OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection


Rapporteur for opinion: Petra Kammerevert
SHORT JUSTIFICATION

Gatekeepers are freely exploiting independent media companies as well as entities in the cultural and creative sectors by making direct investment more difficult in the medium and long term. Within gatekeepers ecosystems, created from central platform services, such actions involve unilaterally dictating the terms of use, prices and behaviour as well as using data as exclusively as possible for their own benefit. Such actions are political unacceptable and need to be systematically and efficiently prevented.

The only way to achieve this is to take account of the dual character of these sectors, as economic as well as cultural assets, whilst ensuring that they remain as independent as possible from state control and influence. A complementary interplay of institutions at the regional, national, and European levels must be established to: (i) allow for strong European competition supervision and (ii) leave room for a diversity of opinions, cultures, and media within the Member States. In the case of a centralised treatment of cultural and media products and services based solely on competitive standards, the Regulation would lack the cultural compatibility required by Article 167 (4) TFEU, which is all the more important in the case of horizontal regulations, as is the case here. More specific and better functioning regulations for certain sectors at European level must also be established and prevail in the culture and media sectors. The mere inclusion of “without prejudice clauses” in the recitals does not resolve these conflicts. Instead they create legal uncertainty and ultimately undermine the purpose of the Regulation.

In order to properly adjust the balance of power with gatekeepers, web browsers and digital voice assistants should be explicitly included in the list of central platform services. At the same time, there are doubts about explicitly including multi-sided streaming platform services (e.g. for games, music or movies) or video-on-demand platforms. It is true that there is a risk that such services might also acquire gatekeeper characteristics in the near future, which could call into question the contestability of the market. However, this is not a case of any number of demanders being brought together with any number of providers via the open Internet and a concrete exchange relationship being created from such an open intermediary service.

Efficient law enforcement only seem possible if the additional obligations and prohibitions resulting from the qualification as a gatekeeper can be applied quickly. Therefore the proposed timeframes should be shortened. Data generated primarily through the offerings of others than the gatekeeper must not be monopolised exclusively in favour of the gatekeeper. In addition, it is necessary to ensure a minimum level of transparency in setting advertising prices in order to put business users in a fair negotiating position in relation to the gatekeeper. Accordingly, the pricing mechanism must not remain in the algorithm-driven black box of the gatekeepers. In order to properly assess fairness, commercial users or independent entities must be able to measure performance, especially with respect to online advertising services.

Finally, it is recalled that advertising is a major source of funding for professional content across a wide range of media. As such, new forms of advertising should not be banned across the board, but should be regulated in such a way that they handle data respectfully and transparently.
AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1
Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) Digital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by providing new business opportunities in the Union and facilitating cross-border trading.

Amendment

(1) Digital services in general and online platforms in particular play an increasingly important role in the economy and society. In the European internal market, they provide new business opportunities and facilitate cross-border trading.

Amendment 2
Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal and economic implications, have led national legislators and sectoral regulators to act. A number of national regulatory solutions have already been adopted or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. This has created a risk of divergent regulatory solutions and thereby fragmentation of the

Amendment

(6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal and economic implications, have led national legislators and sectoral regulators to act. A number of regulatory solutions at national level have already been adopted or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. This has created a risk of divergent regulatory solutions and thereby fragmentation of the
internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements.

Amendment 3

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised **mandatory rules** should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market.

Amendment

(8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised **legal obligations** should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market.

Amendment 4

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) **A fragmentation of the internal market can only be effectively averted if** Member States **are prevented from applying national rules which are specific to the types of undertakings and services covered by this Regulation. At the same time, since** this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, **to the corresponding national competition rules and to other national competition rules** regarding unilateral behaviour **that are** based on an individualised assessment of market positions and behaviour, including its likely effects and the precise scope of

Amendment

(9) **This Regulation does not override national competition laws or render them unlawful nor does it preclude** Member States **from imposing identical, similar, stricter or different obligations on undertakings, in order to pursue legitimate public interests, in compliance with Union law. Those legitimate public interests are inter alia consumer protection, the fight against acts of unfair competition and the protection and fostering of media freedom and pluralism of media or opinion as well as diversity in cultures or in languages. In particular the right of the Member States to impose obligations on the undertakings referred to as "gatekeepers" within the meaning of**
the prohibited behaviour, and which provide for the possibility of undertakings to make efficiency and objective justification arguments for the behaviour in question. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market.

Amendment 5
Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Systematic mergers and acquisitions should have a clear and legal threshold to put an end to killer acquisitions where big companies buy start-ups and growing companies in order to suppress any possible competition. A special attention should be given to takeovers in important sectors such as health, education, defence and financial services.

Amendment 6
Proposal for a regulation
Recital 13

Text proposed by the Commission

Amendment

(13) In particular, online intermediation services, online search engines, operating systems, online social networking, video
sharing platform services, number-independent interpersonal communication services, cloud computing services and online advertising services all have the capacity to affect a large number of end users and businesses alike, which entails a risk of unfair business practices. They therefore should be included in the definition of core platform services and fall into the scope of this Regulation. Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council. In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.

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Amendment 7

Proposal for a regulation
Recital 14 a (new)

Text proposed by the Commission

Amendment
(14a) Gatekeepers may also provide other ancillary services, for instance retailing or distribution activities, that are targeted at end users alongside their core platform services and in a manner that is indistinguishable for the average user. Such ancillary services can compete with business users of the core platform service and contribute significantly to the imbalance in a given market and ultimately increase unfairly the gatekeeper’s power, including in relation to the gatekeeper’s business partners, such as suppliers of goods or services, relying on such ancillary service. To prevent gatekeepers from unfairly benefiting from the leverage provided by provision of parallel services, such ancillary services should also be subject to the obligations applicable to core platform services.

Amendment 8
Proposal for a regulation
Recital 14 b (new)

Text proposed by the Commission

(14b) The impact of gatekeepers on the market makes their business partners, whether business users or suppliers of ancillary services, highly vulnerable to unfair terms and conditions of the gatekeepers they rely on. As such, gatekeeper should ensure that their terms and conditions are transparent and fair. While appropriate and proportionate sanctions in case of breach of such terms and conditions should be allowed, they should be formally justified and allow the sanctioned party to contest them. For this purpose, gatekeepers should provide for an internal system for handling swiftly the complaints of their business users and suppliers of ancillary services, including in their national language if the gatekeeper’s service actively targets the
Member State concerned.

Amendment 9

Proposal for a regulation
Recital 15

_text proposed by the Commission_

(15) The fact that a digital service qualifies as a core platform service in light of its widespread and common use and its importance for connecting business users and end users does not as such give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway and is operated by a provider with a significant impact in the internal market and an entrenched and durable position, or by a provider that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should apply only to undertakings designated on the basis of these three objective criteria, and they should only apply to those of their core platform services that individually constitute an important gateway for business users to reach end users.

_text proposed by the Commission_

Amendment

(15) The fact that a digital service qualifies as a core platform service in light of its widespread and common use or its importance for connecting business users and end users, does not, as such, give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway, is operated by a provider with a significant impact in the internal market and an entrenched and durable position, or by a provider that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should only apply to undertakings designated on the basis of these three objective criteria, and to those of their core platform services that individually constitute an important gateway for business users to reach end users.

