



2020/0374(COD)

7.7.2021

DRAFT OPINION

of the Committee on Economic and Monetary Affairs

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: Stéphanie Yon-Courtin

(*) Associated committee – Rule 57 of the Rules of Procedure

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SHORT JUSTIFICATION

Background

The European Commission proposed two legislative initiatives as part of the “Digital Service Act package”, in December 2020 to upgrade rules governing digital services in the EU, namely the Digital Services Act (DSA) and the Digital Markets Act (DMA). The purpose of the DMA is to ensure effective competition in digital markets and in particular a fair and contestable online platform environment.

Currently over 10,000 online platforms operate in Europe’s digital economy, most of which are SMEs. A small number of large online platforms capture the biggest share of the overall value generated. Their services cover a wide range of daily activities including online intermediation services, such as online marketplaces, online social networking services, online search engines, operating systems or software application stores. These large platforms increasingly act as gateways or gatekeepers between business users and end users. The DMA should apply to core platform services provided or offered by gatekeepers to business users established in the EU or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.

Role of ECON Committee

Although IMCO is the lead Committee on the DMA and DSA, ECON has been attributed rule 57+ for the DMA, with shared competence on the entire proposal.

Designation of gatekeepers

The Draftsperson agrees that the scope of the DMA should be limited, in order to ensure that it is properly enforced. The Draftsperson agrees with the Commission on the proposed quantitative thresholds to target well-known gatekeepers but also others that act as a gateway. The Draftsperson underlines the possibility for the Commission to designate new and emerging gatekeepers based on qualitative criteria. The Draftsperson agrees with the Commission on the proposed quantitative thresholds. On the qualitative criteria, the Draftsperson wishes to add relevant business or services characteristics, such as a conglomerate corporate structure or vertical integration of the undertaking providing core platform services.

Obligations and future-proofing

The Draftsperson agrees with the main principles as laid out by the Commission in Articles 5 and 6 but believes that these articles need clarification and modification to:

- allow business users to offer same products and services through business users' own direct online sales channels (5(b));
- communicate with end users (5(c));
- extend identification service to include payment service and technical service (5(e) and (5(f)) as well as provide advertisers and publishers with free of charge, continuous and real-time access to information (5(g));
- ban default services installed by gatekeepers (6(1)(b));
- extend the self-preferencing ban to installation, activation or default setting (6(1)(d));
- specify the feature free of charge and technically possible for interoperability and portability (6(1)(f) and 6(1)(h));

- extend the fair and non-discriminatory conditions to all core platform services and not only app stores (6(1)(k)).

Role for third parties

The Draftsperson would like to introduce a reporting mechanism to allow third parties to report useful information on gatekeeper's practices and on market realities and changes. This reporting mechanism is open to business users, competitors and end-users, allowing them to report to the Commission or to national authorities, practices and behaviours of gatekeepers falling within the scope of the regulation.

Regulatory dialogue and transparency

The Draftsperson is in favour of introducing a restitution mechanism to ensure that gatekeepers implement properly the obligations and prohibitions of Articles 5 and 6. This obligation would require access to controllers to report to the Commission on a regular basis and to describe in a transparent way the measures taken to implement their obligations.

Compliance

The Draftsperson wishes to introduce measures in order to ensure maximum compliance including the appointing of compliance officers for each gatekeeper with real time access to all information required and allowing the Commission to test remedies before their adoption, including through A/B testing to ensure that measures are not counterproductive for stakeholders.

In the event that a gatekeeper implements a new practice that violates the two principles of Article 10, contestability and fairness, and risks serious and immediate harm, interim measures could be put in place to address the practices of the gatekeeper in question pending the outcome of the market investigation.

Cooperation with member States

The Draftsperson believes that the Commission and Member States should work in close cooperation and coordinate their enforcement actions. National Competition Authorities (NCAs) should have a leading role based on the existing European Competition Network (ECN) mechanisms. NCAs should be able to cooperate with the Commission on sharing information on concentrations, market investigation for designating gatekeepers, market investigations into systemic non-compliance, market investigation into new services and new practices as well as request for information to carry out interviews and take statements and powers to conduct on-site inspections.

Role of European Parliament

The Draftsperson underlines the importance of the EU Parliament in the DMA and asks the Commission to provide regular updates on the evaluations of the enforcement of obligations.

AMENDMENTS

The Committee on Economic and Monetary Affairs 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 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) 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. ***A coherent application of these rules can only be achieved effectively if the Commission and Member States are able to exchange confidential information, work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary outcomes. Furthermore, in order to preserve the internal market, the Commission should be able to prevent the adoption of national measures based on stricter national laws that are inconsistent with this Regulation or with a decision adopted by the Commission under this Regulation.***

Or. en

Amendment 2

Proposal for a regulation Recital 13

Text proposed by the Commission

(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 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

Amendment

(13) In particular, online intermediation services, online search engines, **web browsers**, 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 ***should be included irrespective of the technology used to provide such services. For that reason, virtual or voice activated assistants and other connected devices should fall within the scope of this Regulation whether their software is considered an operating system, an online intermediation service or a search engine.*** 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.

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.

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 3

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Active end users as well as business users should be defined in a way to adequately represent the role and reach of the specific core platform service in question. In order to provide legal certainty for gatekeepers, elements of such definitions per core platform service should be set out in an annex to this Regulation, which should be subject to possible amendment by the Commission by way of a delegated act to update it in light of technological or other developments.

Or. en

Amendment 4

Proposal for a regulation Recital 23

Text proposed by the Commission

Amendment

(23) Providers of core platform services which meet the quantitative thresholds but are able to present sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, they do not fulfil the objective requirements for a gatekeeper, should not

(23) Providers of core platform services which meet the quantitative thresholds but are able to present sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, they ***exceptionally*** do not fulfil the objective requirements for a gatekeeper

be designated directly, but only subject to a further investigation. The burden of adducing evidence that the presumption deriving from the fulfilment of quantitative thresholds should not apply to a specific provider should be borne by that provider. In its assessment, the Commission should take into account only the elements which directly relate to the requirements for constituting a gatekeeper, namely whether it is an important gateway which is operated by a provider with a significant impact in the internal market with an entrenched and durable position, either actual or foreseeable. Any justification on economic grounds seeking to demonstrate efficiencies deriving from a specific type of behaviour by the provider of core platform services should be discarded, as it is not relevant to the designation as a gatekeeper. The Commission should be able to take a decision by relying on the quantitative thresholds where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

although they meet all the quantitative thresholds, should not be designated directly, but only subject to a further investigation *of those arguments*. The burden of adducing *compelling* evidence that the presumption deriving from the fulfilment of quantitative thresholds should not apply to a specific provider should be borne by that provider. In its assessment, the Commission should take into account only the elements which directly relate to the requirements for constituting a gatekeeper, namely whether it is an important gateway which is operated by a provider with a significant impact in the internal market with an entrenched and durable position, either actual or foreseeable. Any justification on economic grounds seeking to demonstrate efficiencies deriving from a specific type of behaviour by the provider of core platform services should be discarded, as it is not relevant to the designation as a gatekeeper. The Commission should be able to take a decision by relying on the quantitative thresholds where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

