



**2020/0374(COD)**

12.10.2021

# **OPINION**

of the Committee on Legal 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: Tiemo Wölken

PA\_Legam

## **SHORT JUSTIFICATION**

### **Introduction**

The Rapporteur of the Opinion welcomes the Commission's proposal for a Regulation on contestable and fair markets in the digital sector ("Digital Markets Act"). The Digital Markets Act (DMA) is a crucial addition to the regulatory framework by providing the regulator with a toolbox to intervene against unfair and self-serving business practices employed by the largest companies in the digital sphere.

The scope, gatekeeper designation process, and obligations set out by the European Commission are a first important step to tackle this issue. However, The Rapporteur of the Opinion believes that these provisions are not ambitious enough to remedy the issues of unfair market practices and stifling innovation.

### **The scope**

The Commission proposes a set of eight Core Platform Services (CPS) as the target of this Regulation. The exhaustive nature of this list limits the flexibility of the Regulation in addressing new and emerging categories of CPS. Digital markets move fast, and the regulatory framework should reflect this aspect of the digital economy. The Rapporteur therefore proposes to make the list non-exhaustive, in order to render the DMA more future-proof.

Gatekeepers do not only exist in markets with a large amount of end users and business users, nor are gatekeepers only the largest of companies. The Commission therefore should be able to include smaller companies that do not fulfil the quantitative criteria of the gatekeeper designation, but act as a gatekeeper position in their market nonetheless.

### **The designation process**

The current designation process involves a high degree of self-reporting by potential gatekeepers. The Rapporteur believes that this process can be streamlined in order to ensure that all potential gatekeepers are captured by the legislation, unless they can prove that in their specific market condition they are not a gatekeeper in the sense of the Regulation. All who qualify as a gatekeeper should have to comply with the obligations of the Regulation, whether they self-report or not. Furthermore, the Rapporteur would like to stress the importance of the ability of the Commission to designate emerging gatekeepers irrespective of the quantitative threshold as a central instrument to guarantee the flexibility of the Regulation in its practical application.

### **The obligations**

Many of the obligations set out in Articles 5 and 6 in the Commission proposal address the right issues. However, the provisions often fall short of their full potential.

The Rapporteur proposes to include both business users and end users in each provision where applicable. This is in line with the objective of the DMA to allow both business users

and end users to benefit fully from the platform economy.

Furthermore, the objective of ensuring fairness is referenced in the recitals. However, the actual obligations do not include such a fairness principle. The Rapporteur therefore proposes to add this vital principle to Article 5.

More specifically, the Rapporteur proposes that the prohibition of data combination in Art. 5a is amended to remove the option of consent. Experience with the GDPR has shown that well-intended consent options are often abused by dominant platforms, and that informed consent on part of the end user is virtually unachievable. To avoid potential abuse of personal data, an outright prohibition of personal data combination is therefore the only option.

Another important addition is increased transparency requirements for advertising services for publishers, advertisers and other third parties in order to verify the effectiveness and provision of advertising services by CPS.

Furthermore, self-preferencing of gatekeepers is a common practice to ensure the use of their own services as opposed to third-party software. The rapporteur proposes several amendments to mitigate this issue, and strengthens the interoperability provision in Art. 6f.

### **Other provisions**

The Rapporteur includes a range of amendments in other provisions. Notably, in Article 11 on anti-circumvention, he proposes amendments in order to ban so-called ‘dark patterns’, which are intended to subconsciously influence the choices an end user or business user.

Furthermore, the Rapporteur calls for more rights for end users and business users in flagging non-compliance of gatekeepers as well as invoking a notification procedure with assessment through the Commission.

## **AMENDMENTS**

The Committee on Legal 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 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

*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 the Union and facilitating

cross-border trading.

cross-border trading *as well as innovation development opportunities.*

## Amendment 2

### Proposal for a regulation

#### Recital 2

##### *Text proposed by the Commission*

(2) Core platform services, at the same time, feature a number of characteristics that can be exploited by their providers. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, *a* lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by providers of these services can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between providers of such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the provider of those services the position of a so-called gatekeeper.

##### *Amendment*

(2) Core platform services, at the same time, feature a number of characteristics that can be exploited by their providers. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, *the discouraging and* lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by providers of these services can have the effect of substantially undermining the contestability of the core platform services, *and discouraging investment in innovation for potential new operators on the market*, as well as impacting the fairness of the commercial relationship between providers of such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the provider of those services the position of a so-called gatekeeper.

## Amendment 3

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) Core platform services, at the same time, feature a number of characteristics that can be exploited by their providers. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by providers of these services can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between providers of such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the provider of those services the position of a so-called gatekeeper.

**Amendment 4**

**Proposal for a regulation**  
**Recital 5**

*Text proposed by the Commission*

(5) It follows that the market processes are often incapable of ensuring fair economic outcomes with regard to core

*Amendment*

(2) Core platform services, at the same time, feature a number of characteristics that can be exploited by their providers. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by providers of these services can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between providers of such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the provider of those services the position of a so-called gatekeeper, ***depending on their size***.

*Amendment*

(5) It follows that the market processes ***and ex-post competition law*** are often incapable of ensuring fair economic

platform services. Whereas Articles 101 and 102 TFEU remain applicable to the conduct of gatekeepers, their scope is limited to certain instances of market power (e.g. dominance on specific markets) and of anti-competitive behaviour, while enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case by case basis. Moreover, existing Union law does not address, or does not address effectively, the identified challenges to the well-functioning of the internal market posed by the conduct of gatekeepers, which are not necessarily dominant in competition-law terms.

outcomes with regard to core platform services. Whereas Articles 101 and 102 TFEU remain applicable to the conduct of gatekeepers, their scope is limited to certain instances of market power (e.g. dominance on specific markets) and of anti-competitive behaviour, while enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case by case basis. Moreover, existing Union law does not address, or does not address effectively, the identified challenges to the well-functioning of the internal market posed by the conduct of gatekeepers, which are not necessarily dominant in competition-law terms.

## Amendment 5

### Proposal for a regulation

#### Recital 6

##### *Text proposed by the Commission*

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

##### *Amendment*

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

regulatory requirements.

## Amendment 6

### Proposal for a regulation

#### Recital 7

##### *Text proposed by the Commission*

(7) Therefore, business users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration within the internal market.

## Amendment 7

### Proposal for a regulation

#### Recital 8

##### *Text proposed by the Commission*

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

##### *Amendment*

(7) Therefore, business users and end-users of core platform services provided by gatekeepers should be afforded ***harmonised and*** appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market ***and legal certainty***, and to address existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration within the internal market.

##### *Amendment*

(8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised, ***effective***, mandatory rules ***befitting the digital age*** should therefore



ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market.

be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market.

## Amendment 8

### Proposal for a regulation

#### Recital 11

##### *Text proposed by the Commission*

(11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>26</sup>, Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council<sup>27</sup>, Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>28</sup>, Directive (EU) 2019/790 of the European Parliament and of the Council<sup>29</sup>, Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>30</sup>, and Directive (EU) 2010/13 of the European Parliament and of the Council<sup>31</sup>, as well as national rules aimed at enforcing or, as the case may be, implementing that Union legislation.

---

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

##### *Amendment*

(11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>26</sup>, Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council<sup>27</sup>, Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>28</sup>, Directive **2002/58/EC<sup>28a</sup>**, Directive (EU) 2019/790 of the European Parliament and of the Council<sup>29</sup>, Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>30</sup>, and Directive (EU) 2010/13 of the European Parliament and of the Council<sup>31</sup>, as well as national rules aimed at enforcing or, as the case may be, implementing that Union legislation.

***Where gatekeepers are holders of the right provided for in Article 7(1) of Directive 96/9/EC of the European Parliament and of the Council<sup>31a</sup> they should not exercise that right in such a way that prevents the re-use of data or restrict its re-use beyond the limits set by this Regulation.***

---

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

11.7.2019, p. 57).

<sup>27</sup> Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

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

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

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

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

11.7.2019, p. 57).

<sup>27</sup> Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

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

***<sup>28a</sup> 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).***

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

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

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

***<sup>31a</sup> Directive 96/9/EC of the European Parliament and of the Council of 11***

## Amendment 9

### Proposal for a regulation Recital 12

#### *Text proposed by the Commission*

(12) Weak contestability and unfair practices in the digital sector are more frequent and pronounced for certain digital services than for others. This is the case in particular for widespread and commonly used digital services that mostly directly intermediate between business users and end users and where features 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 are the most prevalent. Often, there is only one or very few large providers of those digital services. These providers of core platform services have emerged most frequently as gatekeepers for business users and end users with far-reaching impacts, gaining the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus **only** on those digital services that are most broadly used by business users and end users and where, based on current market conditions, concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.