Amendment 10

Proposal for a regulation
Recital 16

_text proposed by the Commission_

(16) In order to ensure the effective application of this Regulation to providers of core platform services which are most likely to satisfy these objective requirements, and where unfair conduct weakening contestability is most prevalent and impactful, the Commission should be

_text proposed by the Commission_

Amendment

(16) Where unfair conduct weakening contestability is most prevalent and impactful, and in order to ensure the effective application of this Regulation to providers of core platform services which are most likely to satisfy these objective requirements, the Commission should be
able to directly designate as gatekeepers those providers of core platform services which meet certain quantitative thresholds. Such undertakings should in any event be subject to a fast designation process which should start upon the entry into force of this Regulation.

Amendment 11

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) A very significant turnover in the Union and the provision of a core platform service in at least three Member States constitute compelling indications that the provider of a core platform service has a significant impact on the internal market. This is equally true where a provider of a core platform service in at least three Member States has a very significant market capitalisation or equivalent fair market value. Therefore, a provider of a core platform service should be presumed to have a significant impact on the internal market where it provides a core platform service in at least three Member States and where either its group turnover realised in the EEA is equal to or exceeds a specific, high threshold or the market capitalisation of the group is equal to or exceeds a certain high absolute value. For providers of core platform services that belong to undertakings that are not publicly listed, the equivalent fair market value above a certain high absolute value should be referred to. The Commission should use its power to adopt delegated acts to develop an objective methodology to calculate that value. A high EEA group turnover in conjunction with the threshold of users in the Union of core platform services reflects a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold number of users in

Amendment

(17) A very significant turnover in the Union and the provision of a core platform service in at least three Member States constitute compelling indications that the provider of a core platform service has a significant impact on the internal market. This is equally true where a provider of a core platform service in at least three Member States has a very significant market capitalisation or equivalent fair market value. Therefore, a provider of a core platform service should be presumed to have a significant impact on the internal market where it provides a core platform service in at least three Member States and where either its group turnover realised in the EEA is equal to or exceeds a specific, high threshold or the market capitalisation of the group is equal to or exceeds a certain high absolute value. For providers of core platform services that belong to undertakings that are not publicly listed, the equivalent fair market value above a certain high absolute value should be referred to. The Commission could use its power to adopt delegated acts in order to develop an objective methodology to calculate that value. A high EEA group turnover in conjunction with the threshold of users in the Union of core platform services reflects a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold
the Union reflects a relatively significant potential to monetise these users in the near future. This monetisation potential in turn reflects in principle the gateway position of the undertakings concerned. Both indicators are in addition reflective of their financial capacity, including their ability to leverage their access to financial markets to reinforce their position. This may for example happen where this superior access is used to acquire other undertakings, which ability has in turn been shown to have potential negative effects on innovation. Market capitalisation can also be reflective of the expected future position and effect on the internal market of the providers concerned, notwithstanding a potentially relatively low current turnover. The market capitalisation value can be based on a level that reflects the average market capitalisation of the largest publicly listed undertakings in the Union over an appropriate period.

Amendment 12
Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) Such an assessment can only be done in light of a market investigation, while taking into account the quantitative thresholds. In its assessment the Commission should pursue the objectives of preserving and fostering the level of innovation, the quality of digital products and services, the degree to which prices are fair and competitive, and the degree to which quality or choice for business users and for end users is or remains high. Elements that are specific to the providers of core platform services concerned, such as extreme scale economies, very strong network effects, an ability to connect many business users with many end users.

Amendment

(25) Such an assessment can only be done in light of a market investigation, while taking into account the quantitative thresholds. In its assessment the Commission should pursue the objectives of preserving and fostering the level of innovation, access to public information entailing the making available of information non-discriminatory to a potentially unlimited number of persons or users in general, the quality of digital products and services, the degree to which prices are fair and competitive, and the degree to which quality or choice for business users and for end users is or remains high. Elements that are specific to
through the multi-sidedness of these services, lock-in effects, a lack of multi-homing or vertical integration, can be taken into account. In addition, a very high market capitalisation, a very high ratio of equity value over profit or a very high turnover derived from end users of a single core platform service can point to the tipping of the market or leveraging potential of such providers. Together with market capitalisation, high growth rates, or decelerating growth rates read together with profitability growth, are examples of dynamic parameters that are particularly relevant to identifying such providers of core platform services that are foreseen to become entrenched. The Commission should be able to take a decision by drawing adverse inferences from facts available where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

Amendment 13
Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) The obligations laid down in this Regulation are limited to what is necessary and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they have a particularly

Amendment

(33) The obligations laid down in this Regulation are limited to what is necessary, proportionate and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they have a particularly
negative direct impact on the business users and end users. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified, following an in-depth investigation, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations.

Amendment 14
Proposal for a regulation
Recital 36 a (new)

Text proposed by the Commission

(36a) Article 5(a) of this Regulation should not be understood as suggesting that platforms that are not designated as gatekeepers may freely combine personal data across services without the individual's consent.

Amendment 15
Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) Because of their position, gatekeepers might in certain cases restrict the ability of business users of their online intermediation services to offer their goods or services to end users under more favourable conditions, including price, through other online intermediation services. Such restrictions have a negative direct impact on the business users and end users. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified, following an in-depth investigation, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations.
significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users.

services or the direct online sales channels they own. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services or corresponding direct online distribution channels, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services or other direct online distribution channels and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users or their less favourable display in the ranking.

Amendment 16

Proposal for a regulation
Recital 38

Text proposed by the Commission

(38) To prevent further reinforcing their dependence on the core platform services of gatekeepers, the business users of these gatekeepers should be free in promoting and choosing the distribution channel they consider most appropriate to interact with any end users that these business users have already acquired through core platform services provided by the gatekeeper. Conversely, end users should also be free to choose offers of such business users and to enter into contracts with them either through core platform services of the gatekeeper, if applicable, or
from a direct distribution channel of the business user or another indirect distribution channel such business user may use. This should apply to the promotion of offers and conclusion of contracts between business users and end users. Moreover, the ability of end users to freely acquire content, subscriptions, features or other items outside the core platform services of the gatekeeper should not be undermined or restricted. In particular, it should be avoided that gatekeepers restrict end users from access to and use of such services via a software application running on their core platform service. For example, subscribers to online content purchased outside a software application download or purchased from a software application store should not be prevented from accessing such online content on a software application on the gatekeeper’s core platform service simply because it was purchased outside such software application or software application store.

Amendment 17
Proposal for a regulation
Recital 39

Text proposed by the Commission

(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users to raise concerns about unfair behaviour by gatekeepers with any relevant administrative or other public authorities. For example, business users may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit such a possibility of raising concerns or seeking available

Amendment

(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users to raise concerns about unfair behaviour by gatekeepers with any relevant administrative or other public authorities. For example, business users may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit such a possibility of raising concerns or seeking available
redress, for instance by means of confidentiality clauses in agreements or other written terms, should therefore be prohibited. This should be without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use including the use of lawful complaints-handling mechanisms, including any use of alternative dispute resolution mechanisms or of the jurisdiction of specific courts in compliance with respective Union and national law. This should therefore also be without prejudice to the role gatekeepers play in the fight against illegal content online.

Amendment 18

Proposal for a regulation
Recital 42

Text proposed by the Commission

(42) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the sheer complexity of modern day programmatic advertising. The sector is considered to have become more non-transparent after the introduction of new privacy legislation, and is expected to become even more opaque with the announced removal of third-party cookies. This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased and undermines their ability to switch to alternative providers of online advertising services. Furthermore, the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment.

