



2020/0374(COD)

6.7.2021

DRAFT OPINION

of the Committee on Industry, Research and Energy

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 – C9-0419/202 – 2020/0374(COD))

Rapporteur for opinion: Carlos Zorrinho

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

PA_Legam

SHORT JUSTIFICATION

1. Background

The Digital Markets Act (DMA), like the Digital Services Act (DSA), forms part of a broader package of legislation which provides the legal framework for the Commission's strategy entitled 'Shaping Europe's Digital Future'. It is thus a component of a wider body of legislation and needs to be defined in terms of its links with other relevant legislative texts, avoiding any overlaps liable to hinder implementation.

2. Principles

The purpose of the Digital Markets Act is to ensure the proper functioning of the internal market by fostering competitive and fair markets. Specific aims stem from this overall objective that can only be effectively achieved by addressing and solving market failures, ensuring competitive digital markets, building ecosystems conducive to innovation and providing a free and informed choice for consumers, monitoring and remedying distortions caused by inappropriate practices by gatekeepers and shoring up the security and coherence of the applicable legal framework, thereby safeguarding the structure of the internal market.

In view of these objectives and since the ITRE Committee is competent to deliver an opinion on the Digital Markets Act as a whole, the rapporteur has taken into account the complementarity of the competitive dimension, where the DMA must be a powerful, clear, pragmatic and easy-to-apply tool with which to achieve a level playing field, while also constituting a pillar of the second wave of digitalisation of European society, and should therefore incorporate the principles and the common values of the EU strategy for its digital future.

3. Vision

Digital services in general and online platforms in particular are playing an increasingly prominent role in the economy, and are thus crucial in determining the smooth functioning and balance of the internal market, establishing a transparent and fair relationship between providers and consumers, building an environment conducive to new business opportunities, in particular for small and medium-sized businesses and start-ups, promoting a challenging and favourable climate for innovation and fostering cross-border trade relations.

The Digital Markets Act was proposed by a European Commission that has described itself as geopolitical. The rapporteur views the geopolitical dimension as twofold.

If implemented successfully it will make the internal market more robust, while also increasing the Union's external competitive capacity.

A European approach to digital markets focused on better services for citizens and better conditions for business will create a more balanced and transparent global digital market, inspired by common European principles and values, thus enhancing the European Union's geopolitical relevance and helping build a fairer and more sustainable globalisation.

4. Overall approach

The amendments proposed in this report are the reflection of the principles and vision set out above.

4.1 - We take the view that in defining core platform services the DMA should take account of the effects of the development of the Internet of Things.

4.2 - We believe that gatekeepers should not be able to restrict users' free choice through contractual rules or technical practices that impede mobility between services or software applications.

4.3 - We believe that gatekeepers must comply with a set of rules that do not jeopardise diversity in Europe's digital environment or stifle an economic ecosystem in which SMEs play a key role in wealth creation, innovation, employment and regional development.

4.4 - We propose strengthening the legislation's capacity to limit unfair practices and foster the opening up of competition on platforms, thus providing opportunities for application developers and small competing platforms in conditions of balanced competition.

4.5 - We believe that high interoperability standards must be ensured for core messaging and media services, not just for ancillary services, as the Commission proposes.

4.6 - We propose monitoring portability and the right to access and transfer the data held by companies, in order to prevent abusive practices that aid and abet trends towards market concentration or monopolisation.

4.7 - We stress the conditions for combating targeted advertising and the ban on commercial tracking for the purposes of establishing consumer profiles.

4.8 - We propose regular monitoring of gatekeepers' compliance with their obligations in a transparent manner.

4.9 - We propose that gatekeepers be required to refrain from patterns of behaviour that give rise to dependency or the forced bundling of users.

4.10 - We are of the opinion that regulation should be based on constructive dialogue and avoid the fragmentation of regulatory power, without impeding the combined use of the capacities and competences of the various relevant bodies at European and national level.

AMENDMENTS

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

Amendment 1

Proposal for a regulation Recital 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Digital technologies, such as artificial intelligence, block-chains, robotics, crowdfunding and social media platforms, digital 3D printing, big data, cloud and mobile devices enable the creation of new entrepreneurial initiatives and create a wide spectrum of opportunities leading to new ways of doing business. Digital entrepreneurship includes entrepreneurial processes, outcomes and services transformed by digitization and digital transformation;

Or. en

Amendment 3

Proposal for a regulation Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) A common European approach focused on better services for citizens and businesses, should create a fairer global digital market inspired by European common shared principles and values.