#### *Amendment*

(12) Weak contestability and unfair practices in the digital sector are more frequent and pronounced for certain digital services than for others. This is the case in particular for widespread and commonly used digital services that mostly directly intermediate between business users and end users and where features 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 are the most prevalent. Often, there is only one or very few large providers of those digital services. These providers of core platform services have emerged most frequently as gatekeepers for business users and end users with far-reaching impacts, gaining the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus on **all of** those digital services that are most broadly used by business users and end users and where, based on current **and prospective** market conditions, concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.

## Amendment 10

### 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 Council<sup>32</sup>. 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, online social networking, video sharing platform services, number-independent interpersonal communication services, cloud computing services and online advertising services, **web browsers, and virtual assistants** all have the capacity to affect a large number of end users and businesses alike, which entails a risk of unfair business practices. They should be included in the definition of core platform services and fall 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.*** 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<sup>32</sup>. ***Online intermediation services should be covered irrespective of the technology used to provide such services. In this regard, virtual or voice activated assistants and other connected devices should fall within the scope of this Regulation irrespective of the software used as an operating system, an online intermediation service or a search engine.*** 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.

---

<sup>32</sup> 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.

---

<sup>32</sup> 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.

## Amendment 11

### Proposal for a regulation Recital 14

#### *Text proposed by the Commission*

(14) A number of other ancillary services, such as identification or payment services and technical services which support the provision of payment services, may be provided by gatekeepers together with their core platform services. As gatekeepers frequently provide the portfolio of their services as part of an integrated ecosystem to which third-party providers of such ancillary services do not have access, at least not subject to equal conditions, and can link the access to the core platform service to take-up of one or more ancillary services, the gatekeepers are likely to have an increased ability and incentive to leverage their gatekeeper power from their core platform services to these ancillary services, to the detriment of choice and contestability of these services.

#### *Amendment*

(14) A number of other ancillary services, such as identification or payment services and technical services which support the provision of payment services, may be provided by gatekeepers together with their core platform services. As gatekeepers frequently provide the portfolio of their services as part of an integrated ecosystem to which third-party providers of such ancillary services do not have access, at least not subject to equal conditions, and can link the access to the core platform service to take-up of one or more ancillary services, the gatekeepers are likely to have an increased ability and incentive to leverage their gatekeeper power from their core platform services to these ancillary services, to the detriment of choice and contestability of these services. ***Gatekeepers that provide ancillary services such as retailing or distribution activities that are targeted at end users alongside their core platform services and in a manner that is indistinguishable for the average user should also be subject to the obligations applicable to core platform services.***

Amendment 12

**Proposal for a regulation**  
**Recital 18**

*Text proposed by the Commission*

(18) A sustained market capitalisation of the provider of core platform services at or above the threshold level over three or more years should be considered as strengthening the presumption that the provider of core platform services has a significant impact on the internal market.

*Amendment*

(18) A sustained market capitalisation of the provider of core platform services at or above the threshold level over three or more years should be considered as strengthening the presumption that the provider of core platform services has a significant impact on the internal market, ***generating at least a potential effect as regards influencing end user options.***

**Amendment 13**

**Proposal for a regulation**  
**Recital 23**

*Text proposed by the Commission*

(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 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

*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 ***be*** 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 ***therefore***



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.

***not be admitted***, 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.

## Amendment 14

### 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

#### *Amendment*

(25) Such an assessment can only be done in light of ***an efficient*** market investigation ***tailored to the conditions on the digital market***, while taking into account the quantitative thresholds. In its assessment the Commission should pursue the objectives of preserving, ***stimulating*** 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

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.

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 15

### Proposal for a regulation Recital 26

#### *Text proposed by the Commission*

(26) A particular subset of rules should apply to those providers of core platform services that are foreseen to enjoy an entrenched and durable position in the near future. The same specific features of core platform services make them prone to tipping: once a service provider has obtained a certain advantage over rivals or potential challengers in terms of scale or intermediation power, its position may become unassailable and the situation may evolve to the point that it is likely to become durable and entrenched in the near future. Undertakings can try to induce this tipping and emerge as gatekeeper by using some of the unfair conditions and practices regulated in this Regulation. In such a situation, it appears appropriate to intervene before the market tips irreversibly.

#### *Amendment*

(26) A particular subset of rules should apply to those providers of core platform services that are foreseen to enjoy an entrenched and durable position in the near future. The same specific features of core platform services make them prone to tipping, ***both from the perspective of market conditions and from that of user behaviour***: once a service provider has obtained a certain advantage over rivals or potential challengers in terms of scale or intermediation power, its position may become unassailable and the situation may evolve to the point that it is likely to become durable and entrenched in the near future. Undertakings can try to induce this tipping and emerge as gatekeeper by using some of the unfair conditions and practices regulated in this Regulation. In such a situation, it appears appropriate to intervene ***in an effective and harmonised manner*** before the market tips irreversibly.

## Amendment 16

### Proposal for a regulation Recital 27



*Text proposed by the Commission*

(27) However, such an early intervention should be limited to imposing only those obligations that are necessary and appropriate to ensure that the services in question remain contestable and allow to avoid the qualified risk of unfair conditions and practices. Obligations that prevent the provider of core platform services concerned from achieving an entrenched and durable position in its operations, such as those preventing unfair leveraging, and those that facilitate switching and multi-homing are more directly geared towards this purpose. To ensure proportionality, the Commission should moreover apply from that subset of obligations only those that are necessary and proportionate to achieve the objectives of this Regulation and should regularly review whether such obligations should be maintained, suppressed or adapted.

*Amendment*

(27) However, such an early intervention should be limited to imposing only those obligations that are necessary and appropriate to ensure that the services in question remain contestable and allow to avoid the qualified risk of unfair conditions and practices. Obligations that prevent the provider of core platform services concerned from achieving an entrenched and durable position in its operations, such as those preventing unfair leveraging, and those that facilitate switching and multi-homing are more directly geared towards this purpose. To ensure proportionality, the Commission should moreover apply from that subset of obligations only those that are necessary and proportionate to achieve the objectives of this Regulation and should regularly review whether such obligations should be maintained, suppressed or adapted, ***bearing in mind the basic objective of guaranteeing a framework for developing and encouraging innovation.***

**Amendment 17**

**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

***Designated*** gatekeepers should comply with the obligations laid down in this Regulation in respect of each of the core platform services listed in the relevant designation decision. The mandatory rules should apply taking into account the conglomerate position of gatekeepers, where applicable. Furthermore, implementing measures that the Commission may by decision impose on the gatekeeper following a regulatory dialogue should be designed in an effective manner, having regard to the features of

*Amendment*

(29) Gatekeepers should comply with the obligations laid down in this Regulation in respect of each of the core platform services listed in the relevant designation decision. The mandatory rules should apply taking into account the conglomerate position of gatekeepers ***and their ecosystem orchestrator power***, where applicable. Furthermore, implementing measures ***based on Article 36*** that the Commission may by decision impose on the gatekeeper following a regulatory dialogue should be designed in an effective

core platform services as well as possible circumvention risks and in compliance with the principle of proportionality and the fundamental rights of the undertakings concerned as well as those of third parties.

manner, having regard to the features of core platform services as well as possible circumvention risks and in compliance with the principle of proportionality and the fundamental rights of the undertakings concerned as well as those of third parties.

## Amendment 18

### 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. 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 **three** years.

## Amendment 19

### 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 services provided within the digital sector**. Such information should not only serve the review process mentioned above, regarding

#### *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 **and other competent national authorities** of all of their intended and concluded acquisitions **prior to their application**. Such information should not only serve the review process mentioned above, regarding the status of individual

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.

## Amendment 20

### 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 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.

gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends ***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.