Amendment

(42) The conditions under which gatekeepers provide targeted online advertising based on contextual information services to business users including both advertisers and publishers are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the sheer complexity of modern day programmatic advertising. This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased therefore their ability and possibility to switch to alternative providers of online advertising services increased. Furthermore, the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily
would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, when requested and to the extent possible, with information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain.

**Amendment 19**

**Proposal for a regulation**

**Recital 43**

*Text proposed by the Commission*

(43) A gatekeeper may in certain circumstances have a dual role as a provider of core platform services whereby it provides a core platform service to its business users, while also competing with those same business users in the provision of the same or similar services or products to the same end users. In these circumstances, a gatekeeper may take advantage of its dual role to use data, generated from transactions by its business users on the core platform, for the purpose of its own services that offer similar services to that of its business users. This may be the case, for instance, where a gatekeeper provides an online marketplace or app store to business users, and at the same time offer services as an online retailer or provider of application software against those business users. To prevent gatekeepers from unfairly benefiting from their dual role, it should be ensured that they refrain from using any aggregated or non-aggregated data, which may include anonymised and personal data that is not products and services relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply targeted online advertising services based on contextual information, when requested, to the extent possible and free of charge, with information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain.

*Amendment*

(43) The gatekeeper may in certain circumstances have a dual role as a provider of core platform services whereby it provides a core platform service to its business users, while also competing with those same business users in the provision of the same or similar services or products to the same end users, including as part of an ancillary service. In these circumstances, a gatekeeper may take advantage of its dual role to use data, generated from transactions by its business users on the core platform or from transactions related to its ancillary service, for the purpose of its own services or goods that offer similar services to that of its business users or of its suppliers. This may be the case, for instance, where a gatekeeper provides an online marketplace or app store to business users, and at the same time offer services as an online retailer or provider of application software against those business users or against its suppliers. To prevent gatekeepers from unfairly benefiting from their dual role, it
publicly available to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit that competes with the business users of a core platform service. Should be ensured that they refrain from using any aggregated or non-aggregated data, which may include anonymised and personal data exclusively in domain of core platform providers, to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit that competes with the business users of a core platform service or with the supplier of an ancillary service.

Amendment 20

Proposal for a regulation
Recital 46

Text proposed by the Commission

(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its core platform service and thereby favour their own software applications.

Amendment

(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its core platform service and thereby favour their own software applications, and should offer end users the opportunity to choose the software applications on its core platforms including an option to settings without any pre-installed software that is not required for the basic functionality of their platform.

Amendment 21

Proposal for a regulation
Recital 47
(47) The rules that the gatekeepers set for the distribution of software applications may in certain circumstances restrict the ability of end users to install and effectively use third party software applications or software application stores on operating systems or hardware of the relevant gatekeeper and restrict the ability of end users to access these software applications or software application stores outside the core platform services of that gatekeeper. Such restrictions may limit the ability of developers of software applications to use alternative distribution channels and the ability of end users to choose between different software applications from different distribution channels and should be prohibited as unfair and liable to weaken the contestability of core platform services. In order to ensure that third party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper the gatekeeper concerned may implement proportionate technical or contractual measures to achieve that goal if the gatekeeper demonstrates that such measures are necessary and justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system. This prohibition on restricting the ability of end users to install and use, or access, third-party software applications or application stores should therefore also be without prejudice to the ability of gatekeepers to take the required responsibility in the fight against illegal content online.

Proposal for a regulation
Recital 48
(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through business users with which they cooperate or with whom they have special cooperation agreements or who they prefer for other reasons not related to the intrinsic relevance of their service, which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties that are also mediated via this core platform service, or it can use other settings to give itself preferential treatment over these third parties. This can occur for instance with products or services, including other core platform services, which are ranked within or along the results of online search engines, or which are partly or entirely embedded in the search results of online search engines, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which can be considered or used by certain end users as a service distinct or additional to the online search engine. Such preferential or embedded displays by a separate online intermediation service shall constitute an inadmissible preference, irrespective of whether the information or results within the favoured groups of specified results could also have been provided by competing services and irrespective of whether such areas are ranked in a non-discriminatory way. Inadmissible preference is also taking place in software applications which are distributed through software application stores, or products or services that are given
prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace, or products or services to which users are directed following a voice request by an end user to a digital voice assistant. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper, which can lead to a conflict of interest. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

Amendment 23
Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and

Amendment

(49) In such situations of a conflict of interest, the gatekeeper should not partly or entirely embed such distinct products or services in online search engines results or groups of results. However, it may rank its products or services, provided that it doesn’t engage in any form of differentiated or preferential treatment in ranking, display or making embedded results on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it either controls or cooperates with or prefers for any other reason. In particular, if the presentation of results by a core platform service includes the ranking of separate products or services, third parties should be afforded equal opportunity to rank their product or service in the same format and on the same terms and conditions. Should this take place in exchange for
enforcement of this obligation. 34

remuneration, to avoid any conflict of interest, the gatekeeper’s separate product or service should be treated as a separate commercial entity and should be commercially viable as a stand-alone service, offered outside of the gatekeeper’s core platform service. The gatekeeper should refrain from imposing mechanisms or conditions that make the gathering and the combination of relevant data from end users or the obtaining of consent for the use of such data by a business user for the purpose of serving interest-based advertising within a core platform service more burdensome or difficult where the business user complies with all statutory requirements for such advertising, in particular under Regulation (EU) 2016/679. It is necessary to provide for entire disclosure and transparency of the parameters and data used for decision making, execution and measurement of the performance measuring tools, in particular with regard to ad inventory and services owned by the gatekeeper in relation to ad inventory and intermediation services owned by other publishers or service providers connected with the gatekeeper’s platform. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking, display or making of embedded results are also generally fair, reasonable and non-discriminatory as well as that business users do have the same access as the gatekeeper to any information resulting from the ranking or any other competition-relevant aspects related to their respective products or services. Ranking should in this context cover all forms of relative prominence, including among others order, graphic display, rating, linking or voice results. In particular, and with regard to digital voice assistants, it should be ensured that the ranking of products and services and thus the, typically single, response to a user’s voice request, should accurately and impartially reflect that request. To ensure
that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. Such an equivalent effect can for instance be achieved by ad formats that are used by users in a similar manner to the gatekeeper's or third parties' online intermediation services, or that benefit the gatekeeper in a similar manner to the preferential treatment in ranking itself (e.g., in terms of financial gains, user access / traffic or data access). The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.³⁴


Amendment 24

Proposal for a regulation
Recital 50

Text proposed by the Commission

(50) Gatekeepers should not restrict or prevent the free choice of end users by technically preventing switching between or subscription to different software applications and services. This would allow more providers to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and shall not raise artificial technical barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to consumers,

Amendment

(50) Gatekeepers should not restrict or prevent the free choice of end users by technically preventing switching between, installment, effective use or subscription to different, including third party software applications and services. This would allow more providers to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and shall not raise artificial technical barriers so as to make switching, installing or
including by means of pre-installation, as well as the improvement of the offering to end users, such as price reductions or increased quality, should not be construed as constituting a prohibited barrier to switching.

Amendment 25

Proposal for a regulation
Recital 51

Text proposed by the Commission

(51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different Internet access service providers, in particular through their control over operating systems or hardware. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing their Internet access service provider.

Amendment

(51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different Internet access service providers, in particular through their control over operating systems or hardware. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing their Internet access service provider or discriminate against using additional software by the end users, such as, for example, establishing virtual private network to hide or change their Internet Protocol.

