



2020/0374(COD)

31.5.2021

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council
on contestable and fair markets in the digital sector (Digital Markets Act)
(COM(2020)0842 – C9-0419/2020 – 2020/0374(COD))

Rapporteur for opinion: Petra Kammerevert

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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 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 internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements.

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, ***in the respective cases***.

Or. en

Amendment 2

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) By approximating diverging national laws, obstacles to the freedom to

Amendment

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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.

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.

Or. en

Amendment 3

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 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

(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 this Regulation, but also on other undertakings, which serve to enforce legitimate public interests, remains unaffected, 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, the corresponding provisions at national level as well as other provisions at national level regarding unilateral behaviour, based on an individualised assessment of market***

positions and behaviour, including its likely effects and the precise scope of the prohibited behaviour, and which provide for the possibility of undertakings to make efficiency and objective justification arguments for the behaviour in question.

Or. en

Amendment 4

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council²⁶, Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council²⁷, Regulation (EU) 2016/679 of the European Parliament and of the Council²⁸, Directive (EU) 2019/790 of the European Parliament and of the Council²⁹, Directive (EU) 2015/2366 of the European Parliament and of the Council³⁰, and Directive (EU) 2010/13 of the European Parliament and of the Council³¹, as well as national **rules aimed at enforcing or, as the case may be, implementing that** Union legislation.

²⁶ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

²⁷ Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services

Amendment

(11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council²⁶, Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council²⁷, Regulation (EU) 2016/679 of the European Parliament and of the Council²⁸, Directive (EU) 2019/790 of the European Parliament and of the Council²⁹, Directive (EU) 2015/2366 of the European Parliament and of the Council³⁰, and Directive (EU) 2010/13 of the European Parliament and of the Council³¹, as well as **rules at national level adopted in accordance with** Union legislation.

²⁶ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

²⁷ Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services

(Digital Services Act) and amending Directive 2000/31/EC.

²⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

²⁹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/ (OJ L 130, 17.5.2019, p. 92.).

³⁰ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

³¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

(Digital Services Act) and amending Directive 2000/31/EC.

²⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

²⁹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/ (OJ L 130, 17.5.2019, p. 92.).

³⁰ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

³¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

Or. en

Amendment 5

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) In particular, online intermediation services, online search engines, operating

Amendment

(13) In particular, online intermediation services **-including, online market places,**

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 Council³². 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.

³² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

software app stores or online mediation services in sectors that serve the public interest-, online search engines ***and*** operating systems, ***-including smart TVs and IPTVs-***, ***digital voice assistants, platforms using voice assistant integrated technologies, web-browsers***, 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 Council³². 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.

³² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

Or. en

Amendment 6

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.

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.

Or. en

Amendment 7

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

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, and the Commission should

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.

be able to directly designate as gatekeepers those core platform *service providers* 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.

Or. en

Amendment 8

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

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

a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold number of users in 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.

services reflects a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold number of users in 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.

Or. en

Amendment 9

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,

Amendment

(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 benefitting 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 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.

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 benefitting from their dual role, it should be ensured that they refrain from using any aggregated or non-aggregated data, 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. en

Amendment 10

Proposal for a regulation Recital 48

Text proposed by the Commission

(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

Amendment

(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**, 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 **using** 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.

products or services, including other core platform services, which are ranked **within or along** the results communicated by 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 should 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 preferencing 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. 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.

Or. en

Amendment 11

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 enforcement of this obligation.³⁴

³⁴ Commission Notice: Guidelines on ranking transparency pursuant to Regulation (EU) 2019/1150 of the European Parliament and of the Council (OJ C 424, 8.12.2020, p. 1).

Amendment

(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 **with** which it **cooperates**. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair, **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 **order**, 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. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.³⁴

³⁴ Commission Notice: Guidelines on ranking transparency pursuant to Regulation (EU) 2019/1150 of the European Parliament and of the Council (OJ C 424, 8.12.2020, p. 1).

Amendment 12

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 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. ***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 either on the buy-side or the sell-side.***

Amendment 13

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.