#### *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 the Regulation may specifically take into account the 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 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 competent national authorities, that would inform the Commission in the event of any of those detected practices.***

## **Amendment 21**

### **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 alternative. The possibility should cover all possible sources of personal data, including ***those created by the*** 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 22**

### **Proposal for a regulation Recital 36 a (new)**

*Text proposed by the Commission*

*Amendment*

***(36a) Article 5(a) of this Regulation should not be understood as suggesting that platforms that are not designated as gatekeepers may freely combine personal***

*data across services without the individual's consent.*

## Amendment 23

### 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 online intermediation services, ***their own interface, their own websites or direct distribution channels***. 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 distribution channels including*** 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 ***or less favourable ranking*** of the offers of business users.

## Amendment 24

### Proposal for a regulation

## Recital 38

### *Text proposed by the Commission*

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

### *Amendment*

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



## Amendment 25

### 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 26

#### *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, as well as third parties with a legitimate interest in representing them,*** to raise concerns about unfair behaviour by gatekeepers with any relevant administrative, ***judicial*** or other public authorities. For example, business users, ***end users, or third parties with a legitimate interest,*** may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user ***or end user*** accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit ***or impede*** 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 ***in clear and intelligible language,*** 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. ***All rights available to business users should also be available to end users.***

**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 Council<sup>33</sup>, 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.

---

<sup>33</sup> 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 27**

**Proposal for a regulation**  
**Recital 41**

*Text proposed by the Commission*

(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

*Amendment*

(40) Identification **and ancillary** 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 Council<sup>33</sup>, 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 **or ancillary** 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.

---

<sup>33</sup> 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*

(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.

## Amendment 28

### 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.

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 technical barriers so as to make switching **more difficult**, 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.

#### *Amendment*

(42) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent, **complex** 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.

Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, ***with free of charge, effective, high quality, continuous, real-time and easy-to-access*** 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 ***and the availability and visibility of advertisement.***

## Amendment 29

### Proposal for a regulation Recital 43

#### *Text proposed by the Commission*

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

#### *Amendment*

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

business unit that competes with the business users of a core platform service.

to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit that competes with the business users of a core platform service.

## Amendment 30

### Proposal for a regulation Recital 46

#### *Text proposed by the Commission*

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

#### *Amendment*

(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or **ancillary** services are pre-installed by a gatekeeper, **or where a service or application is provided as a default without a prompt to choose between of alternative services**. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its core platform service **or inhibit user choice by setting default services** and thereby favour their own software applications **or services**.

## Amendment 31

### 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

#### *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 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.

relevant gatekeeper and restrict the ability of end users to access these software applications or software application stores outside the core platform services of that gatekeeper. Such restrictions may limit the ability of developers of software applications to use alternative distribution channels and the ability of end users to choose between different software applications from different distribution channels and should be prohibited as unfair and liable to weaken the contestability of core platform services. In order to ensure that third party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper the gatekeeper concerned may implement proportionate technical or contractual measures to achieve that goal if the gatekeeper demonstrates that such measures are necessary and justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system. ***This prohibition on restricting the ability of end users to install and use, or access third - party software applications or application stores should not prevent gatekeepers to take the required responsibility in the fight against illegal content online.***

## Amendment 32

### Proposal for a regulation Recital 47 a (new)

*Text proposed by the Commission*

*Amendment*

***(47a) Gatekeepers should be able to implement proportionate technical or contractual measures to restrict end users' ability to access any content that is illegal or does not respect intellectual property in the software applications or software application stores of third parties.***

## Amendment 33

### Proposal for a regulation Recital 48

#### *Text proposed by the Commission*

(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also ***operating on*** that core platform service. This can occur for instance with 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

#### *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 a differentiated treatment*** to their own offering, in terms of ranking, as opposed to the products of third parties also ***using*** that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked ***within or alongside*** 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 ***may be*** considered or used by certain end users as a service distinct or additional to the online search engine, ***such preferential or embedded display of a separate online intermediation service shall be regarded as a favouring irrespective of whether the information or results within the favoured groups of specialised results may also be provided by competing services and are as such ranked in a non-discriminatory way.*** Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and

contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace, ***or products or services listed in core platform service settings, or the results provided by a virtual assistant.*** In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper ***potentially leading to a conflict of interest.*** Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

## Amendment 34

### Proposal for a regulation

#### Recital 49

##### *Text proposed by the Commission*

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

##### *Amendment*

(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it ***cooperates with***. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair ***and do not allow the gatekeeper's own services or products to benefit from competition-relevant information about competing products or services.*** Ranking should in this context cover all forms of relative prominence, including ***among others*** display, rating, ***order***, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential



enforcement of this obligation.<sup>34</sup>

treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.<sup>34</sup>

---

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

---

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

## **Amendment 35**

### **Proposal for a regulation Recital 50**

#### *Text proposed by the Commission*

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

#### *Amendment*

(50) Gatekeepers should not restrict or prevent the free choice of end users by technically preventing switching between or subscription to different software applications and services. This would allow more providers to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and shall not raise 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.

## **Amendment 36**

### **Proposal for a regulation Recital 52**

(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.

#### **Amendment 37**

#### **Proposal for a regulation Recital 53**

(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 **end users** or 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.



*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, ***publishers, or third parties authorised by advertisers*** and publishers, when requested, with free of charge, ***continuous, detailed, comprehensive, accessible and real-time*** access to the performance measuring tools of the gatekeeper and the information necessary, ***including aggregated data and performance 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.

**Amendment 38**

**Proposal for a regulation**

**Recital 54**

*Text proposed by the Commission*

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port

*Amendment*

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port

their data, business users and end users should be granted effective 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.

their data, business users and end users should be granted effective, ***free of charge*** and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability ***of end users' and business users' data***. 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.

## Amendment 39

### Proposal for a regulation Recital 55

#### *Text proposed by the Commission*

(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, ***including data inferred from such use***. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to ***such*** data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. ***Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should***

#### *Amendment*

(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to ***aggregated, non-personal*** data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.

*not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.*

## **Amendment 40**

### **Proposal for a regulation Recital 56**

*Text proposed by the Commission*

*Amendment*

**(56)** *The value of online search engines to their respective business users and end users increases as the total number of such users increases. Providers of online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. Providers of online search engine services collect these data from searches undertaken on their own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other providers of such* **deleted**

*services, so that these third-party providers can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users by appropriate means, without substantially degrading the quality or usefulness of the data.*

## Amendment 41

### Proposal for a regulation Recital 57

*Text proposed by the Commission*

(57) In particular gatekeepers which provide access to software application stores serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of *their software application stores*, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, that would be unfair or lead to unjustified differentiation. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other providers of software application stores; prices charged or conditions

*Amendment*

(57) In particular gatekeepers which provide access to *core platform services such as* software application stores, *online search engine and online social networking service* serve as an important gateway for business users that seek to reach end users, *which can have an adverse effect on the end users' right to receive and impart information and ideas, and ultimately adversely affect media pluralism, diversity of opinion as well as competition*. In view of the imbalance in bargaining power between those gatekeepers *on the one hand*, and business users of *core platform services, especially those being in a minority position on a given sectorial market, such as small press publishers, particularly when accessing their online search engine and online social networks, on the other hand*, 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

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].

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 *or treatment* 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 *core platform services* for different related or similar services or to different types of end users; prices charged or conditions imposed by the provider of *core platform services* for the same service in different geographic regions; prices charged or conditions imposed by the provider of *core platform services* for the same service the gatekeeper offers to itself. ***Determining the fairness of general access conditions should lead to the opportunity to make the revenue stream of digital content providers, such as press publishers being in a dominant position on their market, more transparent, notably in terms of revenues deriving from advertisement , and in terms of distribution of appropriate shares of revenues to the authors of works incorporated in press publications.*** 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]. ***It should also be without prejudice to the ability of business users being in a minority position on a given sectorial market, such as small press publishers, to offer royalty-free licenses in order to ensure access to their content, visibility on***

*online search engines and online social networking services, and it should be without prejudice to the ability of end-users to perform acts of hyperlinking according to article 15(1) of Directive (EU) 2019/790.*

## Amendment 42

### Proposal for a regulation Recital 58 a (new)

*Text proposed by the Commission*

*Amendment*

*(58a) During the implementation period of three months, designated gatekeepers should inform the Commission about what they intend to implement and how, in order to ensure effective compliance with their obligations. Such information should be made available to concerned third parties of undertakings, taking into account the protection of trade secrets of designated gatekeepers.*

## Amendment 43

### Proposal for a regulation Recital 60

*Text proposed by the Commission*

*Amendment*

(60) In exceptional circumstances justified on the limited grounds of public **morality**, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this

(60) In exceptional circumstances justified on the limited grounds of public **health and security**, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this



Regulation without undermining the intended ex ante effects on fairness and contestability.

