Google response to the DETE consultation on DSA & DMA

January 2021

Google welcomes the opportunity to contribute constructively to the discussion surrounding the EU's proposed Digital Services Act (DSA) and Digital Markets Act (DMA).

The DSA and DMA are important for the digital future of Europe. We agree there is a need for a regulatory framework that provides greater clarity on the responsibilities of digital platforms, promotes consumer choice online, and encourages business customers to make more use of the internet to the benefit of the European economy at large. In short we want more not less for European consumers and businesses.

We are currently reviewing the Commission proposals carefully. However, we are concerned that they appear to specifically target a handful of companies and make it harder to develop new products to support small businesses in Europe. We will continue to advocate for new rules that support innovation, increase responsibility and promote economic recovery to the benefit of European consumers and businesses.

Digital Services Act (DSA)

- **Supporting a responsible internet and smart regulation.** As we highlighted in our response to the EU DSA public consultation, we support the commission's goal to promote a responsible internet, and we are not opposed to regulation. We want to work constructively to ensure that regulation provides clarity, promotes innovation, and respects fundamental rights.

- **Preserving fundamental principles of the EU Single Market.** We welcome the Commission's proposal to maintain the core principles of the e-Commerce Directive, including its conditional intermediary liability regime, the prohibition on mandating general monitoring, and the country-of-origin principle. These principles enabled the growth of the digital economy in Europe and expanded access to information. Maintaining them, and improving them by adding protections for voluntary efforts to moderate content, will further foster innovation and protect fundamental rights.

- **Legal certainty for businesses**: services need to be given clear rules to meet their obligations, and sufficient flexibility in designing their implementation. Taking into account the variety of complexity of online intermediaries, it is important to get these details right.

- **Getting the details right.** We call on policymakers to ensure business certainty around due diligence obligations, ensure appropriate safeguards around disclosure of user content to authorities, and strengthen protections for fundamental rights. These include ensuring legal clarity for content removals, clear appeal mechanisms and transparency, and giving users control on recommendations.
    - **Fundamental rights:** The DSA aims to strengthen the protection of fundamental rights. We remain concerned about any provisions that would impact free expression rights and freedom to conduct a business. This includes any provisions that would perversely incentivise companies to remove content without careful decision-making. This also includes provisions that are overly prescriptive, which could interfere with development

and uptake of digital services, and barriers that could constrain the arts and science.

- **Notice formalities:** We support the need for standardised and substanianted requests to remove content through our legal removal channels.
- **Recommendations:** We support efforts to give users more control and transparency around recommendations, so long as any requirements are flexible and principled-based, so that they can be tailored to the particular service.
- **Alternative Dispute Resolution:** We understand the importance of users having the ability to appeal content decisions, and we already offer mechanisms for them to do so. However, we are concerned about the provisions that would allow any individual -- including bad-faith actors -- to use alternative dispute resolution (ADR) to arbitrate every dispute. This opens up avenues for abuse, does not scale to the millions of decisions platforms make, and could weaken attempts to develop robust and transparent content management systems.
    - For instance, covered entities may respond by making more generic statements in information moderation policies to avoid claims that they acted inconsistently; alternatively, covered entities' policies and practices could become overly rigid, unable to adapt to the constantly changing shifts in online content for fear that they will face claims of inconsistency. We want to ensure that our systems are used for effective decision-making, and that we prevent bad-faith or invalid appeals. For that reason, we believe that it is more appropriate for the regulator to oversee, at a systemic level, appeals processes.
- **Transparency obligations**. We are committed to providing greater transparency for our users and governments so that they better understand the content they are seeing and how to notify us of concerns. The DSA should support these kinds of constructive transparency measures while ensuring that platforms can continue to protect user privacy, ensure commercially sensitive information is not revealed and prevent bad actors from gaming the system. Google has long been a leader in transparency, including disclosing data on content moderation, removal requests and blocking bad ads.
- **Transparency reports.** We stress the need for transparency reporting obligations to be reasonable, proportionate, and based on clear metrics. We recognise the importance of improving accountability and user trust, and have a long track record of providing information to users on our services.
    - Transparency requirements should allow for enough flexibility to take into account the differences between services. For example, metrics based on "average turnaround time" are problematic for a few reasons. First, it may not be the most effective metric to assess the effectiveness of the measures deployed by a platform. Secondly, it may encourage platforms to speed up turn-around time rather than work expeditiously but carefully. Finally, measuring average turn-around times will also skew the data, compared to a metric, where appropriate, like median turn-around time.
    - It will be important to take into account the risks that information can be used by bad actors to game systems, that commercially sensitive information is exposed, or that user privacy is affected. We would be concerned if the DSA allowed third parties to require direct access to platforms' algorithms.
- **Risk mitigation.** We appreciate the importance of assessing and acting to mitigate risk. At the same time, it is unclear from this proposal what a platform would have to do to satisfy these requirements, and as such, they may lead to over-cautiously approaches that impede legitimate content and access to information. It could also diminish innovation in new risk management approaches, to the extent that platforms lack certainty about whether those approaches will satisfy the requirements.

- **Regulatory oversight:** The main focus as regards regulatory oversight structures should be to ensure greater legal certainty for users and industry, so as to enable the next wave of innovation and economic growth. The country-of-origin principle is fundamental in supporting these goals: it can promote certainty and growth, by providing clarity to users and service providers on which member state is providing oversight of those systems.
    - We therefore welcome governance structures where default oversight takes place through country-of-origin regulators, with decisions taken based on a strong evidence base, and investigations conducted within the context of the country-of-origin administrative system and with powers exercised with complete independence.
    - As we highlighted in our response to the European Commission's DSA public consultation, effective oversight requires a broad set of regulatory tools that have a systemic focus and support holistic solutions, based on a robust understanding of market context and user experiences. We therefore welcome cooperation mechanisms between regulatory entities that support these aims, and will be considering the consequences of the Commission's proposals on process safeguards. We want to ensure that the framework for cooperation between regulators should not reduce certainty for industry and users, and support robust regulatory decisions.
    - A number of elements in the proposal on oversight require further clarification, including around due process for VLOPs, and powers of investigation and fining.