Or. en

Amendment 5

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions *of other providers of core platform services or any other*

Amendment

(31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions *prior to their implementation*. Such information should

services provided within the digital sector. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation.

not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the ***markets where gatekeepers operate, in particular in the*** digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation ***and under Council Regulation (EC) No 139/2004 (EC Merger Regulation).***

Or. en

Amendment 6

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 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

Amendment

(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 negative direct impact on the business users and end users. ***The obligations laid down in this Regulation should take into account the specific nature of the core platform services provided.*** 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, 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.

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. ***In order to enhance the effectiveness of the updating process, the Commission should also use the reporting mechanism involving competitors, business users, end users and Member States to inform the Commission in the event of any of the identified practices.***

Or. en

Amendment 7

Proposal for a regulation Recital 36

Text proposed by the Commission

(36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised alternative. The possibility should cover all possible sources of personal data, including own services ***of*** the gatekeeper as well as third party websites, ***and*** should ***be*** proactively ***presented to the end user*** in an explicit, clear and straightforward manner.

Amendment

(36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised ***but equivalent*** alternative, ***and without making the core platform service or certain functionalities thereof conditional upon the end user's consent in the meaning of Article 6(1)(a) of Regulation (EU) 2016/679. The less personalised alternative should not be different or of inferior quality compared to the service offered to the end users who consent to the combining of their personal data.*** The possibility ***of data combination*** should

cover all possible sources of personal data, including own *core platform* services **and other services offered by** the gatekeeper as well as third party *services (where data is obtained, for example, via cookies or ‘like’ buttons included on third party websites)*. **When the gatekeeper requests consent, it** should proactively **present a user-friendly solution to end users to provide, modify or revoke consent** in an explicit, clear and straightforward manner. **Consent should be given in a clear, informed and specific way by the end user who should be informed that a refusal could lead to a less personalised offer but that the quality and functionalities of the core platform service will remain unchanged.**

Or. en

Amendment 8

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 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

Amendment

(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, **their own interface or direct channel**. Such restrictions have a 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 distributive channels including** alternative online intermediation channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative

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.

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, de-listing *or less favourable ranking* of the offers of business users.

Or. en

Amendment 9

Proposal for a regulation Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) Requiring business users or end users to subscribe or register with another of the gatekeeper's core platform service as a condition to access, sign up to or register for a core platform service provides the gatekeeper with a means of capturing and locking in new business users and end users for their core platform services by ensuring that business users cannot access one core platform service without also at least registering or creating an account for the purposes of receiving a second core platform service. This conduct also gives gatekeepers a potential advantage in terms of accumulation of data and could raise barriers to entry.

Or. en

Amendment 10

Proposal for a regulation Recital 40

Text proposed by the Commission

(40) Identification services are crucial for business users to conduct their business, as these can allow them not only to optimise services, to the extent allowed under Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council³³, but also to inject trust in online transactions, in compliance with Union or national law. Gatekeepers should therefore not use their position as provider of core platform services to require their dependent business users to include any identification services provided by the gatekeeper itself as part of the provision of services or products by these business users to their end users, where other identification services are available to such business users.

³³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Amendment

(40) Identification **and payment** services are crucial for **the economic development of** business users to conduct their business, as these can allow them not only to optimise services, to the extent allowed under Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council³³, but also to inject trust in online transactions, in compliance with Union or national law. Gatekeepers should therefore not use their position as provider of core platform services to require their dependent business users to include any **payment and** identification services provided by the gatekeeper itself as part of the provision of services or products by these business users to their end users, where other identification services are available to such business users.

³³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Or. en

Amendment 11

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. 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

(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. 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 ***high-quality, accessible and real-time*** 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.

Or. en

Amendment 12

**Proposal for a regulation
Recital 46 a (new)**

(46a) Securing default positions across the main search access points of an operating system, such as the pre-installed browser, the home screen search bar, or the voice assistant, can entrench the dominant position of an established core platform service and prevent contestability of digital markets. Even where users can change the default manually, they rarely do so, due to behavioural bias. In order to ensure contestability, end users should be able to select their preferred core platform service default through a preference menu when they set up their device. End users should be able to access that preference menu after the device is set up. A gatekeeper should not be able to offer compensation or benefits to hardware manufacturers or network operators, or otherwise require them to offer its core platform service pre-installed or set as a default as these practices do not allow third-party business users to bid for pre-installation or for a default position.

Or. en

Amendment 13

Proposal for a regulation

Recital 47

Text proposed by the Commission

Amendment

(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

(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.

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 *indispensable* 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.

Or. en

Amendment 14

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

Amendment

(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 *or differentiated treatment* to their own offering, in terms of ranking, as opposed to the products of third parties

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.

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.

Or. en

Amendment 15

Proposal for a regulation

Recital 52

Text proposed by the Commission

(52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this

Amendment

(52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this

device, such as near-field-communication technology and the software used to operate that technology, which may be required for the effective provision of an ancillary service by the gatekeeper as well as by any potential third party provider of such an ancillary service. Such access may equally be required by software applications related to the relevant ancillary services in order to effectively provide similar functionalities as those offered by gatekeepers. If such a dual role is used in a manner that prevents alternative providers of ancillary services or of software applications to have access under equal conditions to the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services, this could significantly undermine innovation by providers of such ancillary services as well as choice for end users of such ancillary services. The gatekeepers should therefore be obliged to ensure access under equal conditions to, and interoperability with, the same operating system, hardware or software features that are available or used in the provision of any ancillary services by the gatekeeper.

device, such as near-field-communication technology and the software used to operate that technology, which may be required for the effective provision of an ancillary service by the gatekeeper as well as by any potential third party provider of such an ancillary service. Such access may equally be required by software applications related to the relevant ancillary services in order to effectively provide similar functionalities as those offered by gatekeepers. If such a dual role is used in a manner that prevents alternative providers of ancillary services or of software applications to have access under equal conditions to the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services, this could significantly undermine innovation by providers of such ancillary services as well as choice for end users of such ancillary services. The gatekeepers should therefore be obliged to ensure access ***free of charge*** under equal conditions to, and interoperability with, the same operating system, hardware or software features that are available or used in the provision of any ancillary services by the gatekeeper. ***The gatekeeper should not be prevented from taking indispensable measures to ensure that third party ancillary services do not compromise the integrity of the operating system, hardware or software features it provides. The gatekeeper should however be obliged to duly justify such indispensable measures and provide, free of charge, an alternative access and interoperability solution to enable effective provision of ancillary services.***

Or. en

Amendment 16

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, ***including aggregated data***, 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.