Regulation without undermining the intended ex ante effects on fairness and contestability. ***Where such an exemption is granted, the Commission should review its decision every two years.***

## Amendment 44

### Proposal for a regulation Recital 64

#### *Text proposed by the Commission*

(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 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

#### *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. 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. 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.

risk that this systematic non-compliance results from the very structure of the undertaking concerned.

## Amendment 45

### 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 of gatekeepers could result from new practices that may undermine contestability of core platform services or may be unfair, it is also important to ensure that the Commission can implement interim measures and thus temporarily impose obligations to the gatekeeper concerned. These interim measures should be proportionate and 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.***

## Amendment 46

### 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***

(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. ***The Commission*** should, ***where appropriate, be entitled to require***



*action* by the Commission.

*the commitments to be tested, including A/B tested 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 that they have not led to effective compliance, the Commission shall be entitled to require their amendment or revoke them;*

#### Amendment 47

##### 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. ***Those 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.

#### Amendment 48

##### 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

###### *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.

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. ***Parties directly concerned by the obligations laid down in Articles 5 and 6 should be considered to have an interest and should therefore be able to be heard. Where a procedure concerns products or services used by end consumers, the consumer associations should be considered to have a sufficient interest.***

## Amendment 49

### Proposal for a regulation Recital 77

#### *Text proposed by the Commission*

(77) The advisory committee established in accordance with Regulation (EU) No 182//2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular,

#### *Amendment*

(77) The advisory committee established in accordance with Regulation (EU) No 182//2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. ***The Commission should involve in this advisory committee third parties representing affected end users.*** In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the

delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>36</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>36</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

---

<sup>36</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

---

<sup>36</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

## Amendment 50

### Proposal for a regulation Recital 78 a (new)

*Text proposed by the Commission*

*Amendment*

***(78a) Gatekeepers often highlight sponsored search results, or elements promoting their own products and services, and limit the display of organic***

*results.*

## Amendment 51

### Proposal for a regulation Recital 79 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 52

### Proposal for a regulation Recital 79 – paragraph 1

*Text proposed by the Commission*

This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European

*Amendment*

This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European

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

Amendment 53

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 a (new)**

*Text proposed by the Commission*

Union, in particular Articles **11**, 16, 47 and 50 thereof. Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles

*Amendment*

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

#### **Amendment 54**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

5. Member States shall not impose on gatekeepers 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.***

## Amendment 55

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

#### *Text proposed by the Commission*

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers; Council Regulation (EC) No 139/2004<sup>38</sup> and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) .../.. of the European Parliament and of the Council<sup>39</sup>.

---

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

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

#### *Amendment*

6. This Regulation ***complements and*** is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers; Council Regulation (EC) No 139/2004<sup>38</sup> and national rules concerning merger control; Regulation (EU) 2019/1150; ***Regulation (EU) 2016/679; Directive 2002/58; and Regulation (EU) .../... of the European Parliament and of the Council<sup>39</sup>, Directive 2005/29/EC on unfair commercial practices, Council Directive 93/13/EEC on unfair terms in consumer contracts and Directive 2010/13/EU on the provision of audiovisual media services<sup>39a</sup>.***

---

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

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

## **Amendment 56**

### **Proposal for a regulation**

#### **Article 1 – paragraph 7**

##### *Text proposed by the Commission*

7. National authorities shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions.

##### *Amendment*

7. National authorities shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions, ***providing close assistance to Member States who request this.***

## **Amendment 57**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2 – point a**

##### *Text proposed by the Commission*

(a) online intermediation services;

##### *Amendment*

(a) online intermediation services, ***including online, marketplaces and software application stores;***

## **Amendment 58**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2 – point h**

##### *Text proposed by the Commission*

(h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);

##### *Amendment*

(h) ***online*** advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);



## **Amendment 59**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(ha) payment aggregation services;**

## **Amendment 60**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2 – point h b (new)**

*Text proposed by the Commission*

*Amendment*

**(hb) embedded digital services in vehicles;**

## **Amendment 61**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2 – point h c (new)**

*Text proposed by the Commission*

*Amendment*

**(hc) connected TV services;**

## **Amendment 62**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2 –point i a(new)**

*Text proposed by the Commission*

*Amendment*

**(ia) web browsers;**

## Amendment 63

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 2 – point k a(new)

*Text proposed by the Commission*

*Amendment*

**(ka) virtual assistants;**

## Amendment 64

### 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, as presented, organised or communicated by the providers of ***core platform services including software application stores and virtual assistants***, whatever the technological means used for such presentation, organisation or communication;

## Amendment 65

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

**(23a) ‘Virtual Assistant’ means software that responds to oral or written commands expressed in a non-technical language by end-users and perform tasks or services by itself or mediates with IT systems on behalf of the end user, such as executing search queries, accessing and interacting with other digital services on behalf of the**

*end user;*

## **Amendment 66**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 23 b (new)**

*Text proposed by the Commission*

*Amendment*

**(23b) ‘Web browsers’ means independent or embedded software applications to access and interact with information hosted on web servers and networks such as the internet;**

## **Amendment 67**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 23 c (new)**

*Text proposed by the Commission*

*Amendment*

**(23c) ‘Search results’ means any information in any format, including texts, graphics, voice or other output, returned by core platform services provider in response and related to a written or oral search query, irrespective of whether the information is an organic result, a paid result, a direct answer or any product, service or information offered in connection with, or displayed along with, or partly or entirely embedded in, the organic results;**

## **Amendment 68**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 23 d (new)**

*Text proposed by the Commission*

*Amendment*

**(23d) ‘National competent authority’ means any national authority that has been designated by a Member State as such within the meaning and for the**

*purpose of this Regulation, notably in respect of Article 17;*

## **Amendment 69**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 23 e (new)**

*Text proposed by the Commission*

*Amendment*

**(23e) ‘Consent’ of the data subject means any freely given, specific, informed and unambiguous indication of the data subject’s wishes as defined in point 11 of Article 4 of Regulation (EU) 2016/679;**

## **Amendment 70**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 23 f (new)**

*Text proposed by the Commission*

*Amendment*

**(23f) ‘Payment aggregation services’ means technical services as defined in Article 3(j) of Directive (EU) 2015/2366 of the European Parliament and of the Council, which enable any business activity set out in annex I of Directive (EU) 2015/2366 of the European Parliament and of the Council within the framework of contracts between payment aggregation services providers and third-party providers.**

## **Amendment 71**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 23 g (new)**

*Text proposed by the Commission*

*Amendment*

**(23g) ‘Embedded digital services in vehicles’ means software embedded in vehicles including for the purpose of gaining insights into vehicle performance**

*and driver behaviour, or for the purpose of accessing audiovisual media content;*

## Amendment 72

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 23 h (new)

*Text proposed by the Commission*

*Amendment*

***(23h) ‘Connected TV’ means a television set connected to the internet that allows user to perform online activities including music and video streaming, or viewing of pictures;***

## Amendment 73

### 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 service which serves as an important gateway for business users ***or end users*** to reach ***other*** end users ***or business users***; and

## Amendment 74

### 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, ***based on an objective assessment by the competent authority taking into account past and predicted rates of growth and market concentration,*** in the future.

## Amendment 75

### Proposal for a regulation

#### Article 3 – paragraph 2 – introductory part

*Text proposed by the Commission*

2. A provider of core platform services shall be presumed to satisfy:

*Amendment*

2. A provider of core platform services shall be presumed to satisfy ***either of the following criteria:***

## Amendment 76

### Proposal for a regulation

#### Article 3 – paragraph 2 – point b

*Text proposed by the Commission*

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

for the purpose of the first subparagraph, ***monthly active*** end users shall refer to the average number of ***monthly active*** end users throughout ***the largest part of*** the last financial year;

*Amendment*

(b) the requirement in paragraph 1 point (b) where it provides ***one or multiple*** core platform ***services*** that ***each have*** more than 45 million monthly end users established or located in the Union ***or*** more than 10 000 yearly business users established in the Union in the last financial year;

for the purpose of the first subparagraph, end users shall refer to the average number of end users throughout the last financial year;

## Amendment 77

### Proposal for a regulation

#### Article 3 – paragraph 3 – introductory part

*Text proposed by the Commission*

3. Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within ***three months*** after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2.. That notification shall

*Amendment*

3. 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

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).

the relevant 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).