Or. en

Amendment 14

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 provider ***of the software application store*** 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***

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***

providers of software application stores to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].

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.***

Amendment 15

Proposal for a regulation Recital 79 – point 1

Text proposed by the Commission

Amendment

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 16, 47 and 50 thereof. Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles

deleted

Or. en

Amendment 16

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.

Or. en

Amendment 17

Proposal for a regulation Article 1 – paragraph 5

Text proposed by the Commission

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

5. Member States shall not impose on gatekeepers **within the meaning of this Regulation** further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This **shall not affect** rules pursuing other legitimate public interests, in compliance with Union law. In particular, this Regulation **shall not preclude** Member States from imposing obligations, which are compatible with Union law, on undertakings, including core platform services **providers**, in order to protect consumers, to fight against acts of unfair competition, **to protect and to foster media freedom, pluralism of media or opinion as well as diversity in cultures and in languages or to pursue those other legitimate public interests.**

Or. en

Justification

The proposed Regulation must not have the effect of blocking existing national regulations to safeguard pluralism of opinion and media. The regulatory competence to safeguard media pluralism lies solely with the Member States. The EU institutions must respect media pluralism as well as the diversity of the various national media landscapes in Europe, when exercising their respective competences.

Amendment 18

Proposal for a regulation Article 1 – paragraph 6

Text proposed by the Commission

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

Amendment

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It **shall also not affect** the application of national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions,

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 139/2004³⁸ and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) .../.. of the European Parliament and of the Council³⁹.

Council Regulation (EC) No 139/2004³⁸ and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) .../.. of the European Parliament and of the Council³⁹. ***In particular, this Regulation does not preclude Member States from imposing obligations on undertakings other than gatekeepers or additional obligations on gatekeepers.***

³⁸ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

³⁹ Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

³⁸ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

³⁹ Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

Or. en

Amendment 19

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) digital voice assistants;

Or. en

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point h a (new)

Text proposed by the Commission

Amendment

(ha) web browsers;

Or. en

Amendment 21

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(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;

(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, ***including systems that provide or control access to audiences;***

Or. en

Amendment 22

Proposal for a regulation

Article 2 – paragraph 1 – point 10 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 – point 11 a (new)

Text proposed by the Commission

Amendment

(11a) 'Web browser' means a client software programme that runs against a web server or other Internet server and enables a user to navigate in the World Wide Web to access and display data or to interact with content hosted on servers that are connected to this network, including standalone web browsers, as well as web browsers integrated or embedded in software;

Or. en

Amendment 24

Proposal for a regulation

Article 2 – paragraph 1 – point 18

Text proposed by the Commission

Amendment

(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;

(18) 'Ranking' means the relative prominence given to goods or services, or the relevance given to search results, as presented, organised or communicated by ***core platform services*** providers ***irrespective of*** the technological means used for such presentation, organisation or communication;

Or. en

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

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;

Or. en

Amendment 26

Proposal for a regulation

Article 3 – paragraph 2 – point b – subparagraph 1

Text proposed by the Commission

Amendment

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

(b) the requirement in paragraph 1 point (b) where it provides a core platform service that has more than 45 million monthly end users established or located in the **EEA across all of its core platforms services** and more than 10 000 business **per year** users established in the **EEA during** the last financial year;

Or. en

Amendment 27

Proposal for a regulation

Article 3 – paragraph 2 – point b – subparagraph 2

Text proposed by the Commission

Amendment

for the purpose of the first subparagraph, monthly **active** end users shall refer to the

for the purpose of the first subparagraph, monthly end users shall refer to the average

average number of **monthly** active end users throughout the largest part of the last financial year;

number of active end users throughout the largest part of the last financial year;

Or. en

Amendment 28

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.

