European Tech Alliance

EUTA Statement on the Digital Markets Act

February 2022

Forewords

EUTA **welcomes the launch of the inter-institutional negotiations on the Digital Markets Act** (DMA) and the ambitious legislative timetable put forward by the co-legislators.

Achieving progress on the DMA is essential to promote competition, consumer choice and innovation in digital markets dominated by large gatekeepers. Once again, the EU has the chance to set a new global standard in digital regulation. It is paramount that the DMA remains targeted to such systemic gatekeepers, addressing the most harmful behaviors and ensuring that European companies can innovate and grow in a clear and predictable legal environment.

Scope and definitions

The EUTA fully supports the European Parliament's proposal to include web browsers in the list of services covered by the DMA (Article 2(2fa)) and **to increase the thresholds for the designation of gatekeepers** (Article 3 (2)). This last proposal is essential to ensure that the obligations set out in the DMA effectively address longstanding structural market distortions and that the means and resources of regulators remain focused on the most problematic behaviors of the handful of systemic gatekeepers.

The EUTA urges the Parliament and the Council to clarify that for transaction-based platforms, transactions and not website visits are the most relevant and accurate metric for meaningfully calculating active end users. The current Annex defining users (Article 3, Annex 1) does not currently reflect the transaction-based model. A technical clarification is relevant for many leading European e-commerce companies. Whilst the number of unique visitors may be a relevant metric for some business models, especially social media platforms, other business models do not generate any revenue from users' visits to their website, especially transaction-based actors.

Company performance, including by investors, is evaluated on the basis of transaction-based data, as website visits are broadly recognised as unreliable. Website visits do not in most cases translate into purchases; there is no way of distinguishing between users using multiple devices or browsers; a significant amount of traffic is generated by bots; for retailers selling first-party and third-party products there is no way of distinguishing between these website visits.

The high fines for non-compliance with the DMA would ensure that only reliable data would be communicated by companies close to the user thresholds.

Opting for a one-size-fits-all approach that relies on the largest definition of users "making a visit" could lead to a wrongly broader scope and false designation of unintended gatekeepers. The DMA should therefore define end users of online intermediation services according to the business model, including by distinguishing between transaction-based and any other non-transaction-based online intermediaries.

Obligations for gatekeepers

EUTA welcomes several proposals by the co-legislators to raise the level of ambition on obligations for gatekeepers. In line with the scope of an ex ante regulation, the obligations set out in the DMA need to effectively address present market distortions and prevent future misbehaviors.

In particular, the EUTA welcomes:

1. In the context of software application stores, the extension of the anti-steering clause to any communications between app developers and their users (Article 5c). This should not be constrained by vague security exemptions, such as those included in art. 5ca. by the Parliament. In parallel clarity is needed on the application of Article 5c beyond app stores. More specifically applying the conduct to marketplaces, where refundable goods/services are the norm, has unintended consequences on the marketplace business model and jeopardizes its viability. Therefore, EUTA strongly urges for the provision to better reflect the marketplace business model and its nature of refundable goods/services, without undermining its applicability to app stores.

2. The proposal by the Parliament to include web browsers in the list of services covered by the DMA (Article 2(2fa)).
3. The proposal by the Parliament to prohibit the tie-in of some ancillary services - such as payment services, including in-app payment systems - with gatekeepers' core platform services (Article 5 (e)).
4. The obligation to proactively prompt users to select their defaults for all core platform services (Article 5 (1) (gb)).
5. The proposal to extend Article 6k beyond software application stores.
6. The parliament's proposed obligation for gatekeepers to appoint compliance officers (Article 24b) to oversee compliance of the gatekeeper's current and future product and services' offering with the DMA.

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