## Amendment 78

### Proposal for a regulation Article 3 – paragraph 4

#### *Text proposed by the Commission*

4. 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.

Where the gatekeeper presents such 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

#### *Amendment*

4. 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.

Where the gatekeeper presents such 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

***Where the provider of the core platform service fails to provide within the deadline set by the Commission all the relevant information that is 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.*

## **Amendment 79**

### **Proposal for a regulation**

#### **Article 3 – paragraph 6 – subparagraph 1 – point f**

##### *Text proposed by the Commission*

(f) other structural market characteristics.

##### *Amendment*

(f) other structural market characteristics ***such as the degree of multi-homing among business and end-users of the core platform services provided.***

## **Amendment 80**

### **Proposal for a regulation**

#### **Article 3 – paragraph 6 – subparagraph 2**

##### *Text proposed by the Commission*

In conducting its assessment, the Commission shall take into account foreseeable developments of these elements.

##### *Amendment*

In conducting its assessment, the Commission shall take into account foreseeable developments, of these elements ***in the short term.***

## **Amendment 81**

### **Proposal for a regulation**

#### **Article 3 – paragraph 6 – subparagraph 3**

##### *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 ***pursuant to Chapter V of this Regulation*** 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 82

### Proposal for a regulation

#### Article 3 – paragraph 6 – subparagraph 4

##### *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 ***pursuant to Chapter V of this Regulation*** 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 83

### Proposal for a regulation

#### Article 3 – paragraph 7

##### *Text proposed by the Commission*

7. For each gatekeeper identified pursuant to paragraph 4 or paragraph 6, the Commission shall identify the relevant undertaking to which it belongs and list the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b).

##### *Amendment*

7. For each gatekeeper identified pursuant to paragraph 4 or paragraph 6, the Commission shall identify the relevant undertaking to which it belongs and list the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users ***or end users*** to reach end users ***or business users*** as referred to in paragraph 1(b).

## Amendment 84

### 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 three*** months after a core platform service has been included in the list pursuant to paragraph 7 of this Article.

**Amendment 85**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) there is new relevant information that was not examined before the adoption of the decision;***

**Amendment 86**

**Proposal for a regulation**

**Article 4 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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.

2. The Commission shall regularly, and at least every **3** 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 87

### 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 **make publicly available** 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 **with the support of the competent national authorities** on an on-going basis **and whenever the Council of the European Union or the European Parliament requests**.

## Amendment 88

### Proposal for a regulation Article 5 – paragraph - 1 (new)

*Text proposed by the Commission*

*Amendment*

**-1. A gatekeeper shall behave in a fair manner vis-à-vis business users and end users and refrain from using practices that would prevent business users from effectively competing with their core platform services or any other services provided by the gatekeeper or third parties, such as preferential treatment, pricing advantages, de-listing of the offers of business users or increased commission rates or measures with equivalent effect.**

*Justification*

*In order to align the obligations for gatekeepers with recitals 32, 33 and 34, it is necessary to include a general fairness principle in Article 5. This principle shall ensure the fair conduct of core platform services wherever they directly compete with business users through their own services.*

## Amendment 89

### Proposal for a regulation

#### Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

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

*Amendment*

(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in **business users or** 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 **and the gatekeeper can prove that combining personal data is technically necessary to provide the business user or end user with the core platform service or ancillary service. Users shall be presented with a clear and easy-to-understand consent prompt for each new instance of combination of personal data between services they have signed up for. In the event that the end user has been presented with the specific choice and has not provided consent, or has withdrawn consent, the gatekeeper shall refrain from offering different or degraded services compared to the services offered to an end user that provided consent, unless such consent is indispensable to ensure the same quality of service;**

## Amendment 90

### 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

*Amendment*

(b) **refrain from applying contractual obligations that prevent business from offering** the same products or services to end users **or other business users** through

different from those offered through the online intermediation services of the gatekeeper;

third party online intermediation services, ***by themselves, or by any other means***, at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;

## Amendment 91

### 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 on their own channel of distribution or through any other means;***

## Amendment 92

### 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 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;

(c) allow business users to promote ***different*** offers to end users acquired via the core platform service, and to conclude contracts with these end users ***or receive payments for services provided*** 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 93

### Proposal for a regulation

#### Article 5 – paragraph 1 – point d

*Text proposed by the Commission*

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

*Amendment*

(d) refrain from ***directly or indirectly*** preventing or restricting business users, ***end-users, or third-party suppliers of ancillary services*** from raising issues with any relevant public ***or judicial*** authority relating to any practice of gatekeepers;

## Amendment 94

### 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 ***any*** service of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper;

## Amendment 95

### 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 use***, subscribe to, or register with, any other core platform services ***as defined in Article 2 and ancillary services*** as a condition to ***use***, access, sign up or register to any of their core platform services identified pursuant to that Article;



## Amendment 96

### 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 **individual** advertisers and publishers to which it supplies advertising services, **or third parties authorised by advertisers and publishers**, upon their request **and free of charge**, with **relevant, continuous, detailed, comprehensive, real-time and easy-to-access** information concerning **the bids placed by advertisers and advertising intermediaries**, the price paid by the advertiser and publisher, as well as the amount **and** remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper, **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 for by the gatekeepers, without prejudice to requirements of Regulation (EU) 2016/679;**

## Amendment 97

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

**(ga) refrain from imposing on business users or end users software applications or services, which are used in the context of or together with core platform services, or contractual licensing agreements, which would limit end users' ability or economic incentive to use third party software applications or service and/or give preferential treatment to the gatekeeper's own products or services;**

## Amendment 98

### 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 **any** data not publicly available, which is generated through activities by those business users and end 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 **provided or** generated through **or in connection with** activities by those business users **and end users**, including by the end users of these business users, of its core platform services **or ancillary services** or provided by those business users of its core platform services **its ancillary services** or by the end users of these business users;

## Amendment 99

### 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 **and change any default setting** 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 must 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;

## Amendment 100

### 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** installation, **default-setting, interoperability** and effective use of third party software applications or software application stores **or repositories** using, or interoperating with, operating systems of that gatekeeper and allow **and enable** these software applications or software application stores **or repositories** to be accessed by means other than the core platform services of that gatekeeper **in a non-discriminatory manner. After installation of a third-party software application or software application store, the gatekeeper shall provide the business user or end user with a clear prompt to decide upon the new 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 **provided that such proportionate measures are duly justified;**

## Amendment 101

### 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

*Amendment*

(d) refrain from treating **differently or** more favourably in ranking, services, **display, installation, activation, settings** 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 or other parties** third party and apply **transparent,**

ranking;

fair and non-discriminatory conditions to such ranking;

## Amendment 102

### 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 provider for end users **or using its virtual assistant**;

## Amendment 103

### 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, **end users**, providers of ancillary services **and other providers of core platform services** access to and interoperability with the same operating system, hardware or software features, **such as near-field communication antennas or related technology, number independent interpersonal communications services, or social networking services**, that are available or used in the provision by the gatekeeper of any ancillary services **or industry-standard features of its core platform services, where access and interoperability conditions shall be fair, reasonable and non-discriminatory. The gatekeeper may temporarily limit access to interoperability features in case of provable abuse by a third-party provider or when justified by an immediate**

*requirement to address a technical issue such as a serious security vulnerability. In accordance with Union legislation on standardisation, the Commission shall request European standardisation bodies to develop the necessary technical standards for interoperability such as protocol interoperability and data interoperability and portability, without prejudice to any limitations and restrictions set out in Regulation (EU) 2016/679;*

## Amendment 104

### 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 ***continuous, detailed, comprehensive, accessible and real-time access information*** 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 for by the gatekeepers;***

## Amendment 105

### 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

*Amendment*

(h) provide effective portability of data ***provided for or*** generated through ***or in the***

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 ;

***context of*** 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 business users or*** 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 106

### 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, ***non-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, ***with the consent of the data subject***, access ***to*** and use ***of those data*** 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 107

### Proposal for a regulation

#### Article 6 – paragraph 1 – point j

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*The EDPS raises the issue that the data concerned is most likely personal data or easily identifiable. It should therefore not be shared.*

## Amendment 108

### 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, such as* software application *stores, online search engines and online social networking services or ancillary services offered by the gatekeeper* designated pursuant to Article 3 of this Regulation.

