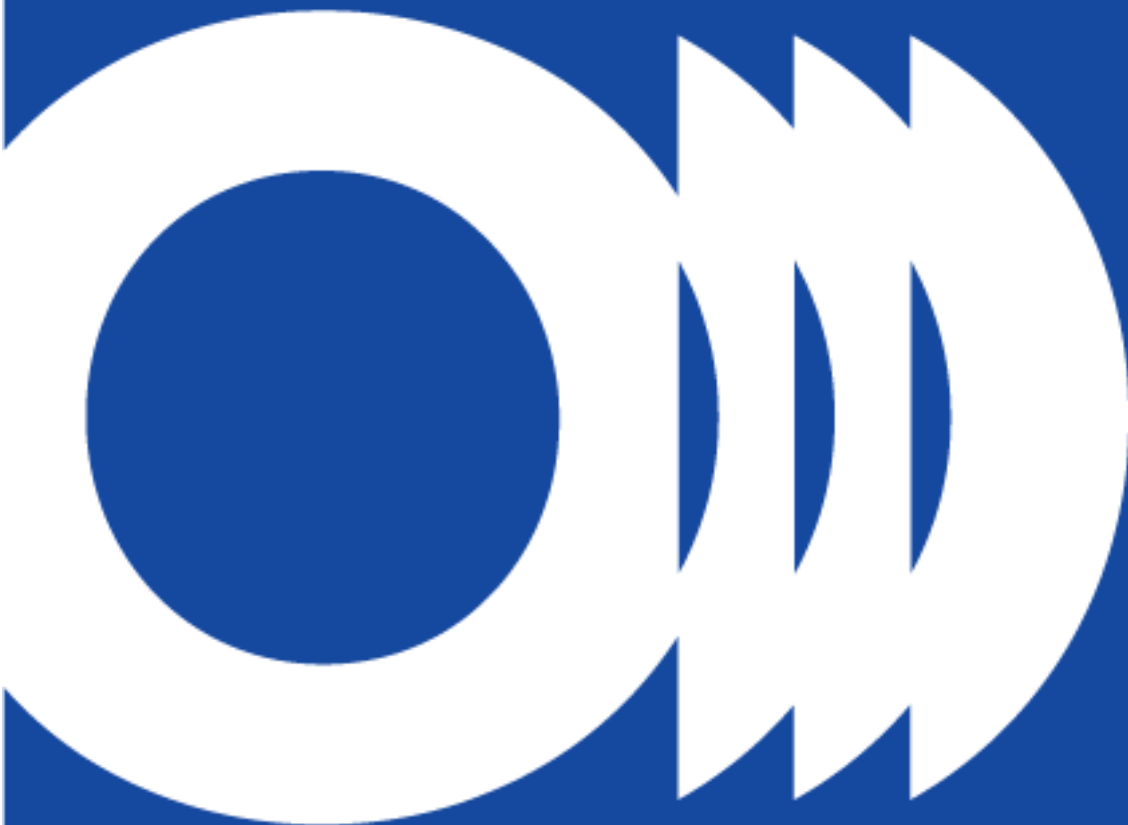


EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

**EBU position paper on the
proposed Digital Markets Act**



EBU position paper on the proposed Digital Markets Act

The European Broadcasting Union (EBU)¹, representing public service media organisations in Europe, supports the proposed Digital Markets Act's objective to create a fairer and more contestable digital space by establishing a strong rulebook for online gatekeeper platforms. Such rules are key to support fundamental values such as cultural diversity and media pluralism. Today, global online platforms largely determine who sees or hears what and when. The DMA must tackle unfair gatekeeper behaviour to guarantee citizens' ability to access and engage online with the media they most trust and value and to enable Europe's diverse media landscape to further prosper.

The internet has brought innovative ways of reaching and interacting with citizens. Public service media offer their diverse content and information beyond their own digital channels and services, and use the opportunities provided by global platforms to engage with their audiences. But global platforms have huge influence over how media is served to and found by users. They control vast amounts of data and are in a unique position to impose their choices to audiences by self-preferencing their own services and content and by bundling service offerings.

The proposed DMA is a timely opportunity to address the risks stemming from the powerful position of gatekeeper platforms and to promote fairness, competition, innovation, plurality and real choice for European citizens. We applaud the fact that the DMA will not only cover platform services – such as video-sharing platforms, social networks, search engines – that have become key for media consumption and distribution, but also other relevant platform services where global gatekeepers' power is likely to rapidly grow: e.g. smart devices, voice assistants and their operating systems. We equally support the European Commission's approach to introduce new obligations ("do's and don'ts") against gatekeeper platforms' unfair behaviour.