Amendment 26

Proposal for a regulation
Recital 52 a (new)

Text proposed by the Commission

(52a) Interoperability needs to also be ensured for messaging and social media services, providing the users with the
possibility to migrate from one platform to another without losing their data and contacts.

Amendment 27

Proposal for a regulation
Recital 53

*Text proposed by the Commission*

(53) The conditions under which gatekeepers *provide* online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given ad. To further enhance fairness, transparency and contestability of online advertising services designated under this Regulation as well as those that are fully integrated with other core platform services of the same provider, the designated gatekeepers should therefore provide advertisers and publishers, when requested, with free of charge access to the performance measuring tools of the gatekeeper and the information necessary for advertisers, advertising agencies acting on behalf of a company placing advertising, as well as for publishers to carry out their own independent verification of the provision of the relevant online advertising services.

*Amendment*

(53) The conditions under which gatekeepers *targeted* online advertising services *based on contextual information* to business users including both advertisers and publishers are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given ad. To further enhance fairness, transparency and contestability of online advertising services designated under this Regulation as well as those that are fully integrated with other core platform services of the same provider, the designated gatekeepers should therefore provide advertisers and publishers, when requested, with free of charge access to the performance measuring tools of the gatekeeper for the purpose of *targeted digital advertising based on contextual information* and the information necessary, including *criteria used by the ad-tech platform services such as pricing mechanisms, advertising auctions and their weighting, and fees charged by ad exchanges*, for advertisers, advertising agencies acting on behalf of a company placing advertising, as well as for publishers to carry out their own independent verification of the provision of the relevant online advertising services. This should include data relating to all parameters used by gatekeepers or services belonging to the same undertaking in the context of an advertising intermediation services in order to determine the outcome of such intermediation and corresponding prices.
for advertisements or charges for any intermediation service provided on either the buy-side or the sell-side.

Amendment 28
Proposal for a regulation
Recital 54

Text proposed by the Commission

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users should be granted effective and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate. These portability rights should provide users with the right to access and transfer their data from the platforms that hold it.

Amendment

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users should be granted effective, free of charge, and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate. These portability rights should provide users with the right to access and transfer their data from the platforms that hold it.
Amendment 29

Proposal for a regulation
Recital 55

Text proposed by the Commission

(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.

Amendment

(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. The obtaining of such consent should be as user-friendly as possible and under the same conditions, such as the duration and renewal of consent, as those applied to the consent provided by the end user to the gatekeeper for the use of such data for its own services. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.

Amendment 30

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Proposal for a regulation
Recital 56

Text proposed by the Commission

(56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. Providers of online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. Providers of online search engine services collect these data from searches undertaken on their own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other providers of such services, so that these third-party providers can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users by appropriate means, without substantially degrading the quality or usefulness of the data.

Amendment

(56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. Providers of online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. Providers of online search engine services collect these data from searches undertaken on their own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other providers of such services, so that these third-party providers can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users by appropriate means, without substantially degrading the quality or usefulness of the data. The gatekeeper should be able to demonstrate that anonymised query, click and view data have been adequately tested against possible re-identification risks.
Amendment 31
Proposal for a regulation
Recital 57

Text proposed by the Commission

(57) In particular gatekeepers which provide access to software application stores serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of their software application stores, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, that would be unfair or lead to unjustified differentiation. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other providers of software application stores; prices charged or conditions imposed by the provider of the software application store for different related or similar services or to different types of end users; prices charged or conditions imposed by the provider of the software application store for the same service in different geographic regions; prices charged or conditions imposed by the core platform service provider for the same service the gatekeeper offers to itself. This obligation should not establish an access right and it should be without prejudice to the ability of providers of software application stores to take the required responsibility in the

Amendment

(57) Core platform services offered by gatekeepers serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and their business users, those gatekeepers should not be allowed to impose general conditions, in particular pricing conditions, data usage conditions or conditions related to the licensing of rights held by the business user, that would be unfair or lead to unjustified differentiation. “Imposing” encompasses both explicit and implicit demands, by means of contract or fact, in particular if a search engine makes the ranking results dependent on the transfer of certain rights or data. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other relevant core platform services providers; prices charged or conditions imposed by the gatekeeper for different related or similar services or to different types of end users; prices charged or conditions imposed by gatekeeper for the same service in different geographic regions; prices charged or conditions imposed by the core platform service provider for the same service the gatekeeper offers to itself. Furthermore,
conditions should be considered to be unfair if the gatekeeper charges prices or imposes conditions without entering into genuine negotiations with business users or collective management organisations representing these business users or without accepting a binding procedure of price fixing, such as an established mechanism under laws of collective rights management, or without accepting a reasonable offer of a binding arbitration by the business users. It should also be considered to be unfair if a gatekeeper demands a royalty-free license as a condition to access or enforces royalties that are significantly below prices fixed in accordance with laws of collective rights management. It should also be considered to be unfair if access to the service or the quality and other conditions of the service are made dependent on the transfer of data or the granting of rights by the business user which are unrelated to or not strictly necessary for providing the core platform service. While this Regulation should not establish an unconditional access right it should ensure that the conditions of access to the core platforms are fair, reasonable and non-discriminatory. In addition, gatekeepers should refrain from applying unfair, unreasonable or discriminatory conditions to the business users that make their services available through the core platform service of the gatekeeper, including a digital voice assistant. Conditions should also be deemed unfair if those conditions or measures imposed hinder business users from monetising their services and allow the gatekeeper to monetise, to its own benefit, third-party content provided by its business users by inserting sponsorship or advertising around such content, without the consent of the content provider.
Proposal for a regulation
Recital 60

Text proposed by the Commission

60) In exceptional circumstances justified on the limited grounds of public morality, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability.

Amendment

60) In exceptional circumstances justified on the limited grounds of public policy, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability.

Amendment 33

Proposal for a regulation
Recital 61

Text proposed by the Commission

61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. Ensuring an adequate level of transparency of profiling practices employed by gatekeepers facilitates contestability of core platform services, by putting external pressure on gatekeepers to prevent making deep consumer profiling the industry standard, given that potential entrants or start-up providers cannot access data to the same extent and depth, and at a similar scale. Enhanced transparency should allow other providers of core platform services to differentiate

Amendment

61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. Ensuring an adequate level of transparency of profiling practices employed by gatekeepers facilitates contestability of core platform services, by putting external pressure on gatekeepers to prevent making consumer profiling, tracking or accumulation of personal data from third parties the industry standard, given that potential entrants or start-up providers cannot access data to the same extent and depth, and at a similar scale. Enhanced transparency should allow other
themselves better through the use of superior privacy guaranteeing facilities. To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should at least provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the impact of such profiling on the gatekeeper’s services, and the steps taken to enable end users to be aware of the relevant use of such profiling, as well as to seek their consent.

