



2020/0374(COD)

3.6.2021

DRAFT 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

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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. This is for instance the case with so-called 'digital labour platforms'.

Digital Labour platforms

The Rapporteur proposes to add digital labour platforms, i.e. platforms that connect users for the provision of on-location or online services, to the scope of the DMA. These platforms, which are for instance active in food delivery, mobility, or domestic work, wield significant market power and dictate unacceptable working conditions. The independently employed workers are bearing the cost of this exploitative business practice. In order to remedy this issue, gatekeeping labour platforms should be obliged to provide their business users with transparency, as well as enabling them to communicate and organise in order to negotiate better business conditions, if allowed by relevant competition and national legislation.

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 11

Text proposed by the Commission

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

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

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

Amendment

(11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council²⁶, Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council²⁷, Regulation (EU) 2016/679 of the European Parliament and of the Council²⁸, Directive (EU) 2019/790 of the European Parliament and of the Council²⁹, Directive (EU) 2015/2366 of the European Parliament and of the Council³⁰, and Directive (EU) 2010/13 of the European Parliament and of the Council³¹, as well as 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 (41) 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.

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

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

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

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

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

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

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

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

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

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

Or. en

Amendment 2

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

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 *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.

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Or. en

Amendment 3

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

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, virtual assistants, streaming services and digital labour platforms*** all have the capacity to affect a large number of end users and businesses alike, which entails a

definition of core platform services and fall into the scope of this Regulation. Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council³². In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.

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. ***The fact that weak contestability and unfair practices in the digital sector are more frequent and pronounced in certain digital services than in others does not imply that other categories of services are exempt from it. The core platform services falling under the scope of this Regulation should therefore not be limited to certain types of services.*** Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council³². In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.

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

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

Or. en

Justification

Opening up the Digital Markets Act to more potential core platform services makes it future-proof and acknowledges the fast paced development of digital markets.

Amendment 4

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to avoid a cumbersome and relatively long implementation mechanism, and to ensure efficiency, providers of core platform services should automatically qualify as gatekeepers if they meet the qualitative and quantitative requirements laid down in this Regulation to qualify as gatekeepers, without the need for a designation procedure. In accordance with Recital 15, the Commission may waive gatekeeper status if the gatekeeper provides sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the three gatekeeper criteria, the provider does not satisfy the requirements.

Or. en

Amendment 5

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

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

(16) In order to ensure the effective application of this Regulation to providers of core platform services which are most likely to satisfy these objective requirements, and where unfair conduct weakening contestability is most prevalent and impactful, the Commission should be able to directly designate as gatekeepers those providers of core platform services which meet certain quantitative thresholds.

which should start upon the entry into force of this Regulation.

Or. en

Amendment 6

Proposal for a regulation

Recital 17

Text proposed by the Commission

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

Amendment

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

future. This monetisation potential in turn reflects in principle the gateway position of the undertakings concerned. Both indicators are in addition reflective of their financial capacity, including their ability to leverage their access to financial markets to reinforce their position. This may for example happen where this superior access is used to acquire other undertakings, which ability has in turn been shown to have potential negative effects on innovation. Market capitalisation can also be reflective of the expected future position and effect on the internal market of the providers concerned, notwithstanding a potentially relatively low current turnover. The market capitalisation value can be based on a level that reflects the average market capitalisation of the largest publicly listed undertakings in the Union over an appropriate period.

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Or. en

Amendment 7

Proposal for a regulation Recital 21

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 8

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 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.

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 be discarded, as it is not relevant to the designation as a gatekeeper. The Commission should be able to take a decision by relying on the quantitative thresholds where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

Or. en

Amendment 9

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 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

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 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.

Or. en

Amendment 10

Proposal for a regulation Recital 36

Text proposed by the Commission

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***

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 ***be prohibited from combining personal data of business users or end users generated on one core platform service with personal data from any other***

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.

services offered by the gatekeeper or with personal data from third-party services.

Or. en

Amendment 11

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

Amendment

(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users **and end users** to raise concerns about unfair behaviour by gatekeepers with any relevant administrative, **judicial** or other public authorities. For example, business users **or end users** may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user **or end 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.

online.

Or. en

Amendment 12

Proposal for a regulation Recital 46

Text proposed by the Commission

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

Amendment

(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper, ***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.***

Or. en

Amendment 13

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

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 to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

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Or. en

Amendment 14

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 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.

