



Computer & Communications
Industry Association
Tech Advocacy Since 1972



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Tech Industry Groups Urge Improving Adjustment Mechanisms to Ensure an Effective and Proportionate Digital Markets Act

Dear Ministers,

The above signed organisations appreciate the opportunity to contribute to your upcoming Competitiveness Council discussion on the Digital Markets Act (DMA).

We represent a wide range of companies active in a wide range of industry sectors with varying degrees of digitisation. Some of these companies offer digital platform services as defined under the DMA, and some could eventually be defined as “gatekeepers”. All of these companies use digital platform services that will eventually be regulated by the DMA.

The European Commission has set important targets for its digital and green ambitions. Digital services can facilitate this progress and increase growth and competitiveness in Europe, but only if Europe continues to foster and encourage the companies driving this innovation. The DMA can do this if it avoids bias between offline and online services, and does not inadvertently discourage innovative technology companies from developing new services in Europe.

We therefore endorse the DMA’s objective *“to allow platforms to unlock their full potential by addressing at EU level the most salient incidences of unfair practices and weak contestability so as to allow end users and business users alike to reap the full benefits of the platform economy and the digital economy at large, in a contestable and fair environment.”*

Given the diversity of platform services that will be regulated by the DMA, we are concerned by the proposed one-size-fits-all and catch-all approach. Generalising obligations, inspired by specific competition cases, to all of a designated gatekeeper's core platform services will have unintended consequences that could reduce the availability of globally competitive platform services in Europe. These consequences are likely to disproportionately disadvantage SMEs that benefit the most from platform services. Furthermore, we are concerned that inflexible rules will carry unforeseen side-effects as the dynamic digital economy evolves over time.

In our experience, it is not fair to say that the conduct addressed by the generally applicable obligations are harmful in all circumstances, even when engaged in by a dominant platform operator. Nor would it be necessary and proportionate in every circumstance to impose all generally applicable obligations on all the services of a dominant platform operator in order to restore fair competition. **We therefore support strengthening the adjustment mechanisms already contained in the proposal**, to address these concerns.

As already envisaged for 'foreseeable' gatekeepers under Article 15 of the DMA, the Commission should only declare applicable *ex ante* those obligations in Article 5 and 6 to those core platform services offered by a gatekeeper, which are necessary and proportionate to address the most salient incidences of unfair practices and weak contestability considering the business circumstances of that particular gatekeeper.

As already envisaged under Articles 8 and 9 of the DMA, the Commission should be empowered to suspend or modify, in whole or in part, obligations laid down in Articles 5 or 6. This *ex post* adjustment mechanism would be limited to situations where the gatekeeper can demonstrate, to the Commission's satisfaction, that application of that obligation has harmful effects on consumers or business users, such as a reduction in service quality. It is necessary that the Commission can adjust obligations over time in order to safeguard against such harmful effects.

We support speedy enforcement of the DMA. These adjustment mechanisms, already foreseen in the proposal and applied only *ex ante* and *ex post*, should not impact enforcement speed.

While we support the objectives and some of the provisions of the DMA, **we believe it is necessary to improve the DMA's existing adjustment mechanisms in this way, in order to ensure the DMA remains effective and proportionate as the digital economy evolves and more European platforms achieve scale.** We are individually and collectively at your disposal to discuss our concerns in further detail. We support Ministers' desire to improve the DMA to address these concerns, to ensure it is future-proof, and to ensure that the DMA meets the Commission's objective to help make Europe fit for the digital age.

We wish you all productive and fruitful discussions during the Council meetings of 25 and 26 November 2021.