



**Computer & Communications Industry Association (CCIA)
Intervention at BEREC Workshop on end-users
in the context of the Digital Markets Act (DMA)
18 May 2021**

**Intervention of Kayvan Hazemi-Jebelli (Competition & Regulatory Counsel).
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[Thank you]

The Computer & Communications Industry Association represents a wide range of European and international technology companies that will be affected by the rules of the proposed DMA, not just big platforms but small ones as well as those companies that rely on platform services. We have been fighting for nearly 50 years for digital markets where all competitors have a fair chance to succeed on their merit.

We support a DMA proposal that is more flexible and effects-based so that it can preserve value creation, growth and the competitiveness of Europe’s digital economy. How can you protect end-users in the future, if the regulator doesn’t look at the effects on end-users?

Let’s take a step back and look at the context. How have these gatekeeper companies become successful?

- One has a mission “to be Earth’s most customer centric company.”
- One is to “give people the power to build community.”
- One to “organize the world’s information and make it universally accessible and useful.”
- And another is “to bring the best user experience to its customers through innovative hardware, software, and services” that just work, seamlessly.

Are they failing in these consumer-centric objectives? No. These companies continue to innovate and create incredible new products and services for users that were once science-fiction:

- Amazon has created a 1-day delivery network that has been the lifeblood of many businesses and a great benefit for end-users during this pandemic. They’ve done this while moving to electric fleets.
- Facebook has created cutting edge virtual reality technology that is more affordable and accessible than ever imagined.
- Alphabet is creating automated driving technology that will transform mobility in our cities, alongside a number of other moon-shots.

Let’s not break what is working just to satisfy the interests of some business users.

A more flexible and effects-based approach would create a safe-harbour to preserve this kind of pro-competitive conduct that benefits end-users. We know the market power of these platforms is in large part due to their aggregation of consumer demand, and how that creates competition between suppliers on the marketplaces they have created. Competition on the platform means that the largest suppliers now face competitive pressure from millions of SMEs. Digital companies have empowered SMEs and creators by removing the old gatekeepers of local geographically bounded markets. Today's digital markets are global. Thanks to technology lowering entry barriers, creators only need 1,000 true fans to make a business. This has caused a cambrian explosion of content. The same is true in other industries. This is good for creators, but it's also amazing for end-users. The DMA proposal threatens to shift the balance of power back to the very large business users of these platforms. That's not to say a DMA isn't needed. There are issues of enforcement speed and information asymmetries that need to be addressed.

A more flexible and effects-based approach would help the Commission better understand the market dynamics and actual impact of its interventions, ensuring better decision making in the future. As many national regulators have pointed out in their consultation submissions, sound knowledge and detailed understanding of the business models and technicalities of the sectors need to be built. This is especially true in highly dynamic digital sectors. We want a DMA that strengthens the platform economy, not punishes it, because believe it or not, the interests of end-users and platforms are aligned.

A more flexible and effects-based approach would designate to gatekeepers the specific obligations that are relevant to them in context and in light of their likely effects. But the proposed DMA imposes a series of catch-all obligations on all platform businesses based on competition law disputes between giant multinational companies. It imposes these obligations out of context, and without regard to the effect they will have on end-users. The DMA would grant broad discretionary power to a Commission enforcer to determine *ad hoc* what is "fair" and what is "unfair" for business users, without any assessment of the effects on end-users. It's a subjective judgment on business models and technical designs, not an objective one. This kind of Commission power demands reasonable safeguards.

A more flexible and effects-based approach would consider the possible justifications for the conduct otherwise prohibited, looking at substantiated positive effects. Such an approach could then also consider wider harms than those currently envisaged, while also giving the gatekeepers the right to defend their decisions. This would be more objective and would provide more legal certainty. I know many here are concerned about the use of data and the long-term implications of this. But not all companies use data in the exact same way in all their core platform services. We need to look more closely at the effects of the DMA provisions in context. The DMA is a very blunt instrument, it doesn't let the Commission go after specific harms that it could identify in the future. It only advances the interests of business users, and we think that has significant risks on end-users. It also carries risks for the wider European digital economy. The Commission's Impact Assessment assumes that there will be no negative effect on non-gatekeeper companies, on consumers, or on the business users who aren't involved in these

giant competition cases. The Commission makes a very bold assumption. **There are a number of concerns with this, even the Regulatory Scrutiny Board has raised some of these.** I want to focus on three in particular:

- **One**, nobody knows what the actual economic impact will be. The Commission's Impact Assessment does not look at the effects of the obligations, and the Commission's specifications of obligations don't look at effects later. For a market regulation, this lack of any analysis of effects is surprising.
- **Two**, breaking big tech's tools and services in Europe will harm all the other players who use them. It will make European companies less competitive, especially the smaller ones. This means lower quality services for end-users.
- **Three**, all the smaller platforms in Europe that use the same strategies to grow will be discouraged from doing so. Prohibiting this conduct as "unfair" without looking at the effects raises lots of questions. As I've said earlier, it's a moral judgment on business models and technical designs, not an objective economic one. I think we need to look at what will affect consumers, and the accessibility of the best and most affordable digital tools and services in Europe.

All these can be solved really with one simple fix, the Commission should be required to further specify the obligations in light of the effects on consumers and end-users, in context. This will help the DMA preserve value creation, growth and competitiveness in Europe's digital economy. It is the recommendation of the major expert reports on digital competition policy of the last few years. Other jurisdictions like the UK and Germany are following an effects-based approach, and we think doing the same here is the best way to safeguard the interests of end-users.

Resources:

BEREC webpage: <https://berec.europa.eu/>

BEREC event page:

https://berec.europa.eu/eng/events/berec_events_2021/281-berec-workshop-on-end-users-in-the-context-of-the-digital-markets-act-dma

Event recording: <https://www.youtube.com/watch?v=9kBlfBnLi6s>