Deleted

Or. en

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 15

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

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

Amendment

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 139/2004³⁸ 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 Council³⁹.

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

Or. en

Justification

By referring to the GDPR and ePrivacy Directive, this amendment brings the text in line with Recital 11.

Amendment 16

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Opening up the Digital Markets Act to more potential core platform services makes it future-proof and acknowledges the fast paced development of digital markets.

Amendment 17

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ia) *web browsers;*

Or. en

Amendment 18

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ja) *digital labour platforms;*

Or. en

Amendment 19

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ka) *virtual assistants;*

Or. en

Amendment 20

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,*** whatever the technological means used for such presentation, organisation or communication;

Or. en

Justification

Ranking is employed by core platform services beyond social networking services and search engines (for instance virtual assistants) and the provision should therefore cover the whole range of services relevant. This also brings the provision in line with Recital 49.

Amendment 21

Proposal for a regulation

Article 2 – paragraph 1 – point 24 a (new)

Text proposed by the Commission

Amendment

(24a) ‘Digital labour platform’ means a core platform service that facilitates the connection between one or multiple business users and end users for the provision of on-location or online services through one or multiple business users;

Or. en

Amendment 22

Proposal for a regulation

Article 2 – paragraph 1 – point 25 a (new)

Text proposed by the Commission

Amendment

(25a) ‘Virtual Assistant’ means software that responds to oral or written commands and performs tasks such as executing search queries, accessing and interacting with other digital services on behalf of the end user;

Or. en

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 – point 26 a (new)

Text proposed by the Commission

Amendment

(26a) ‘Web browsers’ means independent or embedded software applications to access and interact with content hosted on web servers and the internet;

Amendment 24

Proposal for a regulation

Article 2 – paragraph 1 – point 27 a (new)

Text proposed by the Commission

Amendment

(27a) 'Search results' means any information in any format, including texts, graphics, voice or other output, returned by core platform services provider in response and related to a written or oral search query, irrespective of whether the information is an organic result, a paid result, a direct answer or any product, service or information offered in connection with, or displayed along with, or partly or entirely embedded in, the organic results;

Or. en

Amendment 25

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Amendment

Designation of gatekeepers

Qualification as gatekeepers

Or. en

Amendment 26

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. A provider of core platform services shall ***be designated*** as gatekeeper

1. A provider of core platform

if:

services shall **qualify** as gatekeeper if:

Or. en

Amendment 27

Proposal for a regulation

Article 3 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(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

Or. en

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 28

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**:

Or. en

Amendment 29

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 30

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 **combine** 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 monthly active end users throughout the last financial year;

Or. en

Amendment 31

Proposal for a regulation

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Where a provider of core platform services meets all the thresholds in paragraph 2, it shall be considered as a gatekeeper and shall comply with all its obligations under the current Regulation unless the gatekeeper provides sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the elements of paragraph 6, the provider does not satisfy the requirements of Article 3, paragraph 1 ***notify the Commission thereof within three months after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2.. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the provider that meets the thresholds in paragraph 2 point (b). The notification shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b).***

Amendment

Where a provider of core platform services meets all the thresholds in paragraph 2, it shall be considered as a gatekeeper and shall comply with all its obligations under the current Regulation unless the gatekeeper provides sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the elements of paragraph 6, the provider does not satisfy the requirements of Article 3, paragraph 1.

Or. en

Justification

The ‘designation’ procedure could be burdensome and long (and delayed, if the core platform service provider is unwilling to self-designate), and therefore lack efficiency. By streamlining the designation procedure while still providing an option for the potential gatekeeper to dispute its designation, this amendment speeds up the process.

Amendment 32

Proposal for a regulation

Article 3 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

A failure by a relevant provider of core platform services to notify the required information pursuant to this paragraph shall not prevent the Commission from designating these providers as gatekeepers pursuant to paragraph 4 at any time.

Deleted

Or. en

Justification

The ‘designation’ procedure could be burdensome and long (and delayed, if the core platform service provider is unwilling to self-designate), and therefore lack efficiency. By streamlining the designation procedure while still providing an option for the potential gatekeeper to dispute its designation, this amendment speeds up the process.