Or. en

Amendment 4

Proposal for a regulation Recital 1 c (new)

Text proposed by the Commission

Amendment

(1c) Network effects are particularly strong for the core platform services of interpersonal communication services and online social networking and could significantly undermine innovation by providers of such services as well as choice for end users of these services., Gatekeepers should provide interoperability using globally recognised industry-standard service features of social networking services or number-independent interpersonal communications services to end users, business users and competing providers or potential providers of number-independent interpersonal communication services and online social networking at the request of these providers in order to foster the emergence of alternative platforms, which could deliver quality innovative products and services at affordable prices

Or. en

Amendment 5

Proposal for a regulation Recital 13

Text proposed by the Commission

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

Amendment

(13) In particular, online intermediation services, online search engines, operating systems, ***including, inter alia, smart TVs and IPTVs, digital voice assistants and platforms that use integrated voice assistant technologies, mobile payment services, web-browsers***, online social networking, video sharing platform services, ***video and audio on demand*** services, number-independent interpersonal communication services, ***digital services which allow the creation of, processing of, accessing or storage of data in digital form, including software as a service such as cloud computing services, meaning an electronic platform or a cloud storage facility, that the consumer selects for receiving or storing the digital content or digital service*** 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 ***stated as examples*** of core platform services and fall into the scope of this Regulation. ***This should be without prejudice to the inclusion of other categories of digital services into the scope of this Regulation. The fact that weak contestability and unfair practices in the digital sector are more frequent and pronounced in certain digital services than in others does not imply that other categories of services are exempt from it. The core platform services falling under the scope of this Regulation should therefore not be limited to certain types of services.*** Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU)

2015/1535 of the European Parliament and of the Council³². In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.

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

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

Or. en

Amendment 6

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the provider of the core platform service is limited. This is likely to be the case where that provider has provided a core platform service ***in at least three Member States*** to a very high number of business users and end users during at least ***three*** years.

Amendment

(21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the provider of the core platform service is limited. This is likely to be the case where that provider has provided a core platform service to a very high number of business users and end users during at least ***two*** years.

Or. en

Amendment 7

Proposal for a regulation Recital 25

Text proposed by the Commission

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

Amendment

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

Amendment 8

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every two years.

Amendment

(30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future, ***through a public and transparent market investigation***. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every two years.

Amendment 9

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of unfair practices imposed by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the

Amendment

(32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of unfair practices imposed by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the

benefit of society as a whole. Given the fast-moving and dynamic nature of digital markets, and the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any practices by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, insofar as a practice corresponds to the type of practice that is the subject of one of the obligations of this Regulation.

benefit of society as a whole. Given the fast-moving and dynamic nature of digital markets, and the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any practices by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, ***including through product design or by presenting end-user choices in a non-neutral manner, or by otherwise subverting or impairing user autonomy, decision-making, or choice via the structure, function or manner of operation of a user interface or a part thereof***, insofar as a practice corresponds to the type of practice that is the subject of one of the obligations of this Regulation.

Or. en

Amendment 10

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,

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 alternative. ***Such a less personalised alternative should only be different in the level of personalisation resulting from the non-cumulation of personal data and otherwise be of identical quality. The*** possibility should cover all possible

clear and straightforward manner.

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.

Or. en

Amendment 11

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 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.

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 **distribution channels**. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online **distribution channels**, limiting inter-platform contestability, which in turn limits choice of alternative online **distribution** channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, gatekeepers **should be prohibited from limiting** business users from choosing to differentiate commercial conditions, including price. Such a **prohibition** 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 12

Proposal for a regulation

Recital 39

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 13

Proposal for a regulation

Recital 41

Text proposed by the Commission

Amendment

(41) Gatekeepers should not restrict the free choice of end users by technically preventing switching between or subscription to different software applications and services. Gatekeepers should therefore ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and should not raise artificial technical barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to end users, including by means of pre-installation, as well the improvement of end user offering, such as better prices or increased quality, would not in itself constitute a barrier to switching.

deleted

Or. en

Justification

Identical to recital 50

Amendment 14

Proposal for a regulation

Recital 46

Text proposed by the Commission

Amendment

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

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

applications on *its* core platform service and *thereby* favour their own software applications.

and device providers, from un-installing any pre-installed software applications on *their* core platform service and *thereby* favour their own software applications

Or. en

Amendment 15

Proposal for a regulation

Recital 47

Text proposed by the Commission

(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.