Or. en

Amendment 17

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

Amendment

(57) ***Core platform services provided by gatekeepers, and*** in particular ***by*** 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

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 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].

imbalance in bargaining power between those gatekeepers and business users of their **core platform services**, those gatekeepers should not be allowed to impose general conditions, including 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. Pricing or other general access **or treatment** 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 **the relevant core platform service**; 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 the **gatekeeper** 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 providers of **core platform services** to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].

Or. en

Amendment 18

Proposal for a regulation Recital 59 a (new)

Text proposed by the Commission

Amendment

(59a) Within the timeframe for meeting their obligations, designated gatekeepers should inform the Commission about the measures implemented to effectively meet their obligations. Such information should be made available to concerned third parties of undertakings while respecting the business secrets of designated gatekeepers.

Or. en

Amendment 19

Proposal for a regulation Recital 64

Text proposed by the Commission

Amendment

(64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by systematic non-compliance with one or several of the obligations laid down in this Regulation, ***which has further strengthened its gatekeeper position. This would be the case if the gatekeeper's size in the internal market has further increased, economic dependency of business users and end users on the gatekeeper's core platform services has further strengthened as their number has further increased and the gatekeeper benefits from increased entrenchment of its position.*** The Commission should therefore in such cases have the power to impose any remedy, whether behavioural or structural, having

(64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by systematic non-compliance with one or several of the obligations laid down in this Regulation. The Commission should therefore in such cases have the power to impose any remedy, whether behavioural or structural, having due regard to the principle of proportionality. Structural remedies, such as legal, functional or structural separation, including the divestiture of a business, or parts of it, should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy.

due regard to the principle of proportionality. Structural remedies, such as legal, functional or structural separation, including the divestiture of a business, or parts of it, should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. Changes to the structure of an undertaking as it existed before the systematic non-compliance was established would only be proportionate where there is a substantial risk that this systematic non-compliance results from the very structure of the undertaking concerned.

Changes to the structure of an undertaking as it existed before the systematic non-compliance was established would only be proportionate where there is a substantial risk that this systematic non-compliance results from the very structure of the undertaking concerned.

Or. en

Amendment 20

Proposal for a regulation Recital 65 a (new)

Text proposed by the Commission

Amendment

(65a) In case of urgency where a risk of serious and immediate damage for business users or end users could arise as a result of new practices that might undermine the contestability of core platform services or be unfair, the Commission should be able to implement interim measures that would temporarily impose obligations on the gatekeeper concerned. These interim measures should be limited to what is necessary and justified. They should apply pending the conclusion of the market investigation and the corresponding final decision of the Commission pursuant to Article 17.

Or. en

Amendment 21

Proposal for a regulation Recital 66 a (new)

Text proposed by the Commission

Amendment

(66a) The Commission should provide regular updates to the European Parliament as regards the evaluations of the enforcement of the obligations set out in Articles 5 and 6 and the possible need to update the relevant provisions. Where an evaluation would lead to a legislative proposal, the European Parliament should consider using its urgency procedure, which allows for faster parliamentary scrutiny of the Commission's proposals while fully respecting Parliament's democratic prerogatives.

Or. en

Amendment 22

Proposal for a regulation Recital 67

Text proposed by the Commission

Amendment

(67) Where, in the course of a proceeding into non-compliance or an investigation into systemic non-compliance, a gatekeeper offers commitments to the Commission, the latter should be able to adopt a decision making these commitments binding on the gatekeeper concerned, where it finds that the commitments ensure effective compliance with the obligations of this Regulation. ***This decision should also find that there are no longer grounds for action*** by the Commission.

(67) Where, in the course of a proceeding into non-compliance or an investigation into systemic non-compliance, a gatekeeper offers commitments to the Commission, the latter should be able to adopt a decision making these commitments binding on the gatekeeper concerned, where it finds that the commitments ensure effective compliance with the obligations of this Regulation. ***Before their adoption, the Commission should be empowered, where appropriate, to require the commitments to be tested, including A/B testing in order to optimise their effectiveness. The commitments should be reviewed after***

they have been in place for an appropriate period. Should the review of the commitments by the Commission show ineffective compliance, the Commission should be empowered to require modification or revoke the ineffective remedies.

Or. en

Amendment 23

Proposal for a regulation Recital 70

Text proposed by the Commission

(70) The Commission should be able to directly request that undertakings or association of undertakings provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State, or from any natural person or legal person for the purpose of this Regulation. When complying with a decision of the Commission, undertakings are obliged to answer factual questions and to provide documents.

Amendment

(70) The Commission should be able to directly request that undertakings or association of undertakings provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State, or from any natural person or legal person for the purpose of this Regulation. ***Public authorities, bodies or agencies within Member States should have the possibility, on their own initiative, to provide the Commission with relevant information.*** When complying with a decision of the Commission, undertakings are obliged to answer factual questions and to provide documents.

Or. en

Amendment 24

Proposal for a regulation Recital 77 a (new)

Text proposed by the Commission

Amendment

(77a) In order to ensure effective

implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23, the Commission should appoint an independent compliance officer to monitor implementation and compliance of the obligations and measures on a daily basis. The compliance officer should have access to the required information, including to data and algorithms, to ensure compliance and provide feedback to the Commission on a regular basis. The Commission should make recommendations to gatekeepers and impose the necessary sanctions based on feedback from the relevant compliance officer.

Or. en

Amendment 25

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. ***The purpose of*** this Regulation ***is to contribute to the proper functioning of the internal market by laying*** down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.

Or. en

Amendment 26

Proposal for a regulation Article 1 – paragraph 5

Text proposed by the Commission

5. Member States shall not impose on

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.