Amendment 33

Proposal for a regulation

Article 3 – paragraph 4

Text proposed by the Commission

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.

deleted

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

Or. en

Amendment 34

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 **Article 3a** or **Article 3**, 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 for end users** to reach end users **or business users** as referred to in paragraph 1(b).

Or. en

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 35

Proposal for a regulation Article 3 a (new) – title

Text proposed by the Commission

Amendment

Notification to the Commission

Or. en

Amendment 36

Proposal for a regulation Article 3 a (new) – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. *Where a provider of core platform services meets all the thresholds in Article 3(2), it shall notify the Commission thereof within three months after those thresholds are satisfied and provide it with the relevant information identified in Article 3(2). That notification shall include the relevant information identified in Article 3 (2) for each of the core platform services of the provider that meets the thresholds in Article 3(2), point (b). The notification shall be updated whenever other core platform services individually meet the thresholds in Article 3(2), point (b).*

A failure by a relevant provider of core platform services to notify the required information pursuant to this paragraph shall not exempt the gatekeeper from complying with its obligations under this Regulation

Or. en

Justification

This amendment introduces a streamlined designation procedure of gatekeepers, by moving parts of paragraph 3 and paragraph 4 of Article 3 into a new Article.

Amendment 37

Proposal for a regulation Article 3 a (new) – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *The Commission shall, without undue delay and at the latest 60 days after*

receiving the complete information referred to in Article 3(1), include the provider of core platform services that meets all the thresholds of Article 3(2) on the list of 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 Article 3(6), the provider does not satisfy the requirements of Article 3(1).

Where the gatekeeper presents such sufficiently substantiated arguments to demonstrate that it does not satisfy the requirements of Article 3(1), the Commission shall apply Article 3(6) to assess whether the criteria in Article 3(1) are met.

Or. en

Amendment 38

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 on an on-going basis.

Or. en

Amendment 39

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 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 pricing advantages, de-listing of the offers of business users or increased commission rates or measures with equivalent effect;

Or. en

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 40

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

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

As proven by the GDPR, simple consent regimes are often insufficient to address the loss of control over personal data by users. In order to limit the potential negative consequences for end users, business users and competing services, it is necessary to prevent them from combining personal data.

Amendment 41

Proposal for a regulation

Article 5 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 42

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 preventing or restricting business users ***or end users*** from raising issues with any relevant ***public or judicial*** authority relating to any practice of gatekeepers;

Or. en

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 43

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;

Or. en

Justification

The original provision addressed the important bundling practice, but did so only for identification services. It was thus too narrow, since bundling is an issue across different services. This amendment therefore expands the scope.

Amendment 44

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 **and ancillary services** as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;

Or. en

Justification

Platforms may leverage their market power unfairly to prompt users to sign up for ancillary services, not only other core platform services. This includes for instance payment services. It is therefore important to prohibit this practice altogether.

Amendment 45

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 advertisers and publishers to which it supplies advertising services, upon their request, with **relevant** 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;

Or. en

Amendment 46

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ha) provide advertisers, publishers, and third parties with legitimate interest in representing these groups using advertising services, when requested, with the information necessary to carry out their own independent verification of the provision of online advertising services and their effectiveness.

Or. en

Justification

The DMA includes advertising services as a core platform service. However, while Recital 42 makes explicit the intention of the Commission to provide advertisers and publishers with access to information about the ads run through these advertising services, the obligations in Art. 5 stop short of mandating this transparency. This amendment brings the obligations in Art. 5 in line with Recital 42 and adds third parties with a legitimate interest to the list of potential beneficiaries of this information access, in order to reflect the growing need for critical and independent scrutiny of gatekeeper advertising practices.

Amendment 47

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 any data not publicly available, which is ***provided or*** 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;

Or. en

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 48

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;

Or. en

Justification

The burden of proof for the essentiality of an application must lie entirely on the gatekeeper to prevent circumvention of the provision by increasing technical integration of a service with their core platform service. The amendment further closes a loophole that may arise by omitting settings from this provision.

Amendment 49

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 installation, ***default-setting*** 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. ***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;

Or. en

Justification

Gatekeepers exert significant market power via setting of default and standard apps. Improving user choice by providing clear alternatives can address this issue and improve market outcomes.