Amendment

(47) The rules that the gatekeepers set for the distribution of software applications may in certain circumstances restrict the ability of *business users and* end users to install, *set as default* 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. *To ensure contestability, the gatekeeper should prompt the end user to decide whether the downloaded application or app store becomes the default.* 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.

Or. en

Amendment 16

Proposal for a regulation Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) The mandatory bundling business practice and self-preferencing terms of service effectively allow gatekeepers to monopolize an entire market and distort competition by forcing business users to pay for an entire group of software applications rather than allowing such users to choose which ones they want to buy, even if some of the gatekeepers' software applications are less competitive than those of other providers. The mandatory bundling business practice and self-preferencing terms of service, which also encompass ancillary services, enables the monopolization of an entire market, gives business users and their customers less choice, restricts competition for other providers of software applications and should be forbidden.

Or. en

Amendment 17

Proposal for a regulation Recital 50

Text proposed by the Commission

Amendment

(50) Gatekeepers should not restrict or

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prevent the free choice of end users by technically preventing switching between or subscription to different software applications and services. This would allow more providers to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and shall not raise artificial technical barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to consumers, ***including by means of pre-installation***, as well as the improvement of the offering to end users, such as price reductions or increased quality, should not be construed as constituting a prohibited barrier to switching.

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

Or. en

Amendment 18

Proposal for a regulation Recital 51

Text proposed by the Commission

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

Amendment

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

users in choosing their Internet access service provider.

choosing their Internet access service provider.

Or. en

Amendment 19

Proposal for a regulation Recital 51 a (new)

Text proposed by the Commission

Amendment

(51a) Interoperability can have a direct positive impact on contestability, fairness on the market and consumer welfare. Thus, interoperability which requires platforms to open up their access point interfaces (APIs) to potential competitors on the market would significantly reduce barriers to entry, as it would grant competitors access to existing networks and allow them to participate therein. This would as well allow competing platforms to offer their internal systems to users whose data lives elsewhere thereby enabling them to chose an equivalent consumer friendly alternative and at the same time enhance contestability.

Or. en

Amendment 20

Proposal for a regulation Recital 54

Text proposed by the Commission

Amendment

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the

dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users should be granted effective and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate.

dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users should be granted effective and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable, format ***as part of a European ecosystem for trusted data sharing***. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate.

Or. en

Amendment 21

Proposal for a regulation

Recital 61

Text proposed by the Commission

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

Amendment

(61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. ***In order to ensure*** an adequate level of ***data and consumer protection***, external pressure ***should be put*** on gatekeepers to prevent making deep consumer profiling the industry standard, ***in particular*** given that potential entrants or start-up providers cannot access data to the same extent and depth, and at a similar scale. Providers of core platform services

extent and depth, and at a similar scale. **Enhanced transparency should allow other providers of core platform services to differentiate themselves better through the use of superior privacy guaranteeing facilities. To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should at least** provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the impact of such profiling on the gatekeeper's services, and the steps taken to enable end users to be aware of the relevant use of such profiling, as well as to seek their consent.

should commit to superior privacy guaranteeing facilities. **Business models that are based on the commercial tracking and profiling of consumers should be prohibited. To that end the mixing of data from different services should also be prohibited.** Gatekeepers should provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the impact of such profiling on the gatekeeper's services, and the steps taken to enable end users to be aware of the relevant use of such profiling, as well as to seek their consent. **Such information should be shared with other relevant enforcement authorities, in particular data protection authorities.**

Or. en

Amendment 22

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether a provider of core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; **and** whether the list of obligations addressing unfair practices by gatekeepers should be reviewed and additional practices that are similarly unfair and limiting the contestability of digital markets should be identified. Such assessment should be based on market investigations to be run in

Amendment

(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether a provider of core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; whether the list of obligations addressing unfair practices by gatekeepers should be reviewed and additional practices that are similarly unfair and limiting the contestability of digital markets should be identified **and whether the prior designation of gatekeepers or introduction**

an appropriate timeframe, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the requisite degree of legal certainty.

of obligations has had a significant impact on business users, especially on SMEs, or end users. Such assessment should be based on *a public and transparent* market investigations to be run in an appropriate timeframe *at regular intervals*, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the requisite degree of legal certainty.