## Amendment 109

### Proposal for a regulation

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



*Text proposed by the Commission*

*Amendment*

***(ka) provide business users of online intermediation services with access to communication channels without supervision, interference or access by the gatekeeper for the purpose of sharing concerns among business users about discriminatory or unfair business practices by the gatekeeper within the meaning of this Regulation and in view of taking action in accordance with Article 33 paragraph 2a, notwithstanding their obligations under national or Union legislation;***

#### **Amendment 110**

##### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(kb) provide its business users and end users with clear, fair and non-discriminatory licensing conditions, including in terms of charges and fees, preventing material changes limiting the use of software applications or services in conjunction with a core platform service, and safeguarding the reasonably expected use of the software application or service, including after its transfer to another end user, where applicable.***

#### **Amendment 111**

##### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(kc) refrain from displaying a preferential ranking following a search. Preference should be given to displaying***

*organic results;*

## Amendment 112

### Proposal for a regulation

#### Article 6 – paragraph 1 – point k d (new)

*Text proposed by the Commission*

*Amendment*

***(kd) provide business users of online intermediation services and third parties with legitimate interest in representing business users or end users with information regarding the function of its algorithms, ratings and interactions, pricing and fees, changes of terms and algorithms, tracking of business or end users, and deactivation procedures in a clear, comprehensive and easily accessible way;***

Amendment 113

### Proposal for a regulation

#### Article 6 – paragraph 1 – point k f (new)

*Text proposed by the Commission*

*Amendment*

***(kf) treat organic search results with preference over sponsored content or advertising;***

## Amendment 114

### Proposal for a regulation

#### Article 6 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

2. For the purposes of point (a) of paragraph 1 data that is not publicly available shall include any aggregated and non-aggregated data generated by business users ***or generated by goods and services provided by a supplier to the gatekeeper's ancillary services notably distribution,*** that can be inferred from, or collected

through, the commercial activities of business users or their customers on the core platform, ***distribution or other ancillary*** service of the gatekeeper.

## Amendment 115

### Proposal for a regulation

#### Article 6 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Before implementing any change to fees or fee structures charged to business users and which follow from the gatekeeper’s obligations pursuant to paragraph 1, the gatekeeper shall notify the Commission and the affected business users at least one month in advance of such changes;***

## Amendment 116

### Proposal for a regulation

#### Article 7 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be effective in achieving the objective of the relevant obligation. The gatekeeper shall ensure that these measures are implemented in compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

1. The measures implemented by the gatekeeper to ensure ***full*** compliance with the obligations laid down in Articles 5 and 6 shall be ***fully*** effective in achieving the objective of the relevant obligation ***and lead towards this***. The gatekeeper shall ***demonstrate compliance with the obligations laid down in Articles 5 and 6*** and ensure that these measures are implemented in compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

*Justification*

*This echoes the wording of art. 11 on “anti-circumvention”.*

## Amendment 117

### Proposal for a regulation Article 7 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Within six months after its designation pursuant to paragraph 8 of Article 3, the gatekeeper shall provide the Commission with detailed information on the measures to be taken in order to ensure compliance with its obligations laid down in Articles 5 and 6. This information shall be provided in the form of a report and shall be updated on an annual basis, whereby a summary of this report shall be published on the Commission's website without undue delay.***

## Amendment 118

### 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 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.

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 ***in order to comply with the obligations laid down in Article 6. In view of adopting the decision, the Commission shall take into account the information provided by all relevant stakeholders, such as interested third parties, governments or national authorities.*** The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.

## Amendment 119

### 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. ***Legitimate third parties with direct implication shall be able to provide comments to the national competent authorities with regard to the preliminary findings. Member States shall define the rules to exercise such consultation procedure.***

## Amendment 120

### 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 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.

#### *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. ***In*** its request, ***the gatekeeper shall*** 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.

## Amendment 121

### Proposal for a regulation Article 8 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

2. Where the suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision every year. Following such a review the Commission shall either ***wholly or partly*** lift the suspension or decide that the conditions of paragraph 1 continue to be met.

## Amendment 122

### Proposal for a regulation Article 9 – paragraph 2 – point a

*Text proposed by the Commission*

(a) ***public morality;***

*Amendment*

***deleted***

## Amendment 123

### Proposal for a regulation Article 9 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 2 as well as the effects on the gatekeeper concerned and on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between the goals pursued by the grounds in paragraph 2 and the objectives of this Regulation. Such a request may be made and granted at any time pending the

*Amendment*

In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 2 as well as the effects on the gatekeeper concerned and on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between the goals pursued by the grounds in paragraph 2 and the objectives of this Regulation. Such a request may be made and granted at any time pending the

assessment of the Commission pursuant to paragraph 1.

assessment of the Commission pursuant to paragraph 1. ***The Commission shall review any exemption decision adopted according to paragraph 1 on an annual basis and may amend its decision in accordance with its findings.***

## **Amendment 124**

### **Proposal for a regulation Article 10 – paragraph 1**

#### *Text proposed by the Commission*

1. The Commission is empowered to adopt delegated acts in accordance with Article 34 to update the obligations laid down in Articles 5 and 6 where, based on a market investigation pursuant to Article 17, it has identified the need for new obligations addressing practices that limit the contestability of core platform services or are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.

#### *Amendment*

1. The Commission is empowered to adopt delegated acts in accordance with Article 37 to update the obligations laid down in Articles 5 and 6 where, based on a market investigation pursuant to Article 17, it has identified the need for new obligations addressing practices that limit the contestability of core platform services or are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.

## **Amendment 125**

### **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 that is disproportionate to the service provided by the gatekeeper to business users ***or end users***; or

#### *Justification*

*It is the DMA's objective to "allow end users and business users alike" to benefit from the platform economy. This should be better represented by also acknowledging the adverse effects of gatekeeper actions on end users.*



## Amendment 126

### 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 by offering users a choice in a non-neutral way, or by subverting the autonomous decision-making of business users or end users via form, function or operation of the user interface or its components.***

#### *Justification*

*It is vital to address the common practice of dark patterns, employed to subconsciously nudge users in a certain direction, since it robs users of their autonomy and independent choice.*

## Amendment 127

### 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

#### *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, 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.

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, ***and shall offer users a choice in a neutral way, safeguarding the autonomous decision-making of business users or end users via form, function or operation of the user interface.***

#### *Justification*

*It is vital to address the common practice of dark patterns, employed to subconsciously nudge users in a certain direction, since it robs users of their autonomy and independent choice.*

### **Amendment 128**

#### **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 ***undermine the effective*** exercise of those rights or choices.

#### *Justification*

*Business and end users should be able to fully exercise their rights in an effective manner.*

## Amendment 129

### Proposal for a regulation

#### Article 11 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The right for the maker of a database provided for in Article 7(1) of Directive 96/9/EC shall not be exercised by a gatekeeper in such a way that prevents the re-use of data or restricts its re-use beyond the limits set by this Regulation.**

*Justification*

*A gatekeeper may rely on the sui generis database right as provided for in Article (7) of Directive 96/9/EC to escape from some of the obligations under the DMA. For this not to happen, it should be clearly stated that this right shall not be exercised in such a way that prevents the re-use of data or restricts its re-use beyond the limits of the DMA.*

## Amendment 130

### Proposal for a regulation

#### Article 12 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

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.

1. A gatekeeper shall inform the Commission ***and competent national authorities*** 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.

## Amendment 131

### Proposal for a regulation

#### Article 12 – paragraph 1 – subparagraph 1

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

*Amendment*

A gatekeeper shall **notify** the Commission **and the competent national authorities** 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.

**Amendment 132**

**Proposal for a regulation**  
**Article 12 – paragraph 3**

*Text proposed by the Commission*

3. If, following any concentration as provided in paragraph 1, additional core platform services individually satisfy the thresholds in point (b) of Article 3(2), the gatekeeper concerned shall inform the Commission thereof within three months from the implementation of the concentration and provide the Commission with the information referred to in Article 3(2).

*Amendment*

3. If, following any concentration as provided in paragraph 1, additional core platform services individually satisfy the thresholds in point (b) of Article 3(2), the gatekeeper concerned shall inform the Commission **and competent national authorities** thereof within three months from the implementation of the concentration and provide the Commission with the information referred to in Article 3(2).