Amendment 50

Proposal for a regulation

Article 6 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) refrain from treating more favourably in ranking, services, **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 and apply **transparent**, fair and non-discriminatory conditions to such ranking;

Or. en

Justification

Self preferencing takes place in a wide range of core platform service categories. This amendment expands the scope of the provision to capture the widest array of services possible.

Amendment 51

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 that are available or used in the provision by the gatekeeper of any ancillary services **and core platform services**;

Or. en

Justification

Interoperability is fundamental to ensure competitive digital markets. This requirement should therefore extend to not only ancillary services, but also core platform services and

include interoperability with other providers of core platform services. This would also provide users with a higher degree of control over their data, which is why the principle is also supported by the EDPS.

Amendment 52

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 53

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 54

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; provide access and use only where directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679;

Amendment

(i) provide business users, or third parties authorised by a business user, free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users; provide, ***with the consent of the data subject***, access and use ***to 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;

Or. en

Justification

This brings the provision in line with the Opinion issued by the EDPS.

Amendment 55

Proposal for a regulation

Article 6 – paragraph 1 – point j

Text proposed by the Commission

(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,

Amendment

deleted

click and view data that constitutes personal data;

Or. en

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 56

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ka) provide business users of digital labour platforms with access to communication channels without supervision, interference or access by the gatekeeper for the purpose of discussion, coordination and taking of action among business users against discriminatory or unfair business practices by the gatekeeper, notwithstanding their obligations under national or Union legislation;

Or. en

Justification

Labour platforms are an important and growing category of potential gatekeeping platforms. Their crucial position in their market between business users and end users puts them in a powerful position that may empower them to exploit business or end users. These provisions aim to create transparency for these services and to provide business users of these platforms with the possibility to organise and address grievances collectively.

Amendment 57

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(kb) provide business users of digital labour platforms 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;

Or. en

Justification

Labour platforms are an important and growing category of potential gatekeeping platforms. Their crucial position in their market between business users and end users puts them in a powerful position that may empower them to exploit business or end users. These provisions aim to create transparency for these services and to provide business users of these platforms with the possibility to organise and address grievances collectively.

Amendment 58

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 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

1. The measures implemented by the gatekeeper to ensure **full** 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 **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.

security, consumer protection and product safety.

Or. en

Justification

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

Amendment 59

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

Or. en

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 60

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

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.

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.***

Or. en

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 61

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where consent for collecting and processing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing, where required under Regulation (EU) 2016/679 and Directive 2002/58/EC, 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 62

**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 63

**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 64

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

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 65

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

Amendment

Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited ***and publicly***

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.

available 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. This description shall be updated at least annually.

Or. en

Justification

In order to enable proper public scrutiny of the profiling and personalisation practices of gatekeepers, it is crucial to make the audit publicly available. Including both business users and end users in the scope makes sure that the effect on both sides is properly reflected.

Amendment 66

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The Commission 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). 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.

Or. en

Amendment 67

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

Amendment

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. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4.

Or. en

Justification

Due to the scope and differing challenges of core platform services, the Commission should be empowered to consider the whole range of obligations on designated gatekeepers.

Amendment 68

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

Amendment

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.

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 **full** compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within **six** months from the opening of the market investigation.

Or. en

Justification

The Commission launches market investigations after already having knowledge of three instances of non-compliance. It should therefore act swiftly, or risk that the potentially abusive practices of a gatekeeper severely harm competition and consumer choice.

Amendment 69

Proposal for a regulation Article 16 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 70

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. It shall issue a public report at the latest within **12** months from the opening of the market investigation.

Or. en

Justification

The Commission launches market investigations after already having knowledge of three instances of non-compliance. It should therefore act swiftly, or risk that the potentially abusive practices of a gatekeeper severely harm competition and consumer choice.

Amendment 71

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.**

Or. en

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 72

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:

Or. en

Justification

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

Amendment 73

Proposal for a regulation

Article 30 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Gatekeepers, undertakings 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.

Or. en

Justification

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

Amendment 74

Proposal for a regulation Article 30 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en*Justification*

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

Amendment 75

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 76

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 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, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation pursuant to Articles 15, 16 and 17.

Or. en

Justification

Relevant third parties should have the right to lodge complaints against gatekeepers in order to alert the Commission to potential violations of gatekeeper obligations, which should enable the Commission to act pursuant to Articles 15, 16, and 17.