

Brussels, 30 June 2020

Joint statement in response to the inception impact assessments on a new competition tool ex ante regulatory instrument for large online platforms acting as gatekeepers

We are pleased to see that the European Commission is reviewing its regulatory toolbox in response to the challenges posed by large online platforms in numerous digital markets, and we welcome the possibility to provide feedback on both the DG CNECT-led and the DG COMP-led inception impact assessments.

The European Commission rightly highlights that a small number of large online platforms are now able to control the entire platform ecosystem, and that they act as economic gatekeepers. The Commission also mentions that these online platforms increasingly determine 'the parameters for future innovations, consumer choice and competition'. We agree, but we are convinced that the challenge is broader than that.

We believe that this small number of large online platforms not only act as economic gatekeepers, but also as 'fundamental rights' gatekeepers. Through their business models, their terms of services and community guidelines, these platforms set standards in the market with regards to, among others, consumers' rights to privacy, data protection and freedom of expression. These large platforms are able to do so because, on the one hand, barriers to entry are so high that it is extremely difficult, if not impossible, for new players to enter the market and put competitive pressure on gatekeepers. And, on the other hand, because consumers do not have viable alternatives to switch to.

Data harvesting business models and content curation and distribution practices also result in uncertainty and lack of transparency around how we form our opinion on platforms and how these mechanisms impact, structure, and potentially control the public discourse. In addition to the impact on media pluralism, democratic debate, participation and political processes and fundamental rights, these business choices lead to further engagement on the platforms that helps these companies' that cements their market power.

The impact of these platforms' behaviours and business models on the guarantee of fundamental rights in the digital single market is a major challenge for the EU, and the European Commission should include it in its understanding of the problem it aims to fix with these welcomed initiatives.

Furthermore, the Commission points at the imbalance in bargaining power between large platforms and consumers. Once again, we highlight that the consequences of the imbalance are not simply economic. Consumers are deprived of the capability to negotiate not only prices (indeed, the majority of these services are provided for 'free', or without the need for a monetary payment), but also other elements, such as, for example, to what extent are their data protected by the service provider or to what extent the automated systems for content moderation used by the platforms affect their exposure to content diversity.

At this point we underline that it is essential that, throughout this process, personal data is not regarded/framed as a mere economic asset and urge caution in this regard. It is essential that the Commission does not endorse the position that many companies take, that there is a binary choice between offering up your data or receipt of a service. There is a risk that the already asymmetrical situation is further exacerbated with any effort to monetise data.

The European Commission recognises that the single market logic calls for additional rules to ensure ' (...) public interests that go beyond competition or economic considerations'. Among these public interests, we can surely list the need for business models to respect fundamental rights, the guarantee of a certain degree of media diversity, the respect of consumers' autonomy, an adequate degree of transparency in the market. However, we regretfully note that both impact assessments fail to dedicate sufficient attention to those public interest goals.

In the same vein, the Commission states that the overarching policy objective of the initiative is 'to ensure fair trading environment and increase innovation potential and capacity across the online platform ecosystem in the EU single market'. We note that the digital single market is a more complex concept and a more ambitious project, which does not look only at fair trade and innovation, but, as recalled on various occasions by Executive Vice-President Vestager, it also includes the building of a free and equal society, the enhancement of the other EU founding values, and the preservation of our democracies against the excessive power of private actors. Therefore, these initiatives should adequately consider those objectives and values too.

Following this approach, the European Commission should include in the session dedicated to the 'Likely impacts on fundamental rights' not only data protection and privacy, but also all other fundamental rights which are impacted by the behaviours of the small number of large platforms. Indeed, beyond the clear impact on privacy and personal data protection of the business models built on exploiting data, people's freedom of expression, right to non-discrimination, freedom of assembly and association are also increasingly reliant on private actors. We urge the European Commission to include in their consultation processes a wide range of stakeholders and impacted actors and communities to understand and further map the full horizon of potential policy options.

We are convinced that the initiatives of the European Commission constitute a once in a generation opportunity and the planned reform could become a blueprint for the regulation of digital markets and services worldwide. Therefore, we hope the Commission will give due attention to our calls and will not miss the opportunity to set the rules for a democratic, fair, innovative and fundamental rights oriented digital society in Europe.

Signatories

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