Or. en

Amendment 29

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.***

Or. en

Amendment 30

Proposal for a regulation

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, ***unless the end user has been presented with the specific choice and provided consent in the sense of Regulation (EU) 2016/679.*** ;

Amendment

(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data;

Or. en

Amendment 31

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 commercial usage, have no connection with and are not necessary for the provision of the relevant core platform service to its users, in particular*** 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;

Or. en

Amendment 32

Proposal for a regulation

Article 5 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) refrain from the compulsion 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;

Or. en

Amendment 33

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.***

(g) provide advertisers and publishers to which it supplies advertising services, upon their request, with ***complete*** information concerning:

Or. en

Amendment 34

Proposal for a regulation

Article 5 – paragraph 1 – point g – point i (new)

Text proposed by the Commission

Amendment

(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

Or. en

Amendment 35

Proposal for a regulation

Article 5 – paragraph 1 – point g – point ii (new)

Text proposed by the Commission

Amendment

(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.

Or. en

Amendment 36

Proposal for a regulation

Article 6 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(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 those* business users *of its core platform services or by the* end users *of these* business users;

(a) refrain from using *data that* is generated *in the relationship between* business users *and* end users, *and that is not also available to the* business user *itself*;

Or. en

Amendment 37

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 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, ***regardless of whether they belong*** to the same ***undertakings*** compared to similar services or products of ***other parties*** and apply fair, ***reasonable*** and non-discriminatory conditions to such ***practices or settings***;

Or. en

Amendment 38

Proposal for a regulation

Article 6 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) 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;

Or. en

Amendment 39

Proposal for a regulation

Article 6 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) ensure that algorithms that determine the ranking of products and services are fair and transparent, and that the ranking of any content in online platforms incorporating voice assistant technologies must accurately and impartially reflect users' voice requests;

Or. en

Amendment 40

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;

(g) provide advertisers and publishers, upon their request and free of charge, with access to ***any intermediation*** measuring tools of the gatekeeper and ***provide for complete disclosure of and transparency in respect of the parameters and data used for decision making, execution and 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;

Or. en

Amendment 41

Proposal for a regulation

Article 6 – paragraph 1 – point i

Text proposed by the Commission

(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;

Amendment

(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 *provided to the gatekeeper or directly to the business user as prescribed in Article 11(2) or where the business user may rely on Article 6(1), point (c), or Article 6(1), point (e),* of Regulation (EU) 2016/679;

Or. en

Amendment 42

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.***

Or. en

Amendment 43

Proposal for a regulation

Article 6 – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) 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

Amendment 44

Proposal for a regulation

Article 6 – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

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

Amendment 45

Proposal for a regulation

Article 6 – paragraph 1 – point k c (new)

Text proposed by the Commission

Amendment

(kc) 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:- 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,- prevents or impedes the processing of data relevant to competition,- treats its own services and products or the services and products of third parties more preferentially than those of competitors.

Amendment 46

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.*

Or. en

Amendment 47

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.*

Or. en

Amendment 48

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 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.

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. The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services. **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.**

Or. en

Amendment 49

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

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

1. The Commission, **acting on a complaint or on its own initiative**, 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 50**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 51**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 foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper **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

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 to that gatekeeper **at least the** 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.

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.

Or. en

Amendment 52

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.

Or. en

Amendment 53

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.

Or. en

Amendment 54

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 three or more Member States ***or any legal person who can show a legitimate interest***, request the Commission to open an investigation pursuant to Article 15, ***16 or 17*** because they consider that there are reasonable grounds to suspect that :

- (a) a core platform services provider should be designated as a gatekeeper, or***
- (b) 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), or***
- (c) one or more services should be added to the list of core platform services,***

or

(d) types of practices that may limit the contestability of core platform services or may be unfair are not effectively addressed by this Regulation, the Commission shall within three months examine whether there are reasonable grounds to open such an investigation and shall give reasons for its decision not to open an investigation.

Or. en

Amendment 55

Proposal for a regulation Article 33 – paragraph 2

Text proposed by the Commission

2. *Member States* shall submit evidence in support of their request.

Amendment

2. *Any party submitting a request for a market investigation* shall submit evidence in support of their request.

Or. en