

To: Roberto Viola, Director-General DG CNECT, Olivier Guersent, Director-General DG COMP

Brussels, May 30, 2023

Subject: Clarity urgently needed on the role of third parties in implementation and enforcement of the Digital Markets Act

Dear Director-General Guersent and Director-General Viola,

Third parties – including consumers, civil society organisations and SMEs – have a critical role to play in ensuring the EU's Digital Markets Act (DMA) is implemented and enforced effectively. Furthermore, third parties face significant asymmetries of information and resources vis-à-vis the gatekeepers the DMA is designed to regulate. We, the undersigned, are therefore writing to request clarity on the role of third parties in implementation and enforcement of the DMA.

We welcome the role for third parties foreseen in the DMA, specifically in Articles 8 (Compliance with obligations for gatekeepers), 9 (Suspension), 10 (Exemption for grounds of public health and public security), 18 (Market investigation into systematic non-compliance), 19 (Market investigation into new services and new practices), 27 (Information by third parties) and 29 (Non-compliance).

With the DMA applying since May 2nd, setting off the formal process of designation and ultimately compliance with the Regulation's obligations, it is essential that third parties understand in more detail how they can contribute to implementation and enforcement of the DMA.

We appreciate the efforts the Commission has made to engage with third parties through its stakeholder workshops. But these discussions, while insightful, have thus far not set out how third parties will be able to practically engage with implementation of the Regulation over the coming months, including examining gatekeeper compliance with the DMA's obligations and scrutinising requests by gatekeepers for suspension of specific obligations.

Meanwhile Implementing Regulation C(2023)2530, adopted last month by the Commission, focuses almost entirely on the role and responsibilities of gatekeepers, with provisions on third parties limited to narrow issues of confidentiality.

The Commission must provide, as soon as possible, clarity on the role of third parties in DMA implementation and enforcement. **This will ensure that third parties have the clarity needed to effectively support implementation and prevent the process from becoming a closed-door discussion between the Commission and gatekeepers.**

To maximise third parties' ability to contribute to enforcement, we urgently call on the Commission to:

- Provide clarity on the precise manner and frequency with which third parties will be involved in the course of various Commission proceedings under the DMA;
- Clarify what information third parties will be provided with in each case and establish procedures to ensure this is delivered in a timely manner;
- Give third parties the ability to request additional information not included in the non-confidential summaries, where this is necessary to assess gatekeeper compliance with the DMA's obligations;
- Ensure that gatekeepers engage constructively and substantively with third parties' input, particularly in relation to proposed remedies and compliance measures;
- Publish clear guidance on the channels through which third parties will be able to inform national competent authorities and/or the Commission about problematic gatekeeper practices within scope of the DMA;
- Conduct public campaigns to raise awareness among third parties, including civil society organisations and SMEs, of their role in DMA implementation and enforcement.

Yours sincerely,

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| ▪ Open Markets Institute | ▪ Irish Council for Civil Liberties |
| ▪ BEUC | ▪ Privacy International |
| ▪ EDRi | ▪ Lobby Control |
| ▪ European DIGITAL SME Alliance | ▪ Panoptykon Foundation |
| ▪ ARTICLE 19 | ▪ Bits of Freedom |
| ▪ Balanced Economy Project | ▪ Wikimedia Europe |
| ▪ Foxglove | ▪ Coalition for Competitive Digital Markets |
| ▪ Homo Digitalis | |