Or. en

Amendment 23

Proposal for a regulation Recital 65

Text proposed by the Commission

(65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the contestability of core platform services or is unfair is identified. While it is important to conduct *a review* on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market investigations should also ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order

Amendment

(65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular *and transparent* review, *allowing for as much predictability and legal certainty as possible*, of the lists of core platform services as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the contestability of core platform services or is unfair is identified *and that any adverse effect of such a behaviour on business users, in particular SMEs, and end users is mitigated*. While it is important to conduct *are view* on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable

to expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.

and appropriate time-frame. Market investigations should also ***be public, transparent and seek responses from all relevant stakeholders to*** ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.

Or. en

Amendment 24

Proposal for a regulation Recital 73 a (new)

Text proposed by the Commission

Amendment

(73a) The non-compliance of gatekeepers with this Regulation should be assessed in an appropriate timeframe within legally-binding deadlines. To that end, the Commission should be entitled to specify the measures the gatekeeper should implement to ensure effective compliance with its obligations. This may include, in addition to a cease and desist order, any proportionate measures to restore the contestability of the market where this has been harmed by the gatekeeper's non-compliance. The Commission should also be able to require the measures to be tested, including A/B testing, to optimise their effectiveness. The Commission should regularly review the measures adopted to ensure compliance by the gatekeeper with its obligations under this Regulation, and where it finds that they are not effective, should be able to require amendment of

these measures.

Or. en

Amendment 25

Proposal for a regulation Recital 75

Text proposed by the Commission

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

Amendment

(75) In the context of proceedings carried out under this Regulation, the undertakings concerned should be accorded the right to be heard by the Commission and the decisions taken should be widely publicised. While ensuring the rights to good administration and the rights of defence of the undertakings concerned, in particular, the right of access to the file and the right to be heard, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be considered confidential if the relevant conditions are met. ***Natural or legal persons with sufficient interest should also have a right to be heard. Parties that are directly affected by the obligations pursuant to this Regulation should be considered to have sufficient interest. Consumer associations that apply to be heard should be regarded as having a sufficient interest, where the proceedings concern products or services used by end users.***

Or. en

Amendment 26

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

1. This Regulation lays down harmonised rules ensuring contestable and fair markets **for both business users and end users** in the digital sector across the Union where gatekeepers are present.

Or. en

Amendment 27

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

Text proposed by the Commission

(2) ‘Core platform service’ means any of the following:

Amendment

(2) ‘Core platform service’ means **a widespread and commonly used digital service that intermediates between business users and end users or within either group and is provided by a platform service provider, regardless of whether that platform service provider is single-sided or multi-sided, such as** any of the following:

Or. en

Amendment 28

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

Text proposed by the Commission

Amendment

(ba) web browsers;

Amendment 29

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ca) online on-demand audiovisual services;

Or. en

Amendment 30

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(cb) online on-demand audio media services;

Or. en

Amendment 31

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(da) voice assistants;

Or. en

Amendment 32

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(db) *mobile payment services*

Or. en

Amendment 33

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point g

Text proposed by the Commission

Amendment

(g) cloud computing services;

(g) ***software as a service including***
cloud computing services;

Or. en

Amendment 34

Proposal for a regulation

Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6a) *‘Web browser’ means software used by users of client PCs, smart mobile devices and other devices to access and interact with web content hosted on servers that are connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar;*

Or. en

Amendment 35

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(7a) ‘Online on-demand audiovisual service’ means a service as defined in point (g) of Article 1(1) of Directive (EU) 2010/13;

Or. en

Amendment 36

Proposal for a regulation Article 2 – paragraph 1 – point 7 b (new)

Text proposed by the Commission

Amendment

(7b) ‘Online on-demand audio media service’ or ‘anon-linear audio media service’ means an audio media service provided by a media service provider for the listening of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