**Amendment 133**

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

*Text proposed by the Commission*

*Amendment*

**3a. The Commission shall publish annually the list of notified acquisitions of gatekeepers which have fallen below the notification thresholds of Council Regulation No 139/2004. The Commission shall take account of the legitimate interest of undertakings in the protection of their business secrets.**

## Amendment 134

### Proposal for a regulation Article 13 – paragraph 1

*Text proposed by the Commission*

Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of **consumers** that the gatekeeper applies to or across its core platform services identified pursuant to Article 3. This description shall be updated at least annually.

*Amendment*

**1.** Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of **business users and end users and the personalisation of their service** that the gatekeeper applies to or across its core platform services identified pursuant to Article 3.

## Amendment 135

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

*Text proposed by the Commission*

*Amendment*

**1a.** *Without prejudice to trade secrets protection, the audited description shall be shared by the Commission with any competent national authority as well as with any competent supervisory authority represented in the European Data Protection Board upon their request.*

## Amendment 136

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

*Text proposed by the Commission*

*Amendment*

**1b.** *Without prejudice to trade secrets protection, the gatekeeper shall make publicly available an overview of the audited description of applied profiling techniques referred to in paragraph 1.*

## **Amendment 137**

### **Proposal for a regulation**

#### **Article 13 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1c. The Commission shall develop, in consultation with competent national authorities the EU Data Protection Supervisor, the European Data Protection Board, civil society and relevant experts, the standards and process of the audit.***

## **Amendment 138**

### **Proposal for a regulation**

#### **Article 13 – paragraph 1 d (new)**

*Text proposed by the Commission*

*Amendment*

***1d. The description of profiling techniques and its publicly available overview shall be updated at least annually.***

## **Amendment 139**

### **Proposal for a regulation**

#### **Article 14 – paragraph 3 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) a significant number of unfair practices alerts have been reported by national authorities or third parties with legitimate interest pursuant the reporting mechanism in Article 33;***

## **Amendment 140**

### **Proposal for a regulation**

#### **Article 14 – paragraph 3 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

***(bb) there is new relevant information that could not be examined before the adoption of the decision.***

## **Amendment 141**

### **Proposal for a regulation Article 15 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. The Commission may, ***on its own initiative or on the grounds laid down in Article 33***, 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) ***and Article 3 (8)***. It shall endeavour to conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within twelve months from the opening of the market investigation. ***Competent national authorities may contribute their expertise to the market investigation.***

## **Amendment 142**

### **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 opening of the investigation. In the preliminary findings, the Commission shall

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



explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

## Amendment 143

### 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 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 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 144

### Proposal for a regulation Article 15 – paragraph 4

#### *Text proposed by the Commission*

4. When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper ***only*** obligations laid down in Article 5 and Article 6(1) ***points (e), (f), (h) and (i) as specified in the designation decision***. The Commission shall only declare applicable

#### *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 ***the applicable*** obligations laid down in Article 5 and Article 6. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent

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.

that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4.

## Amendment 145

### 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 **any** 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 **full** compliance with this Regulation. **The Commission shall where appropriate, be entitled to require the remedies to be tested to optimise their effectiveness.** The Commission shall conclude its investigation by adopting a decision within **six** months from the opening of the market investigation.

## Amendment 146

### 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

#### *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.

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 147

### Proposal for a regulation

#### Article 16 – paragraph 5

##### *Text proposed by the Commission*

5. The Commission shall communicate its objections to the gatekeeper concerned within **six** months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers necessary and proportionate.

##### *Amendment*

5. The Commission shall communicate its objections to the gatekeeper concerned within **four** months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers **effective**, necessary and proportionate.

## Amendment 148

### Proposal for a regulation

#### Article 17 – paragraph 1

##### *Text proposed by the Commission*

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

##### *Amendment*

The Commission 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. **National competent authorities may recommend such market investigations and contribute their expertise. The Commission** shall issue a public report at the latest within **12** months from the opening of the market

investigation. *The report shall be circulated prior to publication among the competent national authorities with a view of including specific modifications and recommendations based on their expertise.*

## Amendment 149

### Proposal for a regulation Article 19 – paragraph 3

#### *Text proposed by the Commission*

3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the purpose of the request, specify what information is required and fix **the** time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.

#### *Amendment*

3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state **the legal basis**, the purpose of the request, specify what information is required and fix **a reasonable** time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.

## Amendment 150

### Proposal for a regulation Article 19 – paragraph 4

#### *Text proposed by the Commission*

4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to its data-bases and algorithms, it shall state the legal basis and the purpose of the request, and fix the time-limit within which it is to be provided. **It** shall also indicate the penalties provided for in Article 26 and indicate or impose the

#### *Amendment*

4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to its data-bases and algorithms, it shall state the legal basis and the purpose of the request, and fix the time-limit within which it is to be provided. **The decision** shall also indicate the penalties provided for in Article 26 and indicate or

periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.

impose the periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.

## Amendment 151

### Proposal for a regulation Article 19 – paragraph 6

#### *Text proposed by the Commission*

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.

#### *Amendment*

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

## Amendment 152

### Proposal for a regulation Article 20 – paragraph 1

#### *Text proposed by the Commission*

The Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, including in relation to the monitoring, implementing and enforcing of the rules laid down in this Regulation.

#### *Amendment*

The Commission, **and competent national authorities**, may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, **pursuant to Articles 7, 16, 17, 25 and 26**, including in relation to the monitoring, implementing and enforcing of the rules laid down in this Regulation.

## Amendment 153

### Proposal for a regulation Article 21 – paragraph 2

#### *Text proposed by the Commission*

2. On-site inspections may also be

#### *Amendment*

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).

carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) *as well as competent national authorities in the territory of that Member State, where the gatekeeper has its premises.*

## Amendment 154

### Proposal for a regulation Article 21 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 21a*

#### *Reporting mechanism for business users, end-users and relevant stakeholders*

- 1. Business users, competitors and end-users of the core platform services as defined in Article 2(2) may notify to the Commission as well as to the competent national authority any malpractice or behaviour by gatekeepers, which could possibly undermine the contestability of a core platform service, may be unfair pursuant to Article 10 (2) , or give rise to concerns with regard to non-compliance pursuant to Article 25.*
- 2. The Commission shall share the information received pursuant to paragraph 1 with the competent national authorities through the European Competition Network.*
- 3. The Commission may be able to prioritise investigations and may decide to not undertake investigations at all.*
- 4. Without prejudice to Article 33, the competent national authority may request the Digital Markets Advisory Committee to adopt a reasoned opinion in this regard within one month after having received the request.*
- 5. If the reasoned opinion states that the circumstances would justify an enforcement priority, the Commission*

*shall within a further delay of four months examine whether there are reasonable grounds to open such investigation. Where the Commission does not follow the reasoned opinion of the Advisory Committee, it shall give its reasons.*

## **Amendment 155**

### **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 of gatekeepers, resulting from new practices implemented by one or several gatekeepers that may undermine 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 on the concerned gatekeepers in order to avoid the materialization of the said risk.*

## **Amendment 156**

### **Proposal for a regulation**

#### **Article 22 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2b.** *A decision pursuant to paragraph 3 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 the new obligations that may arise under the final decision resulting from the market investigation pursuant to*



*Article 17.*

**Amendment 157**

**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.***

**Amendment 158**

**Proposal for a regulation**

**Article 23 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The Commission shall regularly review the commitments with regard to their purpose and where, following investigation, it finds that they are not effective, shall be entitled to require amendments to the commitments or revoke them where appropriate.***

**Amendment 159**

**Proposal for a regulation**

**Article 23 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) there is new relevant information that was not examined before the adoption of the decision.**

## **Amendment 160**

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

*Text proposed by the Commission*

*Amendment*

1. The Commission ***may 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.

1. The Commission ***shall*** 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.

## **Amendment 161**

### **Proposal for a regulation Article 24 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors to assist the Commission, ***including ones from competent national authorities***, to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.

## **Amendment 162**

### **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

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.

