



**To the rapporteurs of the European Parliament,  
the shadow rapporteurs and the representatives of the committees for  
opinion on the DMA**

Berlin/Brussels, May 27, 2021

Dear Sir or Madam,

We have been observing the power of digital platforms such as Google, Facebook, Amazon, Apple and others with great concern. These platforms control central areas of the digital economy. Their economic power and their intensive lobbying and PR work provides them with huge political influence, which they also use to avert effective regulation. We see this concentration of power as a fundamental problem for democracy. Therefore, as civil society organizations scrutinising the influence of large digital platforms, we welcome the EU Commission's initiative on the Digital Markets Act (DMA).

The approaches for ex-ante regulation in the DMA are a step in the right direction. We welcome the measures for gatekeepers in Articles 5 and 6 as they show that the EU Commission intends to create far-reaching instruments to tackle the power of Big Tech. Two examples of measures we welcome but where we also see a need for improvements:

- Art. 5a: We welcome a prohibition of personal data merging. However, we are critical of the loophole that is opened by possible circumvention via end users' consent. It must be ensured that gatekeepers cannot obtain consent by unfair, manipulative means. For example, a fairness-by-design obligation should be added to Article 11 (prohibition of circumvention) accordingly.
- Art. 6f: It is not sufficient that the obligation for fair access and interoperability covers only the platforms' ancillary services. Ultimately, this regulation could even prove to be more harmful, as it would only make platforms more attractive for commercial users without opening them up. Only by ensuring access and interoperability for the core platform services via Art. 2 (2) would enable the development of alternatives to the existing platforms.

Furthermore, we believe that sufficient staff and quick procedures are crucial to the success of the DMA. We consider the 80 full-time positions planned so far insufficient for a successful implementation - especially in light of the large number of litigious

law firms that are hired by Big Tech to exert pressure on their behalf.

Article 12 requires gatekeepers to notify all intended mergers under the EU Merger Regulation. This alone however, does not prevent killer acquisitions (e.g. Facebook/Instagram/Whatsapp) or excessive concentration of data (Google/Fitbit). Measures should therefore be adopted to enable the EU Commission or national competition authorities to effectively prevent such killer acquisitions.

The DMA relies very heavily on behavioral measures. The fact that gatekeepers can systematically violate the DMA obligations for five years under Article 16 (3) before remedies can be applied is unacceptable. Misconduct is treated too leniently here. The deadlines in the DMA should be significantly shortened, both on the part of the gatekeepers and on the part of the EU Commission. Otherwise, proceedings will still last years in spite of systemic violations. Moreover, these proceedings should not only take place between gatekeepers and the EU Commission, but should also involve other actors, such as companies affected by gatekeeper power or experts from civil society.

Furthermore, in Article 16 (2), even in the case of systematic violations by gatekeepers, behavioral remedies take precedence over structural measures. Structural measures are only hinted at as a last resort and are not further elaborated and specified. We are convinced that structural ex-post measures are essential in the fight against power concentration in the tech sector. One can expect that gatekeepers will try to interpret the ex-ante rules in their own favor and implement them incompletely. It is precisely the huge economic and political power of Big Tech that makes the enforcement of behavioral measures a challenge. We therefore believe that a combination of ex-ante rules and structural measures is better suited to tackle the problem of the monopoly position of digital platforms.

The Federal Trade Commission in the United States also favors structural over behavioral measures and advocates a “clear-cut” solution. As we are facing the same problems with digital platform monopolies, we see this as an opportunity for transatlantic cooperation. Structural measures could include the systematic separation of business units and the unbundling of companies.

Thank you very much for considering our proposals. Should you have any question, please don't hesitate to come back to us.

Yours sincerely,

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