European Tech Alliance
Reaction to the European Commission's
Digital Markets Act proposal

February 2021

Foreword

The EUTA welcomes the Digital Markets Act (DMA) as an important initiative to ensure fair and contestable digital markets. We greatly appreciate the work undertaken by the European Commission over the last year, including consultations with industry representatives, and look forward to working with the European Parliament and Council on the proposal.

We support the Commission's general approach to the Regulation, establishing criteria to identify gatekeepers, applying clear obligations against abusive practices, and providing remedies and enforcement at the EU level. We are supportive of the proposed shift in the EU approach from "cure" to "prevention" and rules and powers enabling the European Commission to effectively regulate the conduct of digital platforms classified as "gatekeepers".

Recognising the discussions are just beginning, we wish to highlight certain aspects of the proposal that we believe would benefit from further clarity or refinement:

- Narrowed scope of gatekeeper definition.
- Acceleration of the gatekeeper designation and compliance procedures.
- Behavioural and structural remedies as serious alternatives to financial penalties.
- EU centralised enforcement and consultation with businesses.

Overall, we would like to encourage EU policymakers not to consider any amendments to the proposal that would weaken its substance, and we also urge the EU institutions to promptly adopt and enact the DMA to halt some gatekeepers' behaviours that are causing irreparable prejudice to smaller digital businesses.

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General Observations

Scope

The EUTA supports the intention of the DMA to introduce rules for platforms that act as "gatekeepers" between businesses and consumers in the digital sector. Gatekeepers who control access to a critical mass of users who are not reachable elsewhere have a particular responsibility to conduct themselves in a way that ensures an open online environment that is fair for businesses and consumers, and open to innovation by all, by complying with specific obligations laid down in the proposed legislation.

We broadly support the criteria set out by the European Commission to characterise gatekeepers, i.e. platforms that have a significant impact on the internal market, serve as an important gateway for business users to reach their customers, and which enjoy, or will foreseeably enjoy, an entrenched and durable position. We welcome the mechanism of designation of gatekeepers consisting of both qualitative and quantitative criteria.

This said, we believe additional clarity and refinement are needed to ensure a more targeted scope and legal certainty and growth opportunities for innovative start-ups and scale-ups. While EUTA members are still examining the proposal, ensuring a targeted scope may also include increasing the thresholds for quantitative criteria, clarifying important definitions such as "user" to take into account different business models, and "core platform services", and examining multi-homing as part of the qualitative assessment/rebuttal process.

Designation Process of Gatekeepers

Ensuring speedy procedures to designate gatekeepers and ensure their compliance with the obligations is also crucial. The risk with delays in rapidly changing digital markets is that obstacles to market entry solidify and markets tip before remedies are implemented and effective.

In that regard, all efforts should be made to ensure short deadlines for the self-identification by gatekeepers, the qualitative assessment processes, and the rebuttal opportunities. The focus on gatekeepers well-known to competition authorities, combined with a rapid market investigation should lead to expedited proceedings and a fast rebalancing of digital markets.

Gatekeeper's Obligations and Prohibitions

It will be important to review the prohibited conducts to avoid that they are too general and involve potentially lengthy time periods to further tailor and apply them to the gatekeepers. We believe that the DMA could benefit from more detailed and prescriptive prohibitions/obligations to ensure many of the concerns are addressed in the regulation, rather than subject to potentially lengthy regulatory dialogue.

We agree with the approach to introduce obligations for problematic behaviours that can be easily specified and should be directly applicable to gatekeepers without the need for discussion (Art 5). Regarding behaviours susceptible to specification (Art 6), we would welcome further clarity on the procedures to ensure effective compliance and notably how the regulatory dialogue will work in order to avoid circumvention by gatekeeper platforms.
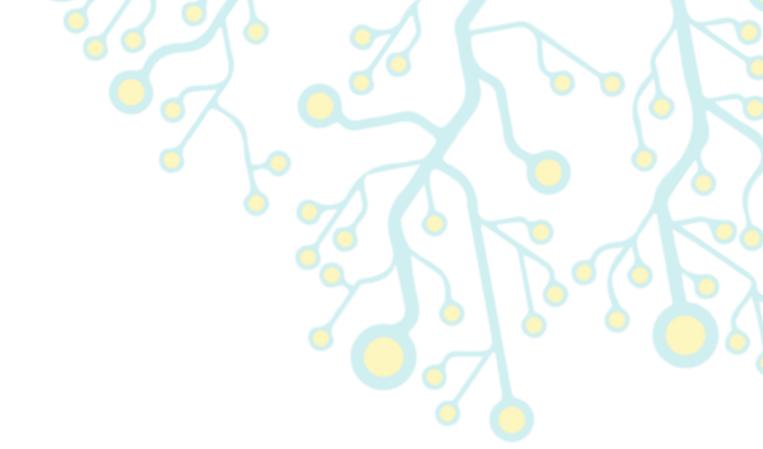
Enforcement and Remedies

We are concerned that the proposed fines in case of systemic non-compliance or bad faith actors may prove ineffective. Measures suggested in the proposal, including structural and behavioural ones, should be applied in a timely manner. Considering the rapid market changes, we support the use of interim measures, combining financial sanctions and behavioural remedies, in case of delays of regular proceedings.

The EUTA welcomes that enforcement will be handled at EU level given the cross-border nature of gatekeepers and the risk of different enforcement approaches within the EU. At the same time, we support the possibility for Member States to request the Commission to open a market investigation for the purpose of designating a new gatekeeper.

Besides the Digital Markets Advisory Committee which will assist the European Commission on the examination of specific cases, an exchange with businesses could be helpful to seize in the long-term if the initial goals of the regulation are reached in specific markets.
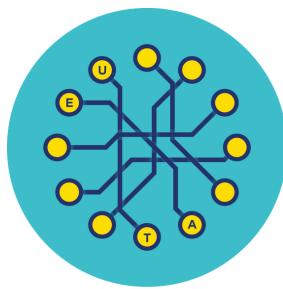
European **T**ech **A**lliance

The European Tech Alliance (EUTA) brings together and gives a voice to the major European digital champions, scaleups and leading startups. We believe that Europe is good at tech and our sector is driving jobs and growth across the continent. With an overarching goal of fostering innovation in Europe, EUTA members are keen to provide expert insights to the EU institutions and promote EU competitiveness in the global tech space.

This paper aims to share our members' expertise and inform the debate. It is not directly attributable to any individual member and we invite you to contact our members, should you like to better understand their specific situation.