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 ***and unfair trading practices in business-to-business relationships.***

Or. en

Amendment 27

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ca) *web browsers;*

Or. en

Amendment 28

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) *virtual assistants;*

Or. en

Amendment 29

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point g

Text proposed by the Commission

(g) cloud computing services;

Amendment

(g) cloud computing services;
***including enterprise software,
applications, and solution services;***

Or. en

Justification

This revised definition would better reflect the reality of the cloud-first strategy of B2B software editors which are increasingly developing their services in the cloud and no longer on premises, with new terms of contract and unfair practices.

Amendment 30

Proposal for a regulation

Article 2 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) ‘Virtual assistant’ means software that responds to oral or written commands expressed in non-technical language by end users and performs tasks or services independently or through IT systems if needed and on behalf of the end user;

Or. en

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(7a) ‘Web browser’ means independent or embedded software applications which allow end users to have access to

information on the World Wide Web;

Or. en

Amendment 32

Proposal for a regulation

Article 2 – paragraph 1 – point 17 a (new)

Text proposed by the Commission

Amendment

(17a) 'Competitor to the gatekeeper's core platform service' means any natural or legal person acting in a commercial or professional capacity providing a core platform service in the same category as a gatekeeper;

Or. en

Amendment 33

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 offered through online intermediation services, ***including software application stores and virtual assistants***, 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, ***including software application stores and virtual assistants***, 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 34

Proposal for a regulation

Article 2 – paragraph 1 – point 23 a (new)

Text proposed by the Commission

Amendment

(23a) ‘Turnover’ means the amount derived by an undertaking as set out in Article 5(1) of Regulation (EC) No 139/2004;

Or. en

Amendment 35

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position ***in the near future***.

(c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position.

Or. en

Amendment 36

Proposal for a regulation

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

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

Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within ***one month*** 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).

information *relating to the quantitative thresholds* 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).

Or. en

Amendment 37

Proposal for a regulation

Article 3 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The Commission shall, without undue delay and at the latest 60 days after receiving the complete information referred to in paragraph 3, designate the provider of core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider, with its notification, presents sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the elements listed in paragraph 6, the provider does not satisfy the requirements of paragraph 1.

Amendment

The Commission shall, without undue delay and at the latest 60 **working** days after receiving the complete information referred to in paragraph 3, designate the provider of core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider, with its notification, presents sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the elements listed in paragraph 6, the provider **exceptionally** does not satisfy the requirements of paragraph 1 **although it meets all the thresholds in paragraph 2**.

Or. en

Amendment 38

Proposal for a regulation

Article 3 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Where the **gatekeeper** presents such

Amendment

Where the **provider of core platform**

sufficiently substantiated arguments to demonstrate that it does not satisfy the requirements *of* paragraph 1, the Commission shall ***apply paragraph 6 to assess whether the criteria*** in paragraph 1 *are met*.

services presents such sufficiently substantiated arguments to demonstrate that it ***exceptionally*** does not satisfy the requirements ***set out in*** paragraph 1 ***although it meets all the thresholds set out in paragraph 2***, the Commission shall ***designate that provider as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the provider was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements set out*** in paragraph 1.

Or. en

Amendment 39

Proposal for a regulation

Article 3 – paragraph 4 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

When a provider of a core platform service fails to provide within the deadline the relevant information required to assess its designation as gatekeeper pursuant to Article 3(2), the Commission shall be entitled to designate that provider as a gatekeeper based on the facts available.

Or. en

Amendment 40

Proposal for a regulation

Article 3 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission may identify as a gatekeeper, in accordance with the procedure laid down in Article 15, any provider of core platform services that

The Commission may identify as a gatekeeper, in accordance with the procedure laid down in Article 15, any provider of core platform services that

meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2, **or has presented sufficiently substantiated arguments in accordance with paragraph 4.**

meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2.

Or. en

Amendment 41

Proposal for a regulation

Article 3 – paragraph 6 – subparagraph 2 – point f

Text proposed by the Commission

(f) other **structural market** characteristics.

Amendment

(f) other **relevant business or service** characteristics, **such as a conglomerate corporate structure or vertical integration of the undertaking providing core platform services, for instance allowing cross subsidisation or combination of data from different sources.**

Or. en

Amendment 42

Proposal for a regulation

Article 3 – paragraph 6 – subparagraph 4

Text proposed by the Commission

Where the provider of a core platform service that satisfies the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the provider has been invited to comply within **a reasonable time-limit** and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper.

Amendment

Where the provider of a core platform service that satisfies the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner **within 2 months** and the failure persists after the provider has been invited to comply within **3 months** and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper **based on the facts available.**

Amendment 43

Proposal for a regulation

Article 3 – paragraph 6 – subparagraph 5

Text proposed by the Commission

Where the provider of a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the provider has been invited to comply within **a reasonable time-limit** and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper based on facts available.

Amendment

Where the provider of a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the provider has been invited to comply within **2 months** and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper based on facts available.

Or. en

Amendment 44

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 ongoing basis **and send the lists, and each update thereof, to the European Parliament.**

Or. en

Amendment 45

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 **any of its** core platform services with personal data from any **other core platform service or** 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 **Article 6(1)(a) of Regulation (EU) 2016/679. The gatekeeper shall be entitled to rely on point (c) or point (d) of Article 6(1) of Regulation (EU) 2016/679 as a legal basis, where applicable.**

Or. en

Justification

Consent is required under GPDR. This provision must not lead to a misuse of consent by gatekeepers which could force consumers to give consent to access quality services.

Amendment 46

**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 to offer the same products or services to end users **by any other means, including** through third party online intermediation services **and through the business users' own direct online sales channels** at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;

Or. en

Justification

This amendment to prohibit narrow parity clauses that prevent users from offering better prices, conditions and availabilities to end users via their own website. Narrow parity clauses are already forbidden in some EU Member States.

Amendment 47

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ba) refrain from requiring business users to inform the gatekeeper of the differentiated prices or conditions they choose to apply to their own channel of distribution or through third party online intermediation services;

Or. en

Justification

Business users should not be required to inform essential platform services of the conditions or prices they charge in other distribution channels. The European Commission had already been able to rule out such practices in Case AT.40153 - Most-Favoured-Nation clauses relating to digital books and related issues.

Amendment 48

Proposal for a regulation

Article 5 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(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

(c) allow business users to promote offers ***or to otherwise communicate with*** end users ***within or outside*** the core platform service, ***or through other channels***, 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,

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;

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;

Or. en

Justification

This article should be extended to communication with end users including promoting offers. Gatekeepers must not arbitrarily restrict how certain user companies communicate with their users. These restrictions prevent them from developing their products and services and expanding their user base. Consumers must access and use content and services via the app of a business user on the platform of the gatekeeper, even if those services have been acquired outside the platform.