We now call upon decision-makers to strengthen the proposed DMA in the following areas.

Include digital voice assistants and web browsers in the scope of the proposal

Digital voice assistants are an increasingly important gateway to digital services and they are embedded in a variety of devices, from mobile devices (tablets, mobile phones) to smart speakers, and contexts (e.g. connected cars). In the preliminary findings of its inquiry into the sector of Internet of Things for consumer-related products and services, the European Commission underlined that big gatekeeping services are implementing strategies to retain or increase their market power as the providers of "the most common smart and mobile device operating systems as well as the leading voice assistants"².

¹ The European Broadcasting Union is the world's leading alliance of public service media. The EBU has 115 member organizations in 56 countries who operate nearly 2,000 television, radio and online channels and services and reach an audience of more than one billion people in 160 languages.

² The preliminary report, published on 9 June 2021, is accessible here: https://ec.europa.eu/competition-policy/antitrust/sector-inquiries/consumer-internet-things_en.

Web browsers are also acting as crucial gateways for users to access online content. Two providers hold more than 80% of the worldwide market share³ and these companies can also be considered as gatekeepers to other core platform services. Web browser providers have the power to engage in practices that greatly affect how business users reach consumers. As the recent CMA decision on Google Privacy Sandbox has demonstrated⁴, gatekeeper platforms may use web browsers to cement their position by, for instance, preventing business users from accessing valuable data.

Strengthen the ban on self-preferencing

Citizens use online services such as social networks or search engines to find news, information and other media content. To ensure citizens' easy access to a plurality of sources and to avoid platforms unilaterally favouring their own content, the DMA needs to impose a strong ban on self-preferencing.

We welcome the proposed prohibition on self-preferencing in ranking but call for it to be extended to capture the various ways in which global platforms engage in self-preferencing practices. In line with the 2019 EU Platform-to-Business Regulation⁵, the ban on self-preferencing should apply to ranking and other settings as well as to access and conditions for the use of technical functionalities and interfaces. We also call for other core platform services such as video-sharing platforms to be included in the definition of ranking, given the key role that they play for media consumption.

Prohibit unfair bundling and tying of services

The proposed DMA prohibits bundling practices that require a user to subscribe to or register with one service to use another service. But it should also address other unfair bundling practices. For example, some gatekeeper platforms force business users to offer content on the gatekeepers' premium (subscription-based) service as a condition to make that content equally available on the general (free) service - with no room for negotiation. For public media, this can mean being cut off from audiences, particularly young audiences, that they are expected to reach.

Ensure proper access to data and ban data-driven exploitative behaviour

The DMA must ensure that media organizations have access to meaningful data related to their own content and services that appear on platforms. We applaud the proposal to grant business users such access, but we warn against any loophole enabling platforms to escape the obligation to share data (e.g. by 'nudging' end users into refusing to share personal data with business users).

³ According to <https://gs.statcounter.com/browser-market-share>.

⁴ <https://www.gov.uk/government/news/cma-to-have-key-oversight-role-over-google-s-planned-removal-of-third-party-cookies>.

⁵ Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services.

As shown by competition authorities' investigations, gatekeeper platforms derive their market power from combining users' personal data within a proprietary ecosystem⁶. The proposed DMA allows platforms to combine data across different services if the user grants consent. However, gatekeeper platforms should altogether be prevented from combining data in order to effectively reduce their data power.

Ensure effective and adaptable enforcement

We call upon the European Commission to allocate sufficient resources to ensure effective enforcement, as well as to allow business users to request the launch of a market investigation. The Commission's capacity to designate as 'gatekeepers' emerging players that do not yet fulfil all the quantitative conditions set in the proposal will enable authorities to adapt to fast-changing digital markets that can 'tip' very quickly. However, the Regulation should allow the Commission to impose *all* obligations foreseen in the DMA to these entities and not only a select few.

Secure the application of sector-specific EU and national laws

The DMA should not affect national and sector-specific rules supporting media pluralism and other legitimate public interests, nor prevent Member States from imposing stricter rules to address issues arising in national markets that are not necessarily pan-European.

⁶ European Commission. Press Release of 17 December 2020. *Commission clears acquisition of Fitbit by Google, subject to conditions*. Retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2484