Amendment 34
Proposal for a regulation
Recital 62

Text proposed by the Commission

(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether a provider of core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; and whether the list of obligations addressing unfair practices by gatekeepers should be reviewed and additional practices that are similarly unfair and limiting the contestability of digital markets should be identified. Such assessment should be based on market investigations to be run in an appropriate timeframe, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the providers of core platform services to differentiate themselves better through the use of superior privacy guaranteeing facilities. To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should provide a comprehensive report of the basis upon which profiling, tracking and the use of data from third parties is performed, including whether personal data and data derived from user activity is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the impact of such profiling on the gatekeeper’s services and users’ privacy, and the steps taken to enable end users to be aware of the use of such profiling, as well as to seek their consent.
requisite degree of legal certainty. **Member States as well as European organisations and associations that have a legitimate interest in representing business users or consumers should be given the right to formally request a market investigation where they can provide evidence supporting reasonable grounds to suspect that any of four abovementioned cases has occurred. The requirement for the presentation of evidence should not be unreasonable high. The Commission should be able to decide not to further investigate upon such request. In this case, it should give sufficient reason for its decision.**

**Amendment 35**

**Proposal for a regulation**

**Recital 75**

*Text proposed by the Commission*

(75) In the context of proceedings carried out under this Regulation, the undertakings concerned should be accorded the right to be heard by the Commission and the decisions taken should be widely publicised. While ensuring the rights to good administration and the rights of defence of the undertakings concerned, in particular, the right of access to the file and the right to be heard, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be considered confidential if the relevant confidential and commercially sensitive information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be considered confidential if the relevant conditions are
Amendment 36

Proposal for a regulation

Recital 79 – introductory part

Text proposed by the Commission

(79) The objective of this Regulation is to ensure a contestable and fair digital sector in general and core platform services in particular, with a view to promoting innovation, high quality of digital products and services, fair and competitive prices, as well as a high quality and choice for end users in the digital sector. This cannot be sufficiently achieved by the Member States, but can only, by reason of the business model and operations of the gatekeepers and the scale and effects of their operations, be fully achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment

(79) The objective of this Regulation is to ensure a contestable and fair digital sector in general and core platform services in particular, with a view to promoting and ensuring innovation, high quality of digital products and services, fair and competitive prices, as well as a high quality and choice for end users in the digital sector. This cannot be sufficiently achieved by the Member States, but can only, by reason of the business model and operations of the gatekeepers and the scale and effects of their operations, be fully achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.

Amendment

1. This Regulation lays down harmonised rules ensuring competitive and fair markets in the digital sector across the Union where gatekeepers are present to contribute to the proper functioning of the internal market.

Amendment 38

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Proposal for a regulation
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular Articles 11, 13, 16, 47 and 50 thereof. Accordingly, this Regulation is interpreted and applied with respect to those rights and principles.

Amendment 39

Proposal for a regulation
Article 1 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law. In particular, nothing in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services where these obligations are unrelated to the relevant undertakings having a status of gatekeeper within the meaning of this Regulation in order to protect consumers or to fight against acts of unfair competition.

Amendment 40

Proposal for a regulation
Article 1 – paragraph 6
6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers; Council Regulation (EC) No 139/2004 and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) …/.. of the European Parliament and of the Council.

In particular, this Regulation does not preclude Member States from imposing obligations on undertakings other than gatekeepers or additional obligations on gatekeepers.

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Amendment 41

Proposal for a regulation
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

2. Core platform service* means any of the following:
   (a) online intermediation services;
   (b) online search engines;

Amendment

2. Core platform service* means any of the following:
   (a) online intermediation services;
   (b) online search engines;
   (ba) web browsers;
(c) online social networking services;  
(d) video-sharing platform services;  
(e) number-independent interpersonal communication services;  
(f) operating systems;  
(fa) virtual assistants;  
(g) cloud computing services;  
(h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);  

Amendment 42

Proposal for a regulation  
Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

(6a) ‘Web browser’ means an independent or embedded client software application that runs against a web server or other Internet server and enables a user to navigate in the World Wide Web to access or display data or to interact with content hosted on servers that are connected to this network;

Amendment 43

Proposal for a regulation  
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) ‘Operating system’ means a system software which controls the basic functions of the hardware or software and enables software applications to run on it,
software applications to run on it; **including systems that provide or control access to audiences.**

**Amendment 44**

Proposal for a regulation
Article 2 – paragraph 1 – point 10 a (new)

*Text proposed by the Commission*

(10a) ‘*virtual assistant*’ means a software application that provides capabilities for a dialogue with a user in natural language and which intermediates between end users and business users offering command-based apps;

**Amendment 45**

Proposal for a regulation
Article 2 – paragraph 1 – point 14

*Text proposed by the Commission*

(14) ‘Ancillary service’ means services provided in the context of or together with core platform services, including payment services as defined in point 3 of Article 4 and technical services which support the provision of payment services as defined in Article 3(j) of Directive (EU) 2015/2366, fulfilment, identification or advertising services;

**Amendment 46**

Proposal for a regulation
Article 2 – paragraph 1 – point 16

*Text proposed by the Commission*

(16) ‘*End user*’ means any natural or legal person using core platform services other than as a business user;

*Amendment*

(16) ‘end-user’ means a natural or legal person who uses core platform services and whose personal data in the form of a user profile or in a similar form are stored
by the providers of the core platform services for more than one month;

Amendment 47
Proposal for a regulation
Article 2 – paragraph 1 – point 18

Text proposed by the Commission

(18) ‘Ranking’ means the relative prominence given to goods or services offered through online intermediation services or online social networking services, or the relevance given to search results by online search engines, as presented, organised or communicated by the providers of online intermediation services or of online social networking services or by providers of online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;

Amendment

(18) ‘Ranking’ means the relative prominence given to goods or services, or the relevance given to search results, as presented, organised or communicated by the providers of online intermediation services or of online social networking services or by providers of online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;

Amendment 48
Proposal for a regulation
Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

(18a) ‘Search results’ means any information in any format, including texts, graphics, voice or other output, returned by core platform services provider in response and related to a written or oral search query, irrespective of whether the information is an organic result, a paid result, a direct answer or any product, service or information offered in connection with, or displayed along with, or partly or entirely embedded in, the organic results;

Amendment

(18a) ‘Search results’ means any information in any format, including texts, graphics, voice or other output, returned by core platform services provider in response and related to a written or oral search query, irrespective of whether the information is an organic result, a paid result, a direct answer or any product, service or information offered in connection with, or displayed along with, or partly or entirely embedded in, the organic results;
Amendment 49
Proposal for a regulation
Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

(23a) **Interoperability**’ means the ability of two or more digital services or digital content, systems, products or respective components thereof, including software or hardware, originally provided in two or more different digital environments to directly:

(a) exchange information or access content without error and use the exchanged information or content for the correct execution of a specific function without changing or converting the content of the data; and/or

(b) communicate with each other; and/or

(c) work together as intended without needing technologies for conversion.

Amendment 50
Proposal for a regulation
Article 3 – paragraph 1 – point b

Text proposed by the Commission

(b) it operates a core platform service which serves as an important gateway for business users to reach end users; and

(b) it operates a core platform service which serves as an important gateway for business users or end users to reach other end users; and

Amendment 51
Proposal for a regulation
Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) the requirement in paragraph 1 point (b) where it provides a core platform

(b) the requirement in paragraph 1 point (b) where it provides core platform
service that has more than 45 million monthly active end users established or located in the **Union** and more than 10 000 yearly active business users established in the **Union in the last financial year**;

services which, in the previous calendar year, had more than 45 million monthly end users established or located in the **EEA** and more than 10 000 yearly business users established in the **EEA**;

**Amendment 52**

Proposal for a regulation
Article 3 – paragraph 3

**Text proposed by the Commission**

3. Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission **thereof within three months** after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the provider that meets the thresholds in paragraph 2 point (b). The notification shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b).

**Amendment**

3. Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission **without undue delay and at the latest 30 days thereof** after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the provider that meets the thresholds in paragraph 2 point (b). The notification shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b).

