28 June 2021

Dear Member of the European Parliament,

As a group of civil society organisations which defend fundamental rights, democratic values, and consumer protection, **we welcome the Digital Markets Act** as a first step towards finding solutions to tackle specific characteristics and harmful conduct in digital markets which led to a handful of companies controlling key services in the digital economy.

Unfortunately, the European Commission's proposal, while a good start, has missed the opportunity to set down rules that give users more rights. This would pave the way for fairer and more contestable digital markets, currently kept under tight control by gatekeepers.

The **European Parliament has a unique opportunity to strengthen the Digital Markets Act in these important areas:**

1. **Add an interoperability obligation for core platform services, such as social networks and instant messaging**

Interoperability is a key tool to make digital markets more dynamic and innovative by helping to break through the network effects that lead to a few gatekeepers dominating the user base, enabling competing alternatives to emerge, both within and between platforms. This in turn gives users meaningful alternatives when it comes to choosing which online services to use. Importantly, interoperability paves the way for alternative services built on a variety of business models, including more rights-respecting ones, to flourish.

While the DMA proposal creates interoperability for ancillary services in Article 6(1)(f), that is not enough. An interoperability obligation for core platform services, notably for social networking services and instant messaging is necessary to put users back in control of their personal data and online experiences.

2. **Ensure the DMA has effective enforcement provisions**

The DMA must continue to be based on self-executing obligations as currently proposed. This is the essence of pre-emptive regulation. Once the co-legislators have decided what obligations gatekeepers must comply with in the interests of society, there should be no room for gatekeepers to argue that the obligations should not apply. This would simply delay or undermine the DMA's effectiveness and run contrary to the democratic process.

Furthermore, consumers or their and other civil society representatives, and other third parties must have the right to (1) submit formal complaints about gatekeepers violating their obligations under the DMA; and (2) be heard in decision-making processes under the DMA (such as under Articles 7 and 25 and in market investigations under Articles 14-17) to ensure effectiveness and transparency of process. The Commission's enforcement powers should be strengthened to ensure swift and effective compliance by gatekeepers with their obligations under the DMA.

3. **Strengthen anti-circumvention measures and make the prohibition to use dark patterns explicit**

Article 11 on anti-circumvention should include a clear prohibition on the use of dark patterns and other user interfaces techniques which involve presenting end users with choices in a non-neutral manner or otherwise subvert their decision-making to defeat the effectiveness of Articles 5 and 6.

4. **Strengthen the end user's position**

Currently, the DMA focuses on the relationship among gatekeepers and business-users and does not pay adequate attention to the relationship among gatekeepers and end-users. A prime example is Article 10(2)(a), one of the future-proofing provisions in the DMA, which limits the possibility to consider a gatekeeper's practice

as unfair to situations where 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 the business users."

This completely ignores the imbalance of rights and obligations between gatekeepers and end-users, who are left exposed to potential exploitation by new types of gatekeeper practices. In order to address this problem, we propose that the future-proofing in Article 10(2)(a) covers explicitly also the imbalance of rights and obligations towards end-users.

Thank you for taking into account these considerations in the ongoing discussions and we remain at your disposal to further elaborate these policy recommendations.

Sincerely,

Signatories

Amnesty International

ARTICLE19

BEUC – The European Consumer Organisation

Bits of Freedom

Centrum Cyfrowe

Civil Liberties Union for Europe (Liberties)

Corporate Europe Observatory

Digital Courage



Deutsche Vereinigung für Datenschutz e.V.



Electronic Frontier Foundation



European Digital Rights (EDRi)



Homo Digitalis



LobbyControl



Open Society European Policy Institute



Panoptykon Foundation



Privacy International