Or. en

Amendment 37

Proposal for a regulation Article 2 – paragraph 1 – point 8 a (new)

Text proposed by the Commission

Amendment

(8a) ‘Voice assistants’ means software that responds to oral or written commands and performs tasks such as executing search queries, accessing and interacting with other digital services on behalf of the end user;

Or. en

Amendment 38

Proposal for a regulation

Article 2 – paragraph 1 – point 8 b (new)

Text proposed by the Commission

Amendment

(8b) ‘Mobile payment service’ means a payment service operated under financial regulation and performed from or via a mobile device;

Or. en

Amendment 39

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(10a) ‘software as a service’ means a method of software delivery in which software is accessed online via a subscription;

Or. en

Amendment 40

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***

(18) ‘Ranking’ means the relative prominence given to goods or services offered through, or the relevance given to search results by online search engines, as presented, organised or communicated by ***core platform service*** providers, ***irrespective*** of the technological means used for such presentation, organisation or

services or by providers of online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;

communication;

Or. en

Amendment 41

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 42

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 43

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(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.

Amendment

(c) ***after a thorough evidence based assessment, it has been demonstrated that the gatekeeper*** enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future.

Or. en

Amendment 44

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR 6.5 billion in the last three financial years, or where the average market capitalisation or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 65 billion in the last financial year, and it provides a core platform service ***in at least three Member States***;

Amendment

(a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR 6.5 billion in the last three financial years, or where the average market capitalisation or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 65 billion in the last financial year, and it provides a core platform service;

Or. en

Amendment 45

Proposal for a regulation

Article 3 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the requirement in paragraph 1 point (c) where the thresholds in point (b) were met in each of the last **three** financial years.

(c) the requirement in paragraph 1 point (c) where the thresholds in point (b) were met in each of the last **two** financial years.

Or. en

Amendment 46

Proposal for a regulation

Article 3 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the size, including turnover and market capitalisation, operations and position of the provider of core platform services;

(a) the size, including turnover and market capitalisation, operations and position of the provider of core platform services **as well as the market share in the relevant market**;

Or. en

Amendment 47

Proposal for a regulation

Article 3 – paragraph 6 – subparagraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) existing alternative providers;

Or. en

Amendment 48

Proposal for a regulation

Article 3 – paragraph 8

Text proposed by the Commission

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

Amendment

8. The gatekeeper shall comply with the obligations laid down in Articles 5 and 6 **as soon as possible, and in any case no later than two** months after a core platform service has been included in the list pursuant to paragraph 7 of this Article. **If a gatekeeper fails to comply with the obligations within these 2 months, Art. 25 and 26 are applicable.**

Or. en

Amendment 49

Proposal for a regulation

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. The Commission shall regularly, and at least every 2 years, review whether the designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), or whether new providers of core platform services satisfy those requirements. The regular review shall also examine whether the list of affected core platform services of the gatekeeper needs to be adjusted.

Amendment

2. The Commission shall regularly, and at least every 2 years, **conduct a public and transparent market investigation, to** review whether the designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), or whether new providers of core platform services satisfy those requirements. The regular review shall also examine whether the list of affected core platform services of the gatekeeper needs to be adjusted. **The review shall not have any suspending effect on the obligations.**

Or. en

Amendment 50

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall regularly review these measures and may amend them where, following investigation, it finds that they are not effective to ensure compliance by the gatekeeper with its obligations under Articles 5 and 6, the Commission .

Or. en

Amendment 51

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

Text proposed by the Commission

Amendment

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

(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 ***of an alternative service not based on data combination for management*** consent in the sense of Regulation (EU) 2016/679. ; ***where the end user has chosen a service not based on data combination, the service in question shall not differ except in the level of personalisation resulting from the non-accumulation of personal data.***

Or. en

Amendment 52

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 53

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 or end*** users to use, offer or interoperate with an identification service of the gatekeeper, ***including payment services*** in the context of services offered by the business users using the core platform services of that gatekeeper

Or. en

Amendment 54

Proposal for a regulation

Article 5 – paragraph 1 – point f

Text proposed by the Commission

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

Amendment

(f) refrain from requiring business users or end users to subscribe to or register with any other core platform services identified pursuant to Article 3 *or* which meets the thresholds in Article 3(2)(b) *or ancillary services offered by the gatekeeper itself or by any third party belonging to the same undertaking*, as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article

