Council of the European Union

Brussels, 17 December 2020
(OR. en)

Interinstitutional File: 2020/0374(COD)

14172/20
ADD 4

RC 20
MI 585
COMPET 647
CODEC 1376
TELECOM 273
IA 123

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 December 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2020) 364 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act)

Delegations will find attached document SWD(2020) 364 final.

Encl.: SWD(2020) 364 final

EUROPEAN
COMMISSION

Brussels, 15.12.2020
SWD(2020) 364 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on contestable and fair markets in the digital sector (Digital Markets Act)

{COM(2020) 842 final} - {SEC(2020) 437 final} - {SWD(2020) 363 final}

Executive Summary Sheet

Impact Assessment for a Digital Markets Act: legislative initiative to ensure a competitive Single Market for digital services and in particular fair and contestable platform markets[1].

A. Need for action

What is the problem and why is it a problem at EU level?

In digital markets, a few online platforms – often embedded in their own ecosystems – have emerged as key structuring elements of today's digital economy, intermediating the lion's share of transactions between consumers and businesses. These **gatekeeper platforms** have a major impact insofar as they control access to and have gained an entrenched market position in digital markets.

This emergence of gatekeeper platforms has been accompanied by three main problems: (i) **weak contestability** of and competition in platform markets; (ii) **unfair business practices** vis-à-vis business users; and (iii) **fragmented regulation and oversight** of market players operating in these markets.

These problems are driven by market failures that preclude self-correction. Digital market features can strengthen **entry barriers to gatekeeper markets**. Business relations are characterised by particularly strong levels of **dependence and imbalanced bargaining power**. Furthermore, various national rules in the EU are emerging in partial response to the problems identified, resulting in **fragmented regulation and oversight.**

By undermining competition and market contestability, the problems lead to **inefficient market outcomes** in terms of higher prices, lower quality, as well as less choice and innovation to the detriment of European consumers. Addressing these problems is of utmost importance in view of the size of the digital economy (estimated at between 4.5% to 15.5% of global GDP in 2019) and the important role of platforms in digital markets.

What should be achieved?

Ensuring the proper functioning of the internal market by promoting effective competition in digital markets and in particular a fair and contestable online platform environment.

What is the value added of action at the EU level (subsidiarity)?

Member States are increasingly considering national measures to remedy the identified problems. This results in different regulatory requirements across the EU. Such fragmentation puts at risk the scaling-up of start-ups and smaller businesses and their ability to compete in digital markets.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not?

Four key parameters shape the choice of options: the scope design, the set of obligations related to unfair trading practices, the speed and flexibility of the architecture and the enforcement framework.

Option 1 is a **non-dynamic instrument** of **self-executing obligations** addressing clearly **defined unfair practices** by gatekeepers in **specific core platform services**. This option is presented with two sub-options for the scope on the basis of **solely quantitative thresholds**. Sub-option 1 is based on a high threshold, while sub-option 1.B is based on a lower threshold.

Option 2 is a **semi-flexible instrument**, combining a set of **self-executing obligations** and **obligations with regulatory dialogue**, a mechanism for **updating the practices**, and a mechanism for **identifying emerging gatekeeper** companies. This option is presented with two sub-options for the scope on the basis of **quantitative thresholds and qualitative designation**. Sub-option 2.A is based on a high threshold, while sub-option 2.B is based on a lower threshold, both in combination with qualitative designation

Option 3 is a **fully flexible instrument** providing for a **dynamic updating mechanism** allowing for **inclusion of additional core platform services** and **additional obligations** when such an inclusion is considered appropriate and justified following a market investigation. The scope of this option is based **solely on qualitative thresholds**.

[1] This initiative combines two initiatives and two public consultations for (i) Digital Services Act package: ex ante regulatory instrument of very large online platforms acting as gatekeepers; and (ii) the New Competition Tool.

The **preferred policy option** is Option 2 as it provides for timely intervention for the most egregious practices and more gradual approach for measures needing further tailoring and specification. It further allows tackling new unfair practices and market failures related to gatekeepers that are expected to have an entrenched position in the near future, thus enabling to address market failures in the dynamically changing digital environment.

What are different stakeholders' views? Who supports which option?

There is general support for ex ante rules for digital gatekeepers, with a majority of stakeholders calling for a combination of quantitative and qualitative criteria to identify gatekeepers.

C. Impacts of the preferred option

What are the benefits of the preferred option?

The preferred option will increase the contestability of digital markets and help businesses overcome the barriers stemming from market failures or from gatekeepers' unfair business practices. It will add a tailored regulatory solution where a gap currently exists. This will foster the emergence of alternative platforms, which could deliver quality innovative products and services at affordable prices. The associated benefit of the preferred option would be a change in consumer surplus estimated at EUR 13 billion per year. A substantial decrease in internal market fragmentation is also expected, thus freeing the growth potential of the Digital Single Market.

What are the costs of the preferred option (if any, otherwise of main ones)?

The main cost relates to compliance costs for gatekeepers as a result of the new rules envisaged. Businesses other than gatekeeper platforms may incur certain administrative costs when complying with information requests under the preferred option. These latter costs are, however, unlikely to represent an increase from current compliance costs incurred by businesses.

What are the impacts on SMEs and competitiveness?

SMEs do not qualify as a gatekeepers and would not be targeted by the list of obligations. Instead, new rules levelling the playing field would allow SMEs (including business users competing with gatekeepers) to grow throughout the internal market as a result of the removal of important barriers to entry and expansion. It could be expected that the measures envisaged would also result in more competition among platforms for business users. This is expected to lead to higher quality services at more competitive prices, coupled with a higher productivity. Business users would also have more confidence in selling online, as they would be protected from unfair practices.

Will there be significant impacts on national budgets and administrations?

A more comprehensive enforcement toolkit will allow businesses to compete on their merits. This will result in economic growth, which in turn translates into higher tax revenues for national administrations. The burden to the Commission of implementing this initiative is low (mainly redeployment of existing job positions) compared to the benefits for the economy. National authorities would have to bear some minor administrative costs.

Will there be other significant impacts?

An improvement of market competition in the digital sector would result in higher productivity, which would translate into higher economic growth. The promotion of higher competitiveness of digital markets is also of particular importance in increasing trade and investment flows.

Proportionality?

The preferred option would be proportionate in view of the size (harmful impact of unfair practices) and the nature (fast changing digital sector) of the problem identified. It would achieve the overall objective of a better functioning internal market as well as the specific objectives in a targeted manner by imposing a limited burden on a defined set of undertakings operating in digital markets.

D. Follow up

When will the policy be reviewed?

The Commission will review the measures taken to address problems issues identified in relation to gatekeeper platforms three (3) years after the start of the application of the new rules.