- **A concerning focus on "very large online platforms."** In general, we support a consistent set of rules for all market players. We acknowledge that not all services have the same level of resources, but we are concerned about a due diligence regime with asymmetric obligations targeted at "very large online platforms."
    - **Risks to safety and responsibility from targeting very large platforms.** To be truly effective, due diligence obligations must protect against illegal content proliferating on less regulated platforms. This is not a theoretical risk, and indeed migration of content is a worrisome trend that analysts have observed with terrorist content, violent extremism, and child sexual abuse imagery.
    - **Risks to innovation from targeting very large platforms.** Asymmetric obligations risk disincentivising growth for smaller players, keeping them artificially small to avoid regulation and further propelling the crisis of innovation on the continent that EU leaders have long recognised.

Digital Markets Act (DMA)

- **Supporting a responsible internet and smart regulation.** As we highlighted in our response to the European Commission's DMA public consultation, we support the commission's goal to promote an open, competitive internet, and we are not opposed to regulation. We want to work constructively to ensure that regulation provides clarity, safeguards choice, and promotes innovation.

- **Our tools are built to help users**. Our testing has consistently shown that people want quick access to information, so over the years we've developed new ways to organise and display search results.
    - For example, when you are searching online for a restaurant, you can at the same time quickly access directions because a map has been integrated into Google's Search results pages - saving you the time and effort of a second search through a map app or website.

    - Product integrations also help small businesses to be found more easily and to provide relevant information to their customers such as delivery, curbside pickup or takeaway options during lockdown periods, and can help people in times of emergency such as the Android Emergency location feature.
    - New rules should encourage new and improved features and products which help European consumers get things done and access information quickly and easily.

- **Rules shouldn't deter wider EU digitalisation**. European companies, both large and small, use online tools to help grow their businesses more easily and at a lower cost. For example, online ads help businesses of all sizes find new customers around the world, while cloud computing helps reduce overhead costs and increase productivity. As the EU updates its regulations, it should ensure new rules don't add undue cost and burden for European businesses in ways that make it harder to scale quickly and offer their services across the EU and around the world.

- **Data portability can promote choice and competition, but should safeguard innovation**. We agree that competition among digital platforms is strengthened by measures that allow people to move between platforms without losing access to their data. This also can make it easier for new players to enter or expand in digital markets.
    - Google offers a wide range of tools that allow people to be in control of their online experience, such as Google "My Account", which helps users choose the privacy settings that are right for them, or Google Takeout, which allows users to export their data. Similarly, providing access to aggregated datasets could benefit R&D in a range of industries while safeguarding user data privacy. As new rules are being evaluated, the question is not whether data mobility or data access should be facilitated, but how to achieve their benefits without sacrificing product quality or innovation incentives.

- **Digital platforms are regulated and existing rules can be used effectively.** For example, competition rules apply to online platforms and can effectively govern their relationship with businesses and users. The digital sector has been subject to a close scrutiny by competition authorities in Europe. In addition to three Google antitrust cases, competition authorities have assessed the competitive effects of conduct or acquisitions in new digital markets. For instance, in July 2020, the European Commission launched a competition inquiry into the sector of Internet of Things (IoT) for consumer-related products and services in the European Union.
    - As a September 2020 joint position paper of the Nordic competition authorities notes, "*the current competition law framework is capable of handling most anti-competitive behaviour in the digital economy. The competition law framework has proven to be resilient and flexible in the face of technological growth and disruptive innovation, making it highly relevant for tackling competition issues in digital markets*". The regulators add that "*issues related to the pace of change of digital markets and the speed with which competition cases are enforced may be addressed by the use of interim measures*".
    - In addition, the Platform-to-Business Regulation (P2B) which applies from July 2020, governs the relationship between "online intermediation services" and business users and imposes a wide range of obligations on transparency, ranking or terms and conditions. New measures, enacted before the assessment of the effectiveness of the P2B regulation, risk further increasing complexity for participants of the platform economy without achieving the intended outcome.
    - Other regulations, such as the General Data Protection Regulation or consumer protection laws apply to online platforms, irrespective of their size.

- **Some of the regulatory challenges are not related to the size of online platforms.** Perceived concerns about digital services, such as those relating to privacy, transparency, and ranking decisions, may apply regardless of the size of the service provider or its business model. And several of the possible *ex ante* rules appear designed to address consumer harms independent of the gatekeeper/non-gatekeeper status of a platform. If that is the case, the benefits to platform users would be maximised by ensuring a consistent application across all players in the sector.

- **The upcoming regulation should be future proof.** Digital platforms often operate using different business models and monetisation strategies across markets, geographies and sectors. Digital ecosystems evolve rapidly. Objectives such as "fair trading" or "open choice" are commendable. The biggest challenge however is to translate them into actionable rules for online platforms when it comes to product design.
    - Therefore new regulation should be based on a set of high-level principles that could be applied across different types of platforms (*e.g.*, a measure to address actual or perceived conflicts of interest where a platform owner competes on the platform), complemented by platform-specific guidance that depends on the technologies at issue (*e.g.*, what this means in the context of ad tech services as compared to what this means in the context of an app store or marketplace).