Or. en

Amendment 55

**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 and business* 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 *the gatekeeper can prove* 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

Amendment 56

**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 the installation ***setting as default by business users and end users***, 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 ***promptly notify the end user to decide whether the downloaded application or application store should become the default. 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 ***where the gatekeeper can prove that such measures are necessary and justified and there are no less restrictive means to safeguard the integrity of the hardware or operating system***;

Or. en

Amendment 57

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

Text proposed by the Commission

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

Amendment

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

Amendment 58

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) allow consumers and developers in mobile application ecosystems to increase the number of applications available and ensure that new functionalities across software applications and services can be accessed using the operating system of the gatekeeper;

Or. en

Amendment 59

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(eb) refrain from using dark patterns, such as avoiding abusive patterns like tying or bundling practices;

Or. en

Amendment 60

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ec) refrain from inviting more than once or unreasonably pushing users to revert to the applications of the gatekeepers;

Amendment 61

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ed) refrain from building in their own search engines algorithms that give them unfair advantages;

Or. en

Amendment 62

Proposal for a regulation

Article 6 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(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;

(f) allow business ***users, end*** users and providers of ***competing core platform services or*** 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 ***or industry-standard features of its core platform services;***

Or. en

Amendment 63

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(fa) allow end users, business users, providers and potential providers of number-independent interpersonal

communication services and on line social networking services access to and interoperability with the same industry-standard service features that are available or used in the provision by the gatekeeper of any social networking services or number-independent interpersonal communication services; minimum interoperability requirements shall be in accordance with the relevant Union legislation or the industry standard, where applicable;

Or. en

Amendment 64

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, 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; ***and shall not retain payments for advertisements under the claims that traffic is irregular, without providing detailed evidence for that irregularity and giving the publisher the opportunity to raise objections;***

Or. en

Amendment 65

Proposal for a regulation

Article 6 – paragraph 1 – point h

Text proposed by the Commission

(h) provide effective portability of data

Amendment

(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 ;

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

Or. en

Amendment 66

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 and end* users, or third parties authorised by a business user *or end user*, free of charge, *in a user friendly manner* with effective, high-quality, continuous and real-time access and use of *non-personal* aggregated *and* 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, *in full compliance with Regulation (EU) 2016/679 (GDPR)*, 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 *in line with the principles of purpose limitation and data minimisation*, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679;

Or. en

Amendment 67

Proposal for a regulation

Article 6 – paragraph 1 – point k

Text proposed by the Commission

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

Amendment

(k) apply fair and non-discriminatory general conditions of access for business users ***and end users to any of its core platform services by default through implementing appropriate technical and organisational measures*** to its software application store designated pursuant to Article 3 of this Regulation.

Or. en

Amendment 68

Proposal for a regulation

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to prevent unnecessary commercial tracking of end users, gatekeepers shall refrain from pooling and crossing customer data arising from different services.

Or. en

Amendment 69

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

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

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.

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 **three** months from the opening of proceedings pursuant to Article 18.

Or. en

Amendment 70

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 **six weeks** 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.

Or. en

Amendment 71

Proposal for a regulation Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 72**Proposal for a regulation****Article 10 – paragraph 2 – point a***Text proposed by the Commission*

(a) there is an imbalance of rights and obligations on business users and the gatekeeper is obtaining an advantage from business users that is disproportionate to the service provided by the gatekeeper to business users; or

Amendment

(a) there is an imbalance of rights and obligations on business users **or end users** and the gatekeeper is obtaining an advantage from business **users or end** users that is disproportionate to the service provided by the gatekeeper to business users **or end users**; or

Amendment 73**Proposal for a regulation****Article 11 – paragraph 1***Text proposed by the Commission*

1. A gatekeeper shall ensure that the obligations of Articles 5 and 6 are fully and effectively complied with. While the obligations of Articles 5 and 6 apply in respect of core platform services designated pursuant to Article 3, their implementation shall not be undermined by any behaviour of the undertaking to which the gatekeeper belongs, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature.