**Amendment 53**

Proposal for a regulation
Article 3 – paragraph 8

**Text proposed by the Commission**

8. The gatekeeper shall comply with the obligations laid down in Articles 5 and 6 **within six** months after a core platform service has been included in the list pursuant to paragraph 7 of this Article.

**Amendment**

8. The gatekeeper shall comply with the obligations laid down in Articles 5 and 6 **as soon as possible, and in any case no later than two** months after a core platform service has been included in the list pursuant to paragraph 7 of this Article.

**Amendment 54**
Proposal for a regulation  
Article 4 – paragraph 3

**Text proposed by the Commission**

3. The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6 on an on-going basis.

**Amendment**

3. The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6 on an on-going basis. The Commission shall publish an annual report setting out the findings of its monitoring activities and present it to the European Parliament and the Council.

Amendment 55

Proposal for a regulation  
Article 5 – paragraph 1 – introductory part

**Text proposed by the Commission**

In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:

**Amendment**

In respect of each of its core platform services identified pursuant to Article 3(7) and its ancillary services, a gatekeeper shall:

Amendment 56

Proposal for a regulation  
Article 5 – paragraph 1 – point b

**Text proposed by the Commission**

(b) allow business users to offer the same products or services to end users through third party online intermediation services at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;

**Amendment**

(b) allow business users and supplier to the gatekeeper’s ancillary service to offer the same products or services to end users through third party online intermediation services or through direct business channels at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;

Amendment 57
Proposal for a regulation
Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) allow business users to promote offers to end users acquired via the core platform service, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper or not, and allow end users to access and use, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, where these items have been acquired by the end users from the relevant business user without using the core platform services of the gatekeeper;

Amendment
(c) allow business users to promote different offers to end users acquired via the core platform service, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper or not, and allow end users to access and use, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, where these items have been acquired by the end users from the relevant business user without using the core platform services of the gatekeeper;

Amendment 58

Proposal for a regulation
Article 5 – paragraph 1 – point d

Text proposed by the Commission

(d) refrain from preventing or restricting business users from raising issues with any relevant public authority relating to any practice of gatekeepers;

Amendment
(d) refrain from directly or indirectly preventing or restricting business users, end user or supplier to the gatekeeper’s ancillary service from raising issues with any relevant public authority or in front of national judicial authority relating to any practice of gatekeepers;

Amendment 59

Proposal for a regulation
Article 5 – paragraph 1 – point e

Text proposed by the Commission

(e) refrain from requiring business users to use, offer or interoperate with an identification service of the gatekeeper in the context of services offered by the

Amendment
(e) refrain from requiring business users or end users to use, offer or interoperate with any service of the gatekeeper in the context of services
business users using the core platform services of that gatekeeper;

offered by the business users using the core platform services of that gatekeeper;

Amendment 60

Proposal for a regulation
Article 5 – paragraph 1 – point f

Text proposed by the Commission

(f) refrain from requiring business users or end users to subscribe to or register with any other core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;

Amendment

(f) refrain from requiring business users or end users in order to make use of or allow access to any of its core platform services to accept supplementary conditions or services that, by their nature or according to trade practice, have no connection with and are not necessary for the provision of the relevant core platform service to its users, and in particular from making access to, or subscription and registration to, any of its core platform services referred to in Article 3 conditional on subscribing to or registering with other core platform services or any ancillary services of the gatekeeper;

Amendment 61

Proposal for a regulation
Article 5 – paragraph 1 – point f a (new)

Text proposed by the Commission

(fa) refrain from requiring to use only one specific payment method or payment processor as a condition in order to make use of or allow access to any of its core platform services for business users;

Amendment

(fa) refrain from requiring to use only one specific payment method or payment processor as a condition in order to make use of or allow access to any of its core platform services for business users;

Amendment 62

Proposal for a regulation
Article 5 – paragraph 1 – point g

Text proposed by the Commission

Amendment
(g) provide advertisers and publishers to which it supplies advertising services, upon their request, with information concerning the price paid by the advertiser and publisher, as well as the amount or remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper.

Amendment 63

Proposal for a regulation
Article 5 – paragraph 1 – point g – point i (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) the price and fees, including any deductions or surcharges, paid by the advertiser and publisher, as well as the amount or remuneration paid to the publisher, for the publishing of a given advertisement and for each of the relevant advertising services provided by the gatekeeper; and</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 64

Proposal for a regulation
Article 5 – paragraph 1 – point g – point ii (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ii) the scheme for the calculation of the fees, and its application in relation to the respective bids submitted by the advertiser and publisher for each of the advertising services used.</td>
<td></td>
</tr>
</tbody>
</table>

Amendment 65

Proposal for a regulation
Article 5 – paragraph 1 – point g a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
</table>
(ga) allow end users to un-install any pre-installed software applications on its operating system;

Amendment 66

Proposal for a regulation
Article 5 – paragraph 1 – point g b (new)

Text proposed by the Commission

(gb) allow end users, and business users of number independent interpersonal communication services and social network services to access to and interoperate with the gatekeeper's services by providing open standards, open protocols including application programming interface.

Amendment 67

Proposal for a regulation
Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

1. In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:

Amendment

1. In respect of each of its core platform services identified in accordance with Article 3(7) and its ancillary services including distribution, the gatekeeper shall:

Amendment 68

Proposal for a regulation
Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users, including by the end users of these business users, of its core platform services or provided by

Amendment

(a) refrain from using, in competition with business users and ancillary service suppliers, any data exclusively in domain of a core platform service provider or the provider or the respective ancillary service, which is generated through
those business users of its core platform services or by the end users of these business users; activities by those business users or suppliers, including the end users of these business users, of its core platform services or provided by those business users or suppliers of its core platform services or by the end users of these business users;

Amendment 69

Proposal for a regulation
Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) allow end users to un-install any pre-installed software applications on its core platform service without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties;

Amendment

(b) allow end users to un-install any pre-installed software applications on its core platform service;

Amendment 70

Proposal for a regulation
Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) allow the installation and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking proportionate measures to ensure that third party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by

Amendment

(c) allow the installation and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper, and the ability of end users to choose between different software applications from different distribution channels. The gatekeeper shall be allowed to take proportionate measures to ensure that third party software applications or software application stores do not endanger the
the gatekeeper; integrity of the hardware or operating system provided by the gatekeeper or the security or user-experience of the end-users. This shall be without prejudice to the role gatekeepers play in the fight against illegal content online;

Amendment 71

Proposal for a regulation
Article 6 – paragraph 1 – point d

Text proposed by the Commission

(d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;

Amendment

(d) refrain from embedding or treating more favourably in ranking and other settings, as well as in access to and conditions for the use of services, functionalities or technical interfaces, services and products offered by the gatekeeper itself or by any third party, compared to similar services or products of other parties and apply fair, reasonable and non-discriminatory conditions to such practices or settings;

Amendment 72

Proposal for a regulation
Article 6 – paragraph 1 – point d a (new)

Text proposed by the Commission

(da) ensure that algorithms that determine the ranking of products and services are transparent, fair and reasonable, and that the ranking of any content in core platform services must accurately and impartially reflect users’ requests, and that that ranking-related interfaces are designed transparently and that display personalisation requires the consent of the end user, who must be informed in a comprehensible manner;
Amendment 73

Proposal for a regulation
Article 6 – paragraph 1 – point d b (new)

Text proposed by the Commission

(db) refrain from imposing mechanisms or conditions that make the gathering and the combination of relevant data from end users or the obtaining of consent for the use of such data by a business user for the purpose of serving interest-based advertising within a core platform service more burdensome or difficult where the business user complies with all statutory requirements for such advertising, in particular under Regulation (EU) 2016/679;

