

THE MEDIA SECTOR CALLS FOR REMAINING LOOPHOLES IN THE DIGITAL MARKETS ACT TO BE ADDRESSED DURING TRILOGUE

BRUSSELS, 25 NOVEMBER 2021. The European media sector, through the voice of public and commercial broadcasters, radios and the press, acknowledges the General Approach adopted by the Council of the European Union on the Digital Markets Act (“DMA”). This step forward reflects the political consensus across Member States that swift action is required to rebalance the digital competitive environment in order to preserve a diverse, vivid and innovative media landscape.

We welcome the Council’s commitment to shorten the designation process timeline and also commend recent improvements made in the Council’s General Approach, such as the clarification that voice assistants are covered under the definition of online intermediation services, although we believe that voice assistants, given their impact on the intermediation market, should be enshrined in the list of core platform services in Article 2.

However, given the remaining and substantial loopholes of the General Approach, we believe that there is still margin for important improvements. The trilogue negotiations represent a crucial opportunity to increase the robustness of the obligations (Articles 5&6) and enforcement mechanisms; the amendments set forth by the European Parliament provide a sound basis for discussion.

We draw the co-legislators’ particular attention to reflect upon and fix key loopholes which could undermine effective competition in the supply of media content to European audiences:

- Combination of personal data: reinforcing article 5(a) to address gatekeepers’ data power stemming from network effects.
- Access to data: strengthening articles 6(1)i and 11 to ensure that gatekeepers cannot circumvent the obligation to provide business users with access to non-personal and personal data.
- Self-preferencing: ensuring that the prohibition of self-preferencing also applies to practices other than ranking, as proposed by the European Parliament and covers the preferential treatment of third parties chosen by the gatekeeper.
- Tying and bundling beefing up article 5(f) to cover additional unfair practices through the notion of “use” of a service.
- Fair and non-discriminatory conditions of access: extending article 6(1)k to all core platform services, as proposed by the European Parliament.
- Audience measurement: obliging gatekeepers to provide granular, continuous, and real-time information, therefore enabling a meaningful verification of the ad inventory.

Failing to close these loopholes will impact the long-term sustainability of media services that rely on Gatekeepers to reach digital audiences and, thereby, the ability of European consumers and citizens to access services that support the flow of information and creative diversity in Europe.

Wouter Gekiere, Head of the European Broadcasting Union’s Brussels Office, said: “The recent Google Shopping judgement is further justification that action against self-preferencing by Gatekeepers is a crucial tool to promote and protect fair competition. The media sector however believes that, to be forward-looking, the DMA should also address self-preferencing practices that go beyond ranking”.

A spokesperson of EMMA & ENPA, EPC and NME, said: “Fairness and non-discrimination should become the guiding principles of the DMA regulations. All loopholes that would provide the Gatekeepers with opportunities to disrespect or avoid these principles should be tackled by the co-legislators”.

The trilogue phase will therefore be decisive to decide whether the DMA fulfils its promise to ensure contestability and fairness in digital markets. We rely on lawmakers to provide for a sound and time effective framework, both on the designation of the Gatekeepers and on the obligations imposed on them.

Grégoire Polad

Association of Commercial Television and VoD
Services in Europe

gp@acte.be

+32 2 736 00 52

www.acte.be

Ilias Konteas

EMMA/ENPA

ilias.konteas@enpa.eu

+32 2 536 06 03

www.enpa.eu

www.magazinemedi.eu

Francesca Fabbri

Association of European Radios (AER)

nikolas.moschakis@aereurope.org

+32 488 363 760

www.aereurope.org

Angela Mills Wade

European Publishers Council (EPC)

Angela.Mills-Wade@epceurope.eu

+44 7785327878

www.epceurope.eu

Wouter Gekiere

European Broadcasting Union (EBU)

gekiere@ebu.ch

+32 2 286 91 12

www.ebu.ch

Wout van Wijk

News Media Europe

wout.vanwijk@newsmediaeurope.eu

+32 473 685864

www.newsmediaeurope.eu

Conor Murray

Association of television and radio sales houses
(EGTA)

conor.murray@egta.com

+32 477 727 102

<http://www.egta.com/>