EU: Joint letter on protecting end users' rights in the Digital Markets Act

ARTICLE 19 and a coalition of digital rights defenders sent the following open letter to Members of the European Parliament, including Chairs and vice chairs of IMCO and ECON, and Rapporteurs and (so far known) Shadow Rapporteurs for Digital Markets Act (DMA) and Digital Services Acts (DSA).

Dear Members of the European Parliament,

We, a collective of civil society organisations and digital rights defenders in the EU, welcome the European Commission's focus on improving the way digital markets work. We also share its concerns about gatekeeper platforms' behaviour in many of these markets that undermines competition and market contestability. We equally share the Commission's assessment that this leads to 'inefficient market outcomes in terms of higher prices, lower quality, as well as less choice and innovation to the detriment of European consumers.' (Commission Staff Working Document, SWD (2020) 364 Final, p.1)

However, we believe that the proposal for a Digital Markets Act (DMA), presented by the European Commission on 15 December 2020, fails to respond adequately to the challenges at stake and leaves some important gaps that need to be filled.

Too little focus on end users

Various practices by gatekeepers exploit end users excessively. These practices not only harm end users' economic interests as consumers and customers, they also have a negative impact on users' civic rights. In particular, individual gatekeepers can dictate a quality standard in the market that affects, among other things, the protection of users' data, their freedom of expression and their right not to be discriminated against.

However, the European Commission's proposal totally fails to consider this perspective. Indeed, there is little mention of end users' perspective in the proposed Regulation, and the same is true for the accompanying package (impact assessment and explanatory memorandum). On the contrary, the main focus is on the relationships between core platforms and their business users.

This approach is all the more difficult to justify if one considers that the protection of end users from various kinds of exploitative conduct by companies in strong market positions is traditionally one of the main goals of competition and pro-competitive measures. Unfortunately, the Commission has long since concentrated excessively on the economic aspects of relationships between competitors. This is a failure that urgently needs a fix. EU regulators should be challenged for wanting to protect business users more than end users in the Digital Single Market. We believe this to be a substantial gap, and we call on the European Parliament and on the EU's Council of Ministers to fill it.

DMA would leave power concentrated in the hands of a few gatekeepers

According to the executive summary of the Impact Assessment Report, the DMA proposal should 'foster the emergence of alternative platforms, which could deliver quality innovative products and services at affordable prices.' (p. 2). However, the proposal itself falls short on this promise. On the contrary, it seems to focus on creating conditions for more competition at the business users' level, rather than on creating conditions for more platforms to enter these markets or giving end users more choice between platforms.

In other words, the proposal aims to protect business users from, for example, self-preferencing behaviour by vertically integrated platforms, the imposition of clauses to ensure uniform prices and the mandatory use of certain platforms' services in their relationships with end-users. But this would do little to create the conditions to restore effective competition at the platforms' level. An extreme example of this approach is Article 6(1)(f), which would require gatekeepers to provide access and interoperability only with regard to business users or ancillary services. Rather than fostering the emergence of new platforms, this provision has the potential to increase the systemic dependence of business users and ancillary services' providers on the core platform, whose position remains uncontested and secured in the its primary market(s).

By narrowing the focus on contestability and entry for business users, the DMA proposal seems to accept the status quo for core gatekeeper platforms. But why does it do so? Why does the Commission leave basically untouched such a strongly centralised environment, which, as the same Commission has repeatedly said in the past, raises structural competition problems? Moreover, as we highlight, leaving this strongly centralised environment untouched is surely not the best solution for individuals because it provides a few platforms with too much power over users' rights and over the flow of information in society. We strongly disagree with the Commission's approach, and we therefore challenge the Commission to at least explain why they have adopted it. We also call on the European Parliament and on the Council to change this approach, and to work on more ambitious solutions to stimulate the emergence of alternative platforms.

Discussion of the DSA and DMA cannot be kept separate

The Digital Services Act (DSA) and DMA have been conceived and presented as two complementary legislative proposals to together tackle the complex challenges facing the EU's Digital Single Market. These challenges are economic, social, and political in nature and adequately solving them is key to guaranteeing the future of EU democracies and respect for the EU's fundamental values. To tackle all the main challenges we face today we must look at digital services, and the markets where they are provided, together. The goal of a fair, open and free digital environment can only be achieved if service providers respect certain quality and human rights standards, and if markets are no longer controlled by a handful of gatekeepers. The EU needs a holistic approach, strong coordination and complementarity between the rules for services and those for markets.

Therefore, we call on the European Parliament and on the Council to adopt this holistic approach to the DSA and DMA proposals with a view to enhancing synergies, avoiding conflicts and filling gaps. We also call on civil society and on other relevant stakeholders to engage as much as they can in the debate about both proposals. In fact, the future we desire for the EU digital sphere depends in equal measure on the way we will regulate digital services and on the way we will regulate digital markets.

Your sincerely,

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Association of European Journalists Belgium
Bits of Freedom
Civil Liberties Union for Europe
Cultural Broadcasting Archive
Digitalcourage
Electronic Frontier Foundation
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Free Knowledge Advocacy Group EU
Free Press Unlimited
Global Forum for Media Development
Homo Digitalis
IT-Pol Denmark
Lie Detectors
Media Diversity Institute
Open Society European Policy Institute
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Panoptykon Foundation
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The initial publication of the open letter can be found here: https://www.article19.org/resources/eu-joint-letter-on-protecting-rights-in-the-digital-markets-act/