

Overview of BEUC's assessment of proposed Digital Markets Act



Positive assessment



minor improvements needed



major improvement needed

Art.	Topic	Assessment
1	Subject-matter and scope	The Unfair Commercial Practices Directive and the Unfair Contract Terms Directive need to be added to Article 1(6).
2	Definitions	
3	Designation of gatekeepers	Decisions to designate a gatekeeper (Art. 3(4)), to open a market investigation (Art. 3(6)), and to identify core platform services (Art. 3(7)) must be taken within a legally binding 60-day deadline.
4	Review of the status of gatekeepers	
5	Obligations for gatekeepers	
	(a) No combination of personal data without end user consent	Gatekeepers must offer end users who do not consent to data combination a less personalised alternative service with otherwise identical quality
	(b) Parity obligation prohibition	Business users should be allowed to offer their services directly at different prices.
	(c) Off platform promotion and contracting	
	(d) Raising issues with public authorities	Also prohibit gatekeepers from restricting end users from raising issues
	(e) No tying of gatekeeper identification service	Payment services should be added.
	(f) No tying of core platform services	Tying prohibition to also apply to specified ancillary services in 5(e) No circumvention of prohibition through integrated product design
	(g) Ad information provision	
6	Obligations for gatekeepers susceptible of being further specified	
	(1)(a) No use of non-public business user data	
	(1)(b) Allow app uninstallation	Obligation must apply to all functionalities so long as security/core functionality of the device or operating system is not compromised. Burden of proof for this must be on gatekeeper. Right should apply to both device manufacturer and end users
	(1)(c) Allow installation of apps and app stores	Right should apply to both device manufacturer and end users. Burden of proof must be on gatekeeper to demonstrate that measures are necessary and there are no less restrictive means to safeguard integrity of the hardware or operating system. End user must have the right to decide defaults
	(1)(d) No unfair ranking	
	(1)(e) No use of technical barriers to prevent switching	
	(1)(f) Interoperability obligations for ancillary services	Interoperability must be required not only for ancillary services but also for social networks and instant messaging, in a separate Article
	(1)(g) Provision of ad performance measuring tools	
	(1)(h) Data portability obligations	
	(1)(i) Data access and use obligation	
	(1)(j) Provision of online search data	
	(1)(k) No discriminatory in app store access	
7	Compliance with obligations for gatekeepers	Must ensure no gaming of Articles 7(2) and (7) through fining rules. There must be binding deadlines to open an Article 25 proceeding if a gatekeeper breaches a 7(2) decision and to take a 7(7) decision. Article 7(7) decisions must be requested by gatekeepers before the 6 month obligations implementation deadline expires
8	Suspension of obligations	
9	Exemption for overriding reasons of public interest	
10	Updating obligations for gatekeepers	Reference to imbalance between gatekeepers and end users should be added
11	Anti-circumvention	Use of dark patterns by gatekeepers must be explicitly prohibited in anti-circumvention - relevant for 5(a) and (f), 6(1) (b) (c) (d) (e) (h)

12		Obligation to inform about concentrations	Information obligation should apply to any proposed concentration of the gatekeepers, not just in the digital sector. In addition, further strengthening of EU merger control measures required in other EU instruments.
13		Obligation of an audit	The profiling techniques audit obligation should apply to all services of the gatekeeper and the audit results could be shared with other enforcement authorities.
14		Opening of a market investigation	
15		Market investigation for designating gatekeepers	Deadline for market investigation finding must be legally binding. In Art. 15(1) "may" should be clarified to avoid legal uncertainty
16		Market investigation into systematic non-compliance	
17		Market investigation into new services and new practices	Aside for adding new obligations, it should also be possible to amend or remove existing ones, and to switch obligations between Art 5 and 6
18		Opening of proceedings	
19		Requests for information	A/B testing data can be required by the Commission.
20		Power to carry out interviews and take statements	
21		Power to conduct on-site inspections	
22		Interim measures	
23		Commitments	Include a right to review and amend the commitments if they are found to be ineffective
24		Monitoring of obligations and measures	
25		Non-compliance	It must be explicitly stated that the Commission has the power to specify (1) what measures the gatekeeper must implement to comply with Article 5 and 6 obligations, and (2) the measures necessary to undo the harm caused by non-compliance, including at least behavioural remedies. There must be a binding 6-month deadline for Commission decisions. There must be a right to review and amend the remedies if they are found to be ineffective (also under Articles 16 and 23)
26		Fines	
27		Periodic penalty payments	
28		Limitation periods for the imposition of penalties	Extend limitation period to 5 and 10 years respectively at least
29		Limitation periods for the enforcement of penalties	
30		Right to be heard	Consumers or their representatives (and other interested third parties) must have the right to submit formal complaints and to be heard before decisions are taken if their interests are affected
31		Professional secrecy	
32		Digital Markets Advisory Committee	National authorities could play a greater role in monitoring and the investigation of gatekeeper compliance
33		Request for a market investigation	Member States' right to request investigations should extend to Articles 16, 17 and 25
34		Publication of decisions	
35		Review by the Court of Justice of the European Union	
36		Implementing provisions	
37		Exercise of the delegation	
38		Review	
39		Entry into force and application	
Articles that should be added			
A		Standard of proof	To avoid legal uncertainty and litigation, the standard of proof for Commission decisions must be clearly set out in the DMA.
B		Enforceability in national courts	The DMA must be enforceable before national courts by business users and consumers, including through collective redress. The DMA must be added to the annex of the Representative Actions Directive.