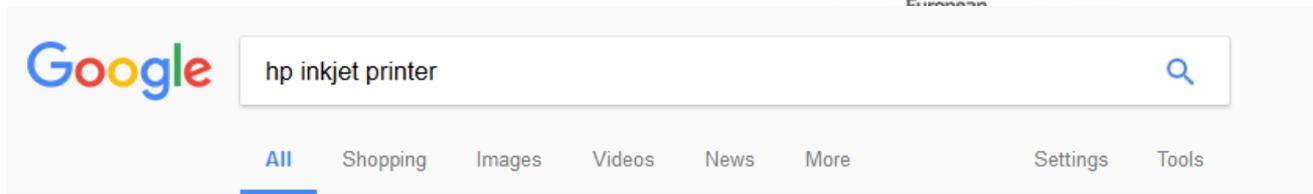


# **EU-China Competition Week Enforcement in digital sector**

**1 December 2021**

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# The Google Shopping case in a nutshell



About 862,000 results (0.57 seconds)

Google Shopping  
on the top

Shop for hp inkjet printer on Google Sponsored ⓘ

 HP ENVY 4526 All-in-One printer €69.99 Coolblue	 HP Deskjet 2130 All-in-One printer €43.89 Coolblue	 HP Officejet 5740 - All-in-One €102.95 bol.com	 Multifunctional Hp Officejet 3832 €60.43 discountoffice.be	 HP CR768A (Officejet 7110) €129.00 PrintAbout.nl
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Competitors not  
visible

## Printers - HP Store UK

[store.hp.com/UKStore/Merch/List.aspx?sel=PRN&fc\\_ptyp\\_inkp=1](https://store.hp.com/UKStore/Merch/List.aspx?sel=PRN&fc_ptyp_inkp=1) ▼

HP DeskJet 3720 Wireless All-in-One Printer with Instant Ink Plan. Get the compact printing power and wireless independence you need to print, scan, and copy ...

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## HP Printers - HP Store UK

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HP DeskJet 3720 Wireless All-in-One Printer with Instant Ink Plan. Get the compact printing power and wireless independence you need to print, scan, and copy ...

## Inkjet Printer - HP OfficeJet Pro | HP® United Kingdom

[www8.hp.com/uk/en/printers/officejet-pro-printers.html](https://www8.hp.com/uk/en/printers/officejet-pro-printers.html) ▼

Discover the HP OfficeJet Pro series of inkjet printers and hear how they pack huge capabilities into a small package, giving your business the power to be

Competition

## The abusive contact:

the more favourable positioning and display in Google's general search results pages of Google's own comparison shopping service

compared to competing comparison shopping services

## Enforcement experience

- Internal documents are key
  - Executives often discuss practices in emails
  - Engineers are more open about consequences
  - Digital companies always conduct lots of tests
- Experiments
  - Complainants conducted testing for us (Bing result switching experiment)
  - Third party monitoring tools (Sistrix – performed even better than its own engineers thought)
- Ask for raw data underlying arguments of dominant company
  - Google claimed it conducted a live experiment showing practice had no impact
  - We obtained the raw data (>1 billion queries with search results and clicks data)
  - Using our own IT we could not only rebut Google’s argument, but also positively show the anticompetitive impact of the practice

# The proposed Digital Markets Act

- A series of ex ante regulatory rules for large digital gatekeepers
  - Digital platforms from a given list
  - Designation process
- Key aims
  - Ensure contestability of markets
  - Fairness to benefit consumers and businesses
- Philosophy is to harmonise certain rules on an EU-wide basis
- Complementary to case-by-case competition enforcement - but it is not competition law
- Some provisions informed by experiences and knowledge from competition law. Benefit of having a more general rule
- Other provisions relate to issues that cannot be effectively dealt with by competition law



# Articulation of the DMA

- First step: designation of gatekeepers
- Second step: gatekeepers must apply two categories of obligations
  - Article 5: Precisely defined obligations which are automatically implemented (7 in total)
  - Article 6: More general obligations that are subject to an implementation dialogue (11 in total)
- Examples of obligations
  - anti-steering provisions
  - ban on MFN clauses
  - ban on preferential ranking and display in search results
  - various data-related and interoperability provisions
  - fair conditions for app stores
- Enforcement procedurally similar to Antitrust

## How are gatekeepers designated?

- Three core criteria:
  - There needs to be a **significant impact** on the EU internal market
  - Company must operate a core platform service that is an **important gateway** for business users to reach end users
  - Must have an **entrenched and durable** position
- Rebuttable presumption with thresholds
- Notification if company meets thresholds. Commission will designate the company as a gatekeeper unless it provides substantiated arguments why it should not be treated as such
- Commission may also designate as gatekeepers a provider of a core platform service that does not meet the thresholds but where it is determined following a case-by-case substantive assessment that the three core criteria are fulfilled