Amendment 74

Proposal for a regulation
Article 6 – paragraph 1 – point e

Text proposed by the Commission

(e) refrain from technically restricting the ability of end users to switch between and subscribe to different software applications and services to be accessed using the operating system of the gatekeeper, including as regards the choice of Internet access provider for end users;

Amendment

(e) refrain from technically restricting the ability of end users to install, effectively use, switch between and subscribe to different software applications and services from third parties to be accessed using the operating system of the gatekeeper, including as regards the choice of Internet access provider for end users;

Amendment 75

Proposal for a regulation
Article 6 – paragraph 1 – point f

Text proposed by the Commission

(f) allow business users and providers of ancillary services access to and interoperability with the same operating system, hardware or software features that

Amendment

(f) allow business users, end users and providers of core platform services or any ancillary services thereof access to and interoperability with the same operating
are available or used in the provision by the gatekeeper of any ancillary services;

system, hardware or software features that are available or used in the provision of the relevant services by the gatekeeper;

Amendment 76

Proposal for a regulation
Article 6 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) allow end users of technologically protected digital content or digital service, legally acquired through third party services, access to and interoperability with the hardware or software features that are used by that gatekeeper when providing a similar technologically protected digital content or digital service; and allow end users of technologically protected digital content or digital service acquired through that gatekeeper access to and interoperability with the hardware or software features that are used by third party when providing a similar technologically protected digital content or digital service. Gatekeepers’ suppliers, as well as third-party hardware providers shall have the possibility to require gatekeepers to provide the necessary interoperability information to comply with the purpose of this Regulation;

Amendment 77

Proposal for a regulation
Article 6 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent
verification of the ad inventory;

measurement of the intermediation services, in particular with regard to the ad inventory and services owned by the gatekeeper in relation to the ad inventory and intermediation services owned by other publishers or service providers connected with the gatekeeper’s platform either on the buy-side or the sell-side. A gatekeeper shall further provide, free of charge, complete information, data and technical interfaces necessary for advertisers and publishers or third parties with a legitimate interest, including authorised organisations by advertisers or publishers, to carry out their own independent, effective, high-quality, continuous and real-time evaluation of intermediation services provided by the gatekeeper, including but not limited to verification of the ad inventory, attribution and performance measurement;

Amendment 78

Proposal for a regulation
Article 6 – paragraph 1 – point h

Text proposed by the Commission

(h) provide effective portability of data generated through the activity of a business user or end user and shall, in particular, provide tools for end users to facilitate the exercise of data portability, in line with Regulation EU 2016/679, including by the provision of continuous and real-time access;

Amendment

(h) provide effective portability of data generated through the activity of a business user or generated by goods and services provided by a supplier of ancillary services notably distribution or an end user and shall, in particular, provide user-friendly tools for end users to facilitate the exercise of data portability, including personal data generated by his or her activity, in line with Regulation EU 2016/679, including by the provision of continuous and real-time access;

Amendment 79

Proposal for a regulation
Article 6 – paragraph 1 – point i
(i) provide business users, or third parties authorised by a business user, free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users; for personal data, provide access and use only where directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679;

(j) provide to any third party providers of online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query,
click and view data that constitutes personal data;

online search engines of the gatekeeper, subject to effective anonymisation with every reasonable means and techniques available to prevent re-identification for the query, click and view data that constitutes personal data and the steps taken to enable end users to be aware of the relevant use of personal data, as well as to seek their consent;

Amendment 81

Proposal for a regulation
Article 6 – paragraph 1 – point k

Text proposed by the Commission

(k) apply fair and non-discriminatory general conditions of access for business users to its software application store designated pursuant to Article 3 of this Regulation.

Amendment

(k) apply fair, reasonable and non-discriminatory general conditions of access and treatment for business users to any of its core platform services, designated pursuant to Article 3 of this Regulation. The insertion of sponsorship or advertising in relation to third party content provided through its core platform service may be considered to be unfair, inappropriate or discriminatory without the express consent of the respective content provider;

Amendment 82

Proposal for a regulation
Article 6 – paragraph 1 – point k a (new)

Text proposed by the Commission

(ka) ensure their services, including user interfaces, are accessible to persons with disabilities in accordance with Article 13 of Directive (EU) 2019/882 of the European Parliament and of the Council 1a. They shall also ensure that business users, which rely on their core platform service to reach consumers for offering services and products in the scope of Directive (EU) 2019/882, comply
with the requirements of Directive (EU) 2019/882;


Amendment 83
Proposal for a regulation
Article 6 – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

(kb) participate in the event of a dispute about the fairness of a price or remuneration as condition for business users to access or to use any of its core platform services identified pursuant to Article 3, in a binding procedure for fixing a fair price or remuneration and adhere the outcome of it, regardless of whether such a procedure is established by law or proposed by the business users or by organisations or rights management organisations representing such business users. The procedure regarding the issue of remuneration and price shall start if the parties have not reached an agreement about terms for resolving the issue of remuneration and pricing within 3 months after one party has asked to start a negotiation or about one party’s refusal to negotiate. This procedure shall apply in particular in the case of a dispute about the remuneration laid down in Directive (EU) 2019/790;

Amendment 84
Proposal for a regulation
Article 6 – paragraph 1 – point k c (new)
Amendment 85

Proposal for a regulation
Article 6 – paragraph 1 – point k d (new)

Text proposed by the Commission

(kc) refrain from limiting end-users’ ability to directly access business users or other end-users services or websites outside of the gatekeepers’ ecosystem from the gatekeeper platform service;

Amendment

(kd) refrain from blanket de-listing without an appropriate and effective complaint procedure;

Amendment 86

Proposal for a regulation
Article 6 – paragraph 1 – point k e (new)

Text proposed by the Commission

(ke) refrain from terms, conditions or technical measures that hinder business users in their business activities on procurement or sales markets, if the gatekeeper's service constitutes an access to these markets, in particular if it thereby: (i) prevents or impedes business users from advertising their services or providing advertising services for third parties or from reaching end users via other access points and marketing their services, (ii) prevents or impedes the processing of data relevant to competition, and (iii) treats its own services and products or the services and products of third parties more preferentially than those of competitors.
Amendment 87

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

2. For the purposes of point (a) of paragraph 1, data that is not publicly available shall include any aggregated and non-aggregated data generated by business users that can be inferred from, or collected through, the commercial activities of business users or their customers on the core platform service of the gatekeeper.

Amendment

2. The Commission is required to publish the behavioural requirements that it specifies for individual gatekeepers. This shall not extend to business secrets or confidential information inherent to the business model of the respective gatekeeper.

For the purposes of point (a) of paragraph 1, data exclusively in domain of the core platform provider shall include any aggregated and non-aggregated data generated by business users or generated by goods and services provided by a supplier to the gatekeeper’s ancillary services notably distribution, that can be inferred from, or collected through, the commercial activities of business users or their customers on the core platform, distribution or other ancillary service of the gatekeeper.