Amendment

1. A gatekeeper shall ensure that the obligations of Articles 5 and 6 are fully and effectively complied with. While the obligations of Articles 5 and 6 apply in respect of core platform services designated pursuant to Article 3, their implementation shall not be undermined by any behaviour of the undertaking to which the gatekeeper belongs, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature, **including through product design or by presenting end user choices in a non-neutral manner, or by otherwise subverting or impairing user autonomy, decision-making, or choice via the structure, function or manner of operation of a user interface or a part thereof.**

Amendment 74**Proposal for a regulation
Article 11 – paragraph 2***Text proposed by the Commission*

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

Amendment

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

Amendment 75**Proposal for a regulation
Article 11 – paragraph 3***Text proposed by the Commission*

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

Amendment

3. A gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5 and 6, or make the exercise of those rights or choices unduly difficult, **including through the use of "dark patterns" or manipulative choice architectures, by presenting end-user**

choices in a non-neutral manner, or by otherwise subverting or impairing 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 76

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 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 *and its potential impact on the rights and interests of business users.*

Or. en

Amendment 77

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

1. The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). **It** shall endeavour to conclude its

Amendment

1. The Commission may conduct a **transparent** market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). **The Commission** shall

investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within *twelve* months from the opening of the market investigation.

endeavour to conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within *six* months from the opening of the market investigation.

Or. en

Amendment 78

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 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 79

Proposal for a regulation Article 17 – paragraph 1

Text proposed by the Commission

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services or to detect types of practices that may limit the contestability of core platform services or

Amendment

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services or to detect types of practices that may limit the contestability of core platform services or

may be unfair and which are not effectively addressed by this Regulation. *It* shall issue a public report at the latest within **24** months from the opening of the market investigation.

maybe unfair and which are not effectively addressed by this Regulation. ***This market investigation shall include public and transparent consultations with all stakeholders, including SMEs and consumers representatives. The Commission.*** shall issue a public report at the latest within **12** months from the opening of the market investigation

Or. en

Amendment 80

Proposal for a regulation

Article 25 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Commission shall adopt a non-compliance decision in accordance with the advisory procedure referred to in Article 32(4) where it finds that a gatekeeper does not comply with one or more of the following:

Amendment

1. The Commission shall adopt, ***within a binding six months timeframe from the opening of proceedings pursuant to Article 18,*** a non-compliance decision in accordance with the advisory procedure referred to in Article 32(4) where it finds that a gatekeeper does not comply with one or more of the following:

Or. en

Amendment 81

Proposal for a regulation

Article 25 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In the non-compliance decision adopted pursuant to paragraph 1, the Commission may furtheralso set out measures that the gatekeeper must implement to ensure effective compliance with its obligations laid down in Articles 5 or 6. Such measures may include any proportionate measures necessary to

restore the contestability of the market where this has been harmed by the gatekeeper's non-compliance. The Commission may require, where appropriate, that the measures be applied on a temporary basis, in order to test them and to optimise their effectiveness. The Commission may impose behavioural remedies after the first infringement of the measures.

Or. en

Amendment 82

Proposal for a regulation Article 25 – paragraph 4

Text proposed by the Commission

4. The gatekeeper shall provide the Commission with the description of the measures it took to ensure compliance with the decision adopted pursuant to paragraph 1.

Amendment

4. The gatekeeper shall provide the Commission with the description of the measures it took to ensure compliance with the decision adopted pursuant to paragraph 1. ***The Commission shall regularly review those measures and where, following investigation, it finds that they are not effective to ensure compliance by the gatekeeper with its obligations under Articles 5 and 6, the Commission may adapt them.***

Or. en

Amendment 83

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

Text proposed by the Commission

Amendment

1a. Where the Commission deems it necessary, it may also hear other natural or legal persons before taking the decisions as provided for in paragraph 1.

Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted. National competent authorities may also ask the Commission to hear any other natural or legal person with sufficient interest.

Or. en

Amendment 84

Proposal for a regulation Article 30 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 85

Proposal for a regulation Article 30 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings, associations of undertakings *and interested natural or legal persons* concerned have *be able* to comment.

Or. en

Amendment 86

Proposal for a regulation Article 30 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Natural or legal persons who can show a legitimate interest shall be entitled to lodge complaints with regard to the non-designation of gatekeepers and non-compliance and systematic non-compliance by gatekeepers with their obligations under this regulation.

Or. en