Amendment 49

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 business users using the core platform services of that gatekeeper;

Amendment

(e) refrain from requiring business users to use, offer or interoperate with an identification service ***and a payment service, or a technical service supporting the provision of payment services*** of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper;

Or. en

Justification

Gatekeepers must not impose identification service, payment service or technical service supporting the provision of payment services as a condition to access the core platform service. This prohibition addresses the tie-ins between the gatekeepers core platform services and their ancillary services.

Amendment 50

Proposal for a regulation

Article 5 – paragraph 1 – point g

Text proposed by the Commission

(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

(g) provide **each advertiser and publisher** to which it supplies services with **free of charge, high-quality, and effective access to** information **on** the price paid by the advertiser **or advertising intermediary**, as well as the remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper;

Or. en

Justification

The information provided to publishers and advertisers under obligation 5(g) must be, as is the case for those same actors under obligation 6(g), provided free of charge.

Amendment 51

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ga) refrain from restricting or obstructing the ability of end users to use their own software license when using the cloud computing service of the gatekeeper.

Or. en

Justification

The purpose of the amendment is to create a new obligation that allows users to freely use their licenses when using a cloud service.

Amendment 52

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

Amendment

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

Or. en

Justification

This amendment aims to improve the segmentation of a gatekeeper's data (by extending the obligation to data generated by the use of ancillary services) in order to prevent gatekeepers from unfairly taking advantage of their dual role as providers of core platform services and competitors of businesses using its service.

Amendment 53

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 ***and refrain from exclusively enabling its own core platform services as default services when equivalent alternative services which perform the same function can be proposed,*** 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;

Or. en

Justification

Pre-installing applications is a case of self-preferencing that must be addressed. The default setting allows players to strengthen their positions and take advantage of their conglomerate nature. The possibility to uninstall is not enough.

Amendment 54

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 the gatekeeper;

Amendment

(c) allow ***and technically enable*** 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 the gatekeeper, ***provided that such proportionate measures are duly justified;***

Or. en

Justification

Gatekeepers should not undermine the installation of competing services.

Amendment 55

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 ***differently or*** more favourably in ranking, ***display, installation, activation, or default settings,*** 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, ***display, installation, activation and default settings;***

Or. en

Justification

This amendment aims to expand the prohibition of self-preferencing that does not only concern the ranking but installation, activation and default settings.

Amendment 56

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 switch between and subscribe to different software applications and services to be accessed using the operating system ***or the cloud computing services*** of the gatekeeper, including as regards the choice of Internet access ***service*** provider for end users, ***or using its virtual assistant;***

Or. en

Justification

This obligation should explicitly apply to gatekeepers providing cloud computing services. This amendment should allow end-users to switch and subscribe to other software solutions accessible via the cloud service.

Amendment 57

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 are available or used in the provision **by the gatekeeper** of any ancillary services;

Amendment

(f) allow business users and providers of ancillary services access to and interoperability with the same operating system, hardware, or software **or other features, including near-field-communication antennas or technology related to those antennas**, that are available or used in the provision of any ancillary services **or industry-standard features of its core platform services; in such cases, access and interoperability conditions shall be fair, reasonable and non-discriminatory. The gatekeeper shall not be prevented from taking indispensable measures to ensure that third party ancillary services do not endanger or compromise the integrity of the operating system, hardware or software features provided by the gatekeeper, provided that such indispensable measures are duly justified by the gatekeeper, while providing free of charge alternative access and interoperability to enable effective provision of ancillary services;**

Or. en

Justification

Interoperability is a key tool to achieve the objective of fair and contestable markets. This amendment aims to extend this obligation beyond ancillary services and to promote broader interoperability within the DMA and to ensure that this interoperability takes place under FRAND conditions.

Amendment 58

Proposal for a regulation

Article 6 – paragraph 1 – point g

Text proposed by the Commission

(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;

Amendment

(g) provide ***advertisers and publishers, or third parties authorised by*** advertisers and publishers, upon their request and free of charge, with ***effective and real time*** 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, ***including aggregated data and performance data in a manner that would allow advertisers and publishers to run their own verification and measurement tools to assess performance of the core services provided by the gatekeepers;***

Or. en

Justification

Stakeholders can choose to engage independent experts or other third parties of their choice to conduct the necessary checks to audit the provision of online advertising services by gatekeepers.

Amendment 59

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 end user and shall, in particular, provide ***free of charge and technically accessible*** tools for ***business users, or third parties authorised by a business user, and*** 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;

Or. en

Amendment 60

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, ***including personal data***, that is provided for or generated in the context of the use of the relevant core platform services ***or of ancillary services offered by the gatekeeper*** 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 ***that data is*** 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;

Or. en

Justification

Amendment to expand access to data generated by business users as part of the ancillary services offered by the gatekeeper to maximize the data portability tool offered by the DMA.

Amendment 61

Proposal for a regulation

Article 6 – paragraph 1 – point k

Text proposed by the Commission

Amendment

(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;

(k) apply fair and non-discriminatory general conditions of access **and treatment** for business users to its **core platform services including** software application store, **cloud computing services, online search engines and online social networking services** designated pursuant to Article 3 of this Regulation;

Or. en

Justification

Fair, reasonable, and non-discriminatory (FRAND) conditions must apply to all core platform services.

Amendment 62

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ka) provide its end users with clear, fair and non-discriminatory licensing conditions, including charges and fees, preventing material changes that limit the use of software applications or services which are used on, or in conjunction with a core service platform of the gatekeeper, and enabling the reasonable expected use of the software application or services, including after its transfer to another end user, if applicable.

Or. en

Justification

Gatekeepers should not be allowed to impose licensing conditions on use of software applications or services which are used on, or in conjunction with a core service platform and that would be ambiguous, unfair or discriminatory. Consistent with CJEU jurisprudence, customers should also have the right to resell and transfer their software licenses with vendors continuing to offer support and patches under fair terms to customers who have

lawfully acquired a resold license.

Amendment 63

Proposal for a regulation

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Before implementing any change in fees or fee structure charged to business users and related to obligations pursuant to paragraph 1, the gatekeeper shall notify such change to the Commission and to the affected business users.

Or. en

Amendment 64

Proposal for a regulation

Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Within six months after its designation and in application of Article 3(8), the gatekeeper shall provide the Commission with a report describing in a detailed and transparent manner the measures implemented to ensure compliance with the obligations set out in Articles 5 and 6. This report shall be updated by the gatekeeper at least annually.