Amendment 88

Proposal for a regulation
Article 7 – paragraph 5

Text proposed by the Commission

5. In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service.

Amendment

5. In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service. Parties with a legitimate interest shall be able to submit their observations as to the effectiveness of such measures.
Amendment 89
Proposal for a regulation
Article 7 – paragraph 6a (new)

Text proposed by the Commission

6a. For the purposes of specifying the obligations under Article 6(1), point (f), the Commission shall in cooperation with the Gatekeeper, business users and end user representatives define the open technologies, open standards and open protocols, including the technical interface (application programming interface), that allows end users of competing software and services and business users to dock on to the gatekeepers core service and to interoperate with it. Any processing of personal data by gatekeepers should comply with Regulation (EU) 2016/679, in particular Article 6(1), point (a), and Article 5(1), point (c). Interoperability obligations shall not limit, hinder or delay the ability of intermediaries to address vulnerabilities in order to comply with an obligation under Article 18 of COM(2020) 823 or Article 32(1), point (c), of Regulation (EU) 2016/679.

Amendment 90
Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. Where consent for collecting and processing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing, where required under Regulation (EU) 2016/679 and Directive 2002/58/EC, or to comply with Union data protection and privacy rules and

Amendment

2. Where consent for collecting, processing and sharing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain at the level of their own services or products the required consent to their processing, where required under Regulation (EU) 2016/679 and Directive 2002/58/EC. In particular, the
principles in other ways including by providing business users with duly anonymised data where appropriate. The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services.

gatekeeper shall use all reasonable means and techniques available to effectively anonymise data and prevent re-identification. The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services, including product design, structure, function or manner of operation capable of influencing user choice and autonomy. Where consent is directly expressed by the end-user at the level of the services or products offered by the business user through the relevant core platform service, it shall prevail over any consent provided at the gatekeeper level.

Amendment 91
Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

3. A gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5 and 6, or make the exercise of those rights or choices unduly difficult.

Amendment

3. A gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights and possibilities including consent of combining end user data offering a less personalised and non-personalised alternatives or choices laid down in Articles 5 and 6, or make the exercise of those rights or choices unduly difficult and avoid the use of behavioural techniques and interface design with lack of transparency, inadequate information and lack of valid consent to ads personalisation or consumer profiling.

Amendment 92
Proposal for a regulation
Article 15 – paragraph 1

Text proposed by the Commission

Amendment

PE693.640v02-00 58/66 AD\1240172EN.docx
1. The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall endeavour to conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within twelve months from the opening of the market investigation.

Amendment 93

Proposal for a regulation
Article 15 – paragraph 2

Text proposed by the Commission

2. In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

Amendment

2. In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within three months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

Amendment 94

Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission

4. When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services that does not yet enjoy an entrenched and durable position in its operations, but it is

Amendment

4. When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services that does not yet enjoy an entrenched and durable position in its operations, but it is
foreseeable that it will enjoy such a position in the near future, it shall declare applicable only obligations laid down in Article 5(b) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4.

Amendment 95

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

1. Where the market investigation shows that a gatekeeper has systematically infringed the obligations laid down in Articles 5 and 6 and has further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose on such gatekeeper any behavioural or structural remedies which are proportionate to the infringement committed and necessary to ensure compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation.

Amendment

1. Where the market investigation, initiated by the Commission following a complaint or on its own initiative, shows that a gatekeeper has systematically infringed the obligations laid down in Articles 5 and 6 and has further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose on such gatekeeper any behavioural or structural remedies which are proportionate to the infringement committed and necessary to ensure compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within six months from the opening of the market investigation.
Amendment 96

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services or to detect types of practices that may limit the contestability of core platform services or may be unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within 24 months from the opening of the market investigation.

Amendment

The Commission, acting on a complaint or on its own initiative, may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services or to detect types of practices that may limit the contestability of core platform services or may be unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within 12 months from the opening of the market investigation.

Amendment 97

Proposal for a regulation
Article 30 – paragraph 1 a (new)

Text proposed by the Commission

1a. If the Commission considers it necessary, it may also hear other natural or legal persons before taking the decisions as provided for in paragraph 1. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted.

Amendment

1a. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission’s preliminary findings within

Amendment 98

Proposal for a regulation
Article 30 – paragraph 2

Text proposed by the Commission

2. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission’s preliminary findings within

Amendment

2. Gatekeepers, undertakings and associations of undertakings concerned and interested third parties may submit their observations to the Commission’s
a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days.

Preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days.

Amendment 99

Proposal for a regulation
Article 30 – paragraph 3

Text proposed by the Commission

3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of undertakings concerned have been able to comment.

Amendment

3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of undertakings concerned and interested third parties have been able to comment.

Amendment 100

Proposal for a regulation
Article 33 – paragraph 1

Text proposed by the Commission

1. When three or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that a provider of core platform services should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation.

Amendment

1. When one or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that a provider of core platform services should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation, adopt a decision and justify its decision to open or refuse to open an investigation. In case the Commission decides there is no grounds for opening a market investigation, it shall publish a reasoned opinion.

Amendment 101

Proposal for a regulation
Article 33 – paragraph 2
2. **Member States** shall submit evidence in support of their request.

Amendment 102

Proposal for a regulation
Article 33 – paragraph 2 a (new)

**Text proposed by the Commission**

2a. Third parties with a legitimate interest in representing business users or end users may provide the Commission with evidence with respect to any of the investigations triggered by paragraphs 1 to 3 of this Article. On that basis, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation pursuant to Articles 15, 16 and 17.

Amendment 103

Proposal for a regulation
Article 33 a (new)

**Text proposed by the Commission**

1. Third parties representing business users or end users shall be entitled to lodge complaints with regard to the non-designation of gatekeepers, non-compliance and systematic non-compliance by gatekeepers with their obligations in accordance with Articles 3, 5 and 6 and request the opening of a market investigation. They shall submit evidence in support of their request.

2. The Commission shall examine whether there are reasonable grounds to
open such an investigation and inform the interested third parties of its decision within three months.

Amendment 104
Proposal for a regulation
Article 38 – paragraph 3

Text proposed by the Commission

3. Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.

Amendment

3. Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1. Among such information, data allowing to determine the fairness of general access conditions to platform services should be examined, including as regards revenue streams deriving from advertisement, and the distribution of appropriate shares of revenues to third party right holders.
### PROCEDURE – COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Title</th>
<th>Contestable and fair markets in the digital sector (Digital Markets Act)</th>
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<th>Committee responsible</th>
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<td>Date announced in plenary</td>
<td>8.2.2021</td>
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<td>Date announced in plenary</td>
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<th>Rapporteur for the opinion</th>
<th>Petra Kammerevert</th>
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<th>Discussed in committee</th>
<th>21.6.2021</th>
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<td>27.9.2021</td>
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| Members present for the final vote | Asim Ademov, Ilana Cicurel, Gilbert Collard, Gianantonio Da Re, Laurence Farreng, Tomasz Frankowski, Romeo Franz, Chiara Gemma, Alexis Georgoulis, Irena Joveva, Petra Kammerevert, Predrag Fred Matić, Dace Melbārde, Victor Negrescu, Niklas Nienaš, Peter Pollák, Marcos Ros Sempere, Domènec Ruiz Devesa, Monica Semedo, Andrey Slabakov, Massimiliano Smeriglio, Michaela Šojdrová, Sabine Verheyen, Maria Walsh, Theodoros Zagorakis, Milan Zver |

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<th>Substitutes present for the final vote</th>
<th>Marcel Kolaja, Elżbieta Kruk</th>
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<td>Substitutes under Rule 209(7) present for the final vote</td>
<td>Evelyne Gebhardt</td>
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## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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<td><strong>28</strong></td>
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<td>ECR</td>
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<td>Gianantonio Da Re</td>
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**Key to symbols:**  
+ : in favour  
- : against  
0 : abstention