

THE DIGITAL MARKETS ACT MUST BE AMENDED TO INCLUDE END USERS AND THEIR REPRESENTATIVES IN THE ENFORCEMENT PROCESS

21 February 2022

The European Union is on the brink of finalising a forward-looking regulatory framework – the Digital Markets Act (DMA) – which will bring much-needed measures to curb harmful behaviour by the most powerful digital firms and create fairer, more competitive digital markets in Europe, and in turn help create a better governed digital public sphere.

The European Commission’s proposal focuses primarily on protecting the interests of business users. These measures are important to establish open and competitive digital markets, yet the DMA will most likely fail to meet its objectives unless it also considers the needs of end users too.

For the DMA to be successful, end users and their representatives must have the necessary procedural rights and mechanisms to participate in the enforcement of the DMA at all levels. This requires several important changes to the DMA along the lines of some of the ideas that the European Parliament carries in its Report.

First, it is essential that interested third parties, including in particular consumer organisations and other representatives of civil society, have the right to take part in the regulatory dialogue or engagement process envisaged by the DMA. Their expert view will be crucial to ensure that the European Commission’s decisions are tailored to what end users need, and hence prove effective at achieving their objectives. Moreover, any such processes should have effective safeguards against the potential for regulatory capture, and the involvement of third parties would be important in this regard too. The European Parliament and EU Member States should therefore amend the DMA to ensure there is a solid legal foundation that enables interested third parties to participate in the dialogue and non-compliance processes.

Second, the DMA must enable users, both individually and collectively, to bring enforcement actions for violation of DMA rules before national courts. At the moment, this option would only be available to business users. To achieve this, the DMA must be added to Annex 1 of the Representative Actions Directive.

As the European Parliament and Member States in the EU’s Council of Ministers finalise the DMA text, the signatories to this letter (independent academics, civil society organisations and SMEs) call on both institutions to give end users the role and necessary safeguards and mechanisms to make sure the DMA is the game-changing law that it promises to be. Producing a holistic regulatory framework that incorporates interested third parties in the regulatory process could also be a much-needed inspiration for other jurisdictions around the world which are currently trying to grapple with the same concentration of power problems in digital markets.

SIGNATORIES

ORGANISATIONS

- Access Now (*International*)
- ARTICLE 19 (*International*)
- Balanced Economy Project (*International*)
- BEUC – The European Consumer Organisation (*Europe*)
- Bits of Freedom (*Europe*)
- Center for Digital Democracy (*United States*)
- Center for Economic Justice (*United States*)
- Civil Liberties Union for Europe – Liberties (*Europe*)
- Consumer Action (*United States*)
- Consumer Federation of America (*United States*)
- Corporate Europe Observatory (*Europe*)
- Electronic Frontier Foundation – EFF (*International*)
- Electronic Privacy Information Center (*United States*)
- European Digital Rights – EDRI (*Europe*)
- Fairplay (*United States*)
- Free Knowledge Advocacy Group EU
- Global Witness (*International*)
- LobbyControl (*Europe*)
- Logilab (*Europe*)
- Noyb – European Center for Digital Rights (*Europe*)
- Open Society European Policy Institute (*Europe*)
- Panoptikon Foundation (*Europe*)
- Privacy International (*International*)
- RENVIS (*Europe*)
- SOMO (*International*)

INDIVIDUALS

- Ian Brown, competition expert adviser to OSF
- Kati Cseres, Amsterdam Centre for European Law & Governance, University of Amsterdam
- Ariel Ezrachi, Slaughter and May Professor of Competition Law, University of Oxford
- Inge Graef, Associate Professor of Competition Law at Tilburg University
- Giorgio Monti, Professor of Competition Law, Tilburg Law and Economics Center, Tilburg University
- Viktoria H.S.E. Robertson, Vienna University of Economics and Business; University of Graz; The Competition Law Hub