Or. en

Amendment 65

Proposal for a regulation

Article 7 – paragraph 1 b (new)

1b. *Within six months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a non-confidential summary of the report referred to in paragraph 1a of this Article. The Commission shall publish without delay the non-confidential summary of the report. This non-confidential summary shall be updated each time the report referred to in paragraph 1 of this Article is updated.*

Or. en

Amendment 66

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. ***Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.***

Amendment

2. The Commission may by decision specify the measures that the gatekeeper concerned shall implement ***in order to comply with the obligations set out in Article 6. When adopting the decision, the Commission shall take into account the information provided by interested third parties, governments and relevant authorities of the Member States. Those measures may concern access to platforms (including interoperability, access to API and common standards); data-related interventions (including data mobility, data access and data silos); fair commercial relations (including non-discrimination); end users' and business users' choices (including design by default and design of choice architecture).*** The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.

Justification

The Commission must be supported, where appropriate, by resources and information to address the asymmetry of information with gatekeepers.

Amendment 67

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings within three months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services concerned should take in order to effectively address the preliminary findings.

Amendment

4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings within three months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services concerned should take in order to effectively address the preliminary findings. ***Interested third parties that are directly concerned shall have the possibility to provide comments on those preliminary findings.***

Amendment 68

Proposal for a regulation
Article 7 – paragraph 7

Text proposed by the Commission

7. A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances. A gatekeeper

Amendment

7. A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances. A gatekeeper

may, with its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances.

shall, with its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances.

Or. en

Amendment 69

Proposal for a regulation Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission may, acting on a reasoned request by a gatekeeper, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

Amendment

In cases of urgency, the Commission may, acting on a reasoned request by a gatekeeper, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

Or. en

Amendment 70

Proposal for a regulation Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision every 2 years. Following such a review, the Commission shall either wholly or partially lift the exemption or decide that the conditions of paragraph 1 continue to be met.

Or. en

Amendment 71

Proposal for a regulation

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. *The delegated acts that update the obligations set out in Articles 5 and 6 in accordance with paragraph 1 shall be limited to:*

(a) *extending any obligation that applies to a certain core platform service or to any other core platform service listed in point (2) of Article 2;*

(b) *specifying the manner in which the obligations of the gatekeepers under Articles 5 and 6 are to be implemented, including through incorporating the specifications set out in Article 7(2) into the obligations;*

(c) *extending any obligation that identifies a certain subset of users as beneficiaries to any other subset of users as beneficiaries;*

(d) *supplementing or amending the obligations with a view to improving the effectiveness of their application.*

Or. en

Amendment 72

Proposal for a regulation

Article 11 – paragraph 3

Text proposed by the Commission

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 or choices laid down in Articles 5 and 6, or make the exercise of those rights or choices unduly difficult.

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,

including by presenting end user choices in a non-neutral manner, or by subverting user autonomy, decision-making, or choice via the structure, function or manner of operation of a user interface or a part thereof.

Or. en

Amendment 73

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 ***involving another provider of core platform services or of any other services provided in the digital sector*** irrespective of whether it is notifiable to a Union competition authority under Regulation (EC) No 139/2004 or to a competent national competition authority under national merger rules.

Amendment

1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 irrespective of whether it is notifiable to a Union competition authority under Regulation (EC) No 139/2004 or to a competent national competition authority under national merger rules.

Or. en

Justification

This information obligation should apply to any proposed concentration of the gatekeepers.

Amendment 74

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

A gatekeeper shall inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the

Amendment

A gatekeeper shall inform the Commission of such a concentration ***at least 2 months*** prior to its implementation and following the conclusion of the agreement, the

announcement of the public bid, or the acquisition of a controlling interest.

announcement of the public bid, or the acquisition of a controlling interest.

Or. en

Amendment 75

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The notification pursuant to paragraph 1 shall at least describe for the acquisition targets their EEA and worldwide annual turnover, for any relevant core platform services their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users, as well as the rationale of the intended concentration.

Amendment

2. The notification ***of information*** pursuant to paragraph 1 shall at least describe for the acquisition targets their EEA and worldwide annual turnover, for any relevant core platform services their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users, as well as the rationale of the intended concentration.

Or. en

Amendment 76

Proposal for a regulation Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission shall make available to national competition authorities information received pursuant to paragraphs 1 and 2. While taking into account the legitimate interest of undertakings in protecting their business secrets, the Commission shall publish annually a list of acquisitions provided by gatekeepers which have fallen below the notification thresholds of Council Regulation No 139/2004.

Or. en

Amendment 77

Proposal for a regulation Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The gatekeeper shall make publicly available an overview of the audited description taking into account the limitations imposed by the requirements of business secrecy. This description, and its publicly available overview, shall be updated at least annually.

Or. en

Amendment 78

Proposal for a regulation Article 14 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) there have been regular alerts about unfair practices raised by national authorities through the reporting mechanism.

Or. en

Amendment 79

Proposal for a regulation Article 15 – paragraph 2

Text proposed by the Commission

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 six months from the

2. In the course of a market investigation pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the provider of core platform services concerned within six months from the opening of 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).

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).

Or. en

Amendment 80

Proposal for a regulation Article 15 – paragraph 3

Text proposed by the Commission

3. Where the provider of core platform services satisfies the thresholds set out in Article 3(2), but has presented significantly substantiated arguments in accordance with Article 3(4), the Commission shall *endeavour to* conclude the market investigation within five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the provider of core platform services within three months from the opening of the investigation.

Amendment

3. Where the provider of core platform services satisfies the thresholds set out in Article 3(2), but has presented significantly substantiated arguments in accordance with Article 3(4), the Commission shall conclude the market investigation within five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the provider of core platform services within three months from the opening of the investigation.

Or. en

Amendment 81

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

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 *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.

position in its operations, but it is foreseeable that it will enjoy such a position, it shall declare applicable to that gatekeeper *specific* obligations laid down in *Articles 5* and *6* 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.

Or. en

Amendment 82

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 shows that a gatekeeper has systematically infringed *one or several* obligations laid down in Articles 5 and 6 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, *where appropriate, be entitled to require the remedies to be tested before their adoption in order to optimise their effectiveness. The Commission shall* conclude its investigation by adopting a decision within twelve months from the opening of the market investigation.

