



## What is self-preferencing? Why might self-preferencing raise competition law concerns?

Self-preferencing involves actions by an undertaking which are designed to favour its own products or services over those of its competitors.

Self-preferencing is often described as a subset of a broader type of conduct, known as leveraging. Leveraging conduct involves the use of power in one market to strengthen a position in another market.

From a competition law perspective, the overall concern with self-preferencing, and other types of leveraging conduct, is that an undertaking with a dominant position may engage in this conduct in order to enhance its own market position, and to prevent or inhibit the entry/expansion of other competitors. In other words, there is a concern that self-preferencing and/or leveraging conduct engaged in by dominant undertakings may produce exclusionary effects.

## What types of self-preferencing conduct might fall within the scope of Article 102 TFEU?

Self-preferencing is not, in general, prohibited by Article 102 TFEU. Instead, it is subject to an “effects” test. This means that self-preferencing conduct may constitute an abuse of a dominant position depending on its effects on competition and consumers. The reason for this is that the question of whether self-preferencing should be prohibited by competition law is not straightforward, and the answer may well vary from case to case.

In the *Google Shopping* decision, the European Commission found that Google had abused its dominant position in the relevant markets for general search services in the EEA by positioning, and displaying more favourably, in its general search results pages, its own comparison shopping service compared to other competing comparison shopping services. It imposed a fine of €2.42 billion. The Google Shopping decision is currently under appeal before the General Court of the EU.

In addition, self-preferencing conduct can overlap with, or contain elements of other types of conduct that might constitute an abuse of a dominant position prohibited by Article 102 TFEU, provided the relevant legal tests are satisfied. **This conduct might include:**

Tying or bundling arrangements.

Discriminatory conduct (such as giving preferential terms to some undertakings over others).

Refusal to supply goods or services.



### For more information:

- See, in particular, the Commission's *Google Shopping Decision*, which is available online from the [European Commission's website](#).
- For more general information on Article 102 TFEU, see section 4 of the DFF's *Short guide to competition law for digital rights litigators*.