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.***

## Amendment 163

### Proposal for a regulation Article 25 – paragraph 3

#### *Text proposed by the Commission*

3. In the non-compliance decision adopted pursuant to paragraph 1, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline ***and to provide explanations on how it plans to comply with the decision.***

#### *Amendment*

3. In the non-compliance decision adopted pursuant to paragraph 1, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline ***and impose behavioural or structural remedies as necessary and proportionate to the infringement.***

#### *Justification*

*The Commission should impose the right remedies if necessary. Experience from competition law has shown that gatekeeper-chosen remedies often fall short of the necessary measures to address the core issue.*

## Amendment 164

### Proposal for a regulation Article 26 – paragraph 1 – point e a (new)

#### *Text proposed by the Commission*

#### *Amendment*

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

## Amendment 165

### Proposal for a regulation

#### Article 26 – paragraph 2 – introductory part

##### *Text proposed by the Commission*

2. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1% of the total turnover in the preceding financial year where they intentionally or negligently:

##### *Amendment*

2. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1% of the total turnover ***of the undertakings or association of undertakings concerned*** in the preceding financial year where they intentionally or negligently:

## Amendment 166

### Proposal for a regulation

#### Article 28 – paragraph 1

##### *Text proposed by the Commission*

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ***three*** year limitation period.

##### *Amendment*

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ***five*** year limitation period.

## Amendment 167

### Proposal for a regulation

#### Article 30 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned the opportunity of being heard on:

##### *Amendment*

1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned ***and third parties with a legitimate interest*** the opportunity of being heard on:

##### *Justification*

*These amendments bring Article 30 in line with changes to Article 33.*

## Amendment 168

### 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 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. The national competent authorities designated under Article 21(a) may also ask the Commission to hear other natural or legal persons with sufficient interest.**

## Amendment 169

### Proposal for a regulation

#### Article 30 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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.

2. Gatekeepers, undertakings and 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.

*Justification*

*These amendments bring Article 30 in line with changes to Article 33.*

## Amendment 170

### Proposal for a regulation

#### Article 31 a (new)

*Text proposed by the Commission*

*Amendment*

**Article 31a**

***Commission cooperation with competent national authorities***

- 1. The Commission may be assisted by the competent national authorities, designated for this purpose by the Member States, with regard to human, financial and organisational resources.***
- 2. The Commission may, in particular, develop a close cooperation with national competent authorities with regard to the enforcement of this Regulation. Competent national authorities shall, at the request of the Commission, be entitled to exercise the powers 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 competent national authorities shall have the power to enforce the obligations deriving from Articles 19, 20, 21 and 24.***
- 4. Competent national authorities shall also be empowered to receive complaints and information on possible cases of non-compliance by gatekeepers from end users and business users in their territory for transmission to the Commission.***

**Amendment 171**

**Proposal for a regulation  
Article 33 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. When ***three*** or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that a

1. When ***two*** or more Member States request the Commission to open an investigation pursuant to Article 15, ***16 and 17*** 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.

provider of core platform services should be designated as a gatekeeper, ***or that a gatekeeper has systematically infringed their obligations under Articles 5 and 6, or because they have information according to which there are reasonable grounds to add new services and new practices,*** the Commission shall within four months examine whether there are reasonable grounds to open such an investigation.

## Amendment 172

### Proposal for a regulation

#### Article 33 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Third parties with a legitimate interest in representing business users or end users may provide the Commission or national competent authorities with evidence that a provider of core platform services should be designated as a gatekeeper or that a gatekeeper is violating their obligations under Articles 5 and 6, or with any information according to which there are reasonable grounds to add new services and new practices. On that basis, national competent authorities shall examine whether there are reasonable grounds to request the Commission to open an investigation pursuant to Articles 15, 16 and 17. In the event the evidence is submitted directly to the Commission, it shall take due account of the information received and inform the interested third parties of its decision within four months.***

## Amendment 173

### Proposal for a regulation

#### Article 36 – paragraph 1 – introductory part



*Text proposed by the Commission*

1. The Commission may adopt implementing acts concerning: 3, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30

*Amendment*

1. The Commission may adopt implementing acts concerning **Articles** 3, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30 **with respect to:**

**Amendment 174**

**Proposal for a regulation  
Article 36 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the form, content and other details of the technical measures that gatekeepers shall implement in order to ensure compliance with **points (h), (i) and (j) of** Article 6(1).

*Amendment*

(b) the form, content and other details of the technical measures that gatekeepers shall implement in order to ensure compliance with Article 6(1);

**Amendment 175**

**Proposal for a regulation  
Article 36 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) the form, content and other details of the regulatory reports delivered pursuant to Article 7.1 a;**

**Amendment 176**

**Proposal for a regulation  
Article 36 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) the practical arrangements for the cooperation and coordination between the Commission and competent national authorities, provided for in Article 1(7);**

## Amendment 177

### Proposal for a regulation Article 36 – paragraph 2

*Text proposed by the Commission*

2. ***the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 1(7).*** Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 32(4). Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.

*Amendment*

2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 32(4). Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.

## Amendment 178

### Proposal for a regulation Article 36 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 36a***

#### ***Guidelines***

***To facilitate the compliance of gatekeepers with and the enforcement of the obligations in Articles 5, 6, 12 and 13, the Commission shall accompany the obligations set out in those Articles with guidelines, where appropriate. Where appropriate and necessary, the Commission may mandate the standardisation bodies to develop standards to facilitate the implementation of the obligations.***

## Amendment 179

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. The power to adopt delegated acts referred to in Articles **3(6) and 9(1)** shall be conferred on the Commission for a period of five years from DD/MM/YYYY. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

*Amendment*

2. The power to adopt delegated acts referred to in Articles **3(5) and 10(1)** shall be conferred on the Commission for a period of five years from DD/MM/YYYY. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

**Amendment 180**

**Proposal for a regulation**  
**Article 37 – paragraph 3**

*Text proposed by the Commission*

3. The delegation of power referred to in Articles **3(6) and 9(1)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

*Amendment*

3. The delegation of power referred to in Articles **3(5) and 10(1)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

**Amendment 181**

**Proposal for a regulation**  
**Article 37 – paragraph 6**

*Text proposed by the Commission*

6. A delegated act adopted pursuant to Articles 3(6) and 9(1) shall enter into force

*Amendment*

6. A delegated act adopted pursuant to Articles 3(6) and 9(1) shall enter into force

only if no objection has been expressed either by the European Parliament or by the Council within a period of **two** months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **two** months at the initiative of the European Parliament or of the Council.

only if no objection has been expressed either by the European Parliament or by the Council within a period of **three** months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three** months at the initiative of the European Parliament or of the Council.

## **Amendment 182**

### **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.



## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Contestable and fair markets in the digital sector (Digital Markets Act)		
<b>References</b>	COM(2020)0842 – C9-0419/2020 – 2020/0374(COD)		
<b>Committee responsible</b> Date announced in plenary	IMCO 8.2.2021		
<b>Opinion by</b> Date announced in plenary	JURI 8.2.2021		
<b>Rapporteur for the opinion</b> Date appointed	Timo Wölken 10.5.2021		
<b>Discussed in committee</b>	27.5.2021	14.6.2021	13.7.2021
<b>Date adopted</b>	30.9.2021		
<b>Result of final vote</b>	+: 16 -: 3 0: 5		
<b>Members present for the final vote</b>	Pascal Arimont, Gunnar Beck, Geoffroy Didier, Pascal Durand, Ibán García Del Blanco, Jean-Paul Garraud, Mislav Kolakušić, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Marcos Ros Sempere, Stéphane Séjourné, Raffaele Stancanelli, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Timo Wölken, Lara Wolters		
<b>Substitutes present for the final vote</b>	Patrick Breyer, Daniel Buda, Emmanuel Maurel, Nacho Sánchez Amor, Kosma Złotowski		
<b>Substitutes under Rule 209(7) present for the final vote</b>	Isabel Benjumea Benjumea		

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

16	+
S&D	Ibán García Del Blanco, Marcos Ros Sempere, Nacho Sánchez Amor, Tiemo Wölken, Lara Wolters
Renew	Pascal Durand, Karen Melchior, Stéphane Séjourné, Adrián Vázquez Lázara
Verts/ALE	Patrick Breyer, Sergey Lagodinsky
ID	Jean-Paul Garraud, Gilles Lebreton
ECR	Kosma Zlotowski
The Left	Emmanuel Maurel
NI	Mislav Kolakušić

3	-
PPE	Geoffroy Didier
ID	Gunnar Beck
ECR	Raffaele Stancanelli

5	0
PPE	Pascal Arimont, Isabel Benjumea Benjumea, Daniel Buda, Axel Voss, Marion Walsmann

Key to symbols:

+ : in favour

- : against

0 : abstention