Or. en

Amendment 83

Proposal for a regulation Article 16 – paragraph 3

Text proposed by the Commission

3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, where the Commission has issued at least **three** non-compliance or fining decisions pursuant to Articles 25 and 26 respectively against a gatekeeper in relation to any of its core platform services within a period of five years prior to the adoption of the decision opening a market investigation in view of the possible adoption of a decision pursuant to this Article.

Amendment

3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, where the Commission has issued at least **two** non-compliance or fining decisions pursuant to Articles 25 and 26 respectively against a gatekeeper in relation to any of its core platform services within a period of five years prior to the adoption of the decision opening a market investigation in view of the possible adoption of a decision pursuant to this Article.

Or. en

Amendment 84

Proposal for a regulation Article 16 – paragraph 4

Text proposed by the Commission

4. A gatekeeper shall be deemed to have further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), where its impact on the internal market has further increased, its importance as a gateway for business users to reach end users has further increased or the gatekeeper enjoys a further entrenched and durable position in its operations.

Amendment

deleted

Or. en

Amendment 85

Proposal for a regulation Article 19 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission shall, without delay, forward a copy of the simple request or of the decision requesting information, in accordance with paragraph 1, to the national competition authority of the Member State on the territory of which the principal place of business of the undertaking or association of undertakings is located.

Or. en

Amendment 86

Proposal for a regulation Article 19 – paragraph 6

Text proposed by the Commission

Amendment

6. At the request of the Commission, **the governments and** authorities **of** the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

6. At the request of the Commission **or on their own initiative, competent** authorities **within** the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

Or. en

Amendment 87

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission

2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission

pursuant to Article 24(2).

pursuant to Article 24(2), *as well as by auditors or experts from national competition authorities in the country of establishment of the premises concerned.*

Or. en

Amendment 88

Proposal for a regulation Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Reporting mechanism for business users and end users

- 1. Business users, competitors and end users of the core platform services may report to the Commission or national regulators any practice or behaviour by gatekeepers that falls within the scope of this Regulation, including non-compliance. The Commission and Member States shall inform each other of such reports.***
- 2. The Commission shall set its priorities for the task of examining the reports referred to paragraph 1. Subject to the provisions of paragraph 5 of this Article and of Article 33, the Commission may choose not to examine a report on the grounds that it does not consider such a report to be an enforcement priority.***
- 3. When the Commission considers that a report is an enforcement priority, it may open a proceeding pursuant to Article 18 or a market investigation pursuant to Article 14***
- 4. Without prejudice to Article 33, a Member State may request the Digital Markets Advisory Committee to adopt an opinion in order to determine if one or several reports should be considered an enforcement priority. The opinion may***

request the Commission to open a proceeding pursuant to Article 18 or a market investigation pursuant to Article 14. The Advisory Committee shall adopt an opinion within 1 month. In its opinion, it shall state the reasons why the report is considered to be, or not to be, an enforcement priority. If the report considers it to be an enforcement priority, the Commission shall, within four months, examine whether there are reasonable grounds for opening such a proceeding or investigation. Where the Commission does not comply with the request of the Advisory Committee, it shall state the reasons for not initiating a proceeding under Article 18 or a market investigation under Article 14.

Or. en

Amendment 89

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

1. In case of urgency due to the risk of serious and *irreparable* damage for business users or end users of gatekeepers, the Commission may, by decision adopt in accordance with the advisory procedure referred to in Article 32(4), order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of Articles 5 or 6.

Amendment

1. In case of urgency due to the risk of serious and *immediate* damage for business users or end users of gatekeepers, the Commission may, by decision adopt in accordance with the advisory procedure referred to in Article 32(4), order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of Articles 5 or 6.

Or. en

Amendment 90

Proposal for a regulation Article 22 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *In case of urgency, due to the risk of serious and immediate damage for business users or end users resulting from new practices implemented by one or several gatekeepers, that may undermine the contestability of core platform services or may be unfair pursuant to Article 10(2), the Commission may, by decision adopted in accordance with the advisory procedure referred to in Article 32(4), order interim measures against the gatekeepers concerned in order to avoid the materialisation of such risk.*

Or. en

Amendment 91

Proposal for a regulation
Article 22 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. *A decision pursuant to paragraph 2a may only be adopted in the context of a market investigation pursuant to Article 17 and within 6 months of the opening of such an investigation. The interim measures shall apply for a specified period of time and, in any case, shall be replaced by new obligations that may arise as a result of the final decision of the market investigation pursuant to Article 17.*

Or. en

Amendment 92

Proposal for a regulation
Article 23 – paragraph 1

Text proposed by the Commission

1. If during proceedings under Articles 16 or 25 the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5 and 6, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) make those commitments binding on that gatekeeper and declare that there are no further grounds for action.

Amendment

1. If during proceedings under Articles 16 or 25 the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5 and 6, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) make those commitments binding on that gatekeeper and declare that there are no further grounds for action. ***The Commission shall, where appropriate, be entitled to require the commitments to be tested to optimise their effectiveness.***

Or. en

Amendment 93

**Proposal for a regulation
Article 23 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. The Commission shall regularly review the commitments as regards their purpose and where, following investigation, it finds that they are not effective, shall be entitled to require amendment of the commitments or revoke them if required.

Or. en

Amendment 94

**Proposal for a regulation
Article 24 – paragraph 1**

Text proposed by the Commission

Amendment

1. The Commission ***may*** take the

1. The Commission ***shall*** take the

necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23.

necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23.

Or. en

Amendment 95

Proposal for a regulation Article 24 – paragraph 2

Text proposed by the Commission

2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.

Amendment

2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, ***including from competent independent national authorities*** to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission. ***Such actions may include, inter alia, access to algorithms, in order to ensure compliance with Articles 5 and 6.***

Or. en

Amendment 96

Proposal for a regulation Article 24 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. To ensure direct involvement on a daily basis, the Commission shall appoint a compliance officer, to be funded by the relevant gatekeeper, to oversee the implementation and compliance of the obligations and measures. The officer shall carry out its tasks under the supervision of the Commission and shall follow any orders or instructions given by

the Commission.

Or. en

Amendment 97

Proposal for a regulation Article 24 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. *The Commission is empowered to adopt a delegated act in accordance with Article 34 specifying the mandate which compliance officers shall fulfil and the obligations of gatekeepers to provide information to and to cooperate with compliance officers.*

Or. en

Amendment 98

Proposal for a regulation Article 25 – paragraph 2

Text proposed by the Commission

Amendment

2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the gatekeeper concerned. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the gatekeeper should take in order to effectively address the preliminary findings.

2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the gatekeeper concerned. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the gatekeeper should take in order to effectively address the preliminary findings. ***The Commission shall take into account the views of relevant third parties such as end users or business users before adopting a decision.***

Or. en

Amendment 99

Proposal for a regulation

Article 26 – paragraph 1 – introductory part

Text proposed by the Commission

1. In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:

Amendment

1. In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total **worldwide** turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:

Or. en

Amendment 100

Proposal for a regulation

Article 26 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the obligation to provide within a time-limit, information that is required for assessing its designation as a gatekeeper pursuant to Article 3(2) or supply incorrect, or misleading information;

Or. en

Amendment 101

Proposal for a regulation

Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) fail to ***provide within the time-limit*** information ***that is required for assessing their designation as gatekeepers*** pursuant to Article 3(2) ***or supply incorrect, incomplete or misleading information;***

(a) fail to ***supply complete*** information pursuant to Article 3(2);

Amendment 102

Proposal for a regulation

Article 26 – paragraph 4 – subparagraph 4

Text proposed by the Commission

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10 % of its total turnover in the preceding financial year.

Amendment

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10 % of its total **worldwide** turnover in the preceding financial year.

Or. en

Amendment 103

Proposal for a regulation

Article 30 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. If the Commission considers it necessary, it may also hear other natural or legal persons before taking the decision as provided for in paragraph 1.

Or. en

Amendment 104

Proposal for a regulation

Article 31 – paragraph 1

Text proposed by the Commission

Amendment

1. The information collected pursuant to Articles 3, **12**, 13, 19, 20 and 21 shall be used only for the purposes of this Regulation.

1. The information collected pursuant to Articles 3, 13, 19, 20 and 21 shall be used only for the purposes of this Regulation.

Or. en

Justification

NCAAs should be able to use the information in Article 12 to refer to the COM if needed through Art 22 EU Merger Regulation.

Amendment 105

**Proposal for a regulation
Article 31 a (new)**

Text proposed by the Commission

Amendment

Article 31a

**Cooperation and coordination with
Member States**

- 1. In accordance with the principles laid down in Article 1 and subject to Article 32a, the Commission shall be the sole decision-maker with regard to the correct application of this Regulation. To ensure effective enforceability and coherent implementation, the Commission shall be supported in every possible way by the expertise of the competent national authorities.**
- 2. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation.**
- 3. National authorities shall not take decisions which are inconsistent with any decision adopted by the Commission under this Regulation.**
- 4. The Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with information regarding any matter of fact or of law, including confidential information.**
- 5. Information exchanged pursuant to paragraph 3 of this Article shall only be**

exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in Article 1(6).

6. National competent authorities may report to the Commission any practice or behaviour by gatekeepers that falls within the scope of this Regulation. The Commission and Member States shall inform each other of such reports.

7. The competent authorities of the Member States enforcing the rules referred to in Article 1(6) may consult the Commission on any matter relating to the application of this Regulation.

Or. en

Amendment 106

Proposal for a regulation Article 32 – paragraph 1

Text proposed by the Commission

1. The Commission shall be assisted by the Digital Markets Advisory Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.

Amendment

1. The Commission shall be assisted by the Digital Markets Advisory Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011. ***The Digital Advisory Committee may establish a technical expert group that can be consulted on an ad hoc basis and that will include relevant national authorities and regulators including national competition authorities, national regulatory and other competent authorities such as telecom regulators, consumer organisations, data protection authorities and audio-visual regulators.***

Or. en

Amendment 107

Proposal for a regulation Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Cooperation with national competition authorities

- 1. The Commission shall apply the provisions of this Regulation in close cooperation with national competition authorities, acting within the European Competition Network as defined in point (5) of Article 2 of Directive (EU)2019/1 of the European Parliament and of the Council, in accordance with the provisions of this Article. It shall, in particular and as appropriate, make use of the European Competition Network System referred to in Article 33 of that Directive for the exchange of information.*
- 2. At the request of the Commission, national competition authorities shall cooperate in the application of Articles 12, 15, 16 and 17.*
- 3. Where requested by the Commission to assist in any investigation pursuant to paragraph 2 of this Article, the competition authorities of the Member States shall have the power to apply, mutatis mutandis, the powers of the Commission set out in Articles 19, 20 and 21.*
- 4. The competition authorities of the Member States shall have the power to exercise the powers conferred on the Commission by Article 24.*
- 5. When requesting a competition authority to cooperate in accordance with paragraph 2, the Commission shall transmit, to that competition authority, copies of the most important documents it has collected with a view to applying Articles 15, 16 and 17. At the request of*

the competition authority of a Member State, the Commission shall provide it with a copy of other existing documents necessary for the assessment of the case. When deciding on whether to request a competition authority to cooperate, the Commission may take into account the importance of the national market for the respective gatekeeper.

6. When acting in accordance with paragraph 3, the competition authorities of the Member States shall inform the Commission in writing before and without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other Member States.

7. The acting competition authority shall make available to the Commission any information it receives in the exercise of powers as set out in paragraph 3. The information supplied to the Commission may be made available to the competition authorities of the other Member States. National competition authorities may also exchange information necessary for the assessment of a case that they are dealing with under this Regulation.

8. The competition authorities of the Member States may consult the Commission on any case involving the application of Union law.

Or. en

Amendment 108

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**

Amendment

1. When three or more Member States request the Commission to open an investigation pursuant to **Articles 15, 16**

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.

and 17 or to institute proceedings in respect of possible non-compliance pursuant to Article 25 because they consider that there are reasonable grounds to suspect that a provider of core platform services should be designated as a gatekeeper ***or that a gatekeeper is not complying with its obligations, or they consider that new services or practices should be included within the scope of this Regulation***, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation.

Or. en

Justification

The request for market investigation from Member States should be extended to new services/practices and non-compliance.

Amendment 109

Proposal for a regulation Article 38 – paragraph 1

Text proposed by the Commission

1. By ***DD/MM/YYYY***, and subsequently every ***three*** years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.

Amendment

1. By ***two years and three months after the entry into force of this Regulation***, and subsequently every ***two*** years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee. ***With respect to the obligations set out in Article 5 and 6, the Commission shall carry out an evaluation by twelve months after the entry into force of this Regulation, and subsequently every twelve months.***

Or. en

Amendment 110

Proposal for a regulation

Article 39 – paragraph 2 – introductory part

Text proposed by the Commission

2. This Regulation shall apply from *six* months after its entry into force.

Amendment

2. This Regulation shall apply from *three* months after its entry into force.

Or. en