

## Digital Markets Act: ARTICLE 19 proposed amendments to Articles 5(d), 14 and 30

21 May 2021

### ARTICLE 19's concerns about the lack of end-users' voices in the implementation of the DMA

The DMA proposal foresees a market investigation system that should provide the European Commission with a certain degree of flexibility and checks and balances in the enforcement of key elements of the framework. These include the designation of a gatekeeper, the response to systematic non-compliance with the rules in Articles 5 and 6 of the DMA, and the impact of new services and practices.

ARTICLE 19 believes market investigations are a step in the right direction; however, some safeguards are needed to ensure that they work properly and are sufficiently inclusive of all voices and perspectives. Effective market investigations should not be a closed exchange between the regulator and the gatekeeper; rather, the former should look for information from all relevant actors, including end-users. An effective investigation cannot rely on information from gatekeepers only.

The market investigation system proposed in the DMA does not create adequate mechanisms for end-users to be involved and heard in the process. This is despite the fact that the issues at stake have a strong impact on end-users' rights. Providing ways for the end-users' voice to be listened to, and amplified would also give a greater legitimacy to the DMA regime. It would enrich the regulator's evidence base and improve the quality of its analysis.

Therefore, we propose that Article 14 should include the possibility for end-users, civil society and other parties with a legitimate interest to submit complaints for violation of the obligations contained in the DMA and request the opening of market investigations pursuant to Articles 15, 16 and 17. We also propose that end-users and civil society should be granted the right to be heard pursuant to Article 30. Finally, we call for the explicit inclusion of end-users in the obligation under Article 5(d).

### Proposed amendments

Current version	Proposed amendments
<p><b>Article 14</b></p> <ol style="list-style-type: none"> <li>1. When the Commission intends to carry out a market investigation in view of the possible adoption of decisions pursuant to Articles 15, 16 and 17, it shall adopt a decision opening a market investigation.</li> <li>2. The opening decision shall specify:               <ol style="list-style-type: none"> <li>(a) the date of opening of the investigation;</li> </ol> </li> </ol>	<p><b>Article 14</b></p> <ol style="list-style-type: none"> <li>1. When the Commission intends to carry out a market investigation in view of the possible adoption of decisions pursuant to Articles 15, 16 and 17, it shall adopt a decision opening a market investigation.</li> <li>2. The opening decision shall specify:               <ol style="list-style-type: none"> <li>(a) the date of opening of the investigation;</li> </ol> </li> </ol>

<p>(b) the description of the issue to which the investigation relates to; (c) the purpose of the investigation.</p> <p>3. The Commission may reopen a market investigation that it has closed where: (a) there has been a material change in any of the facts on which the decision was based; (b) the decision was based on incomplete, incorrect or misleading information provided by the undertakings concerned.</p>	<p>(b) the description of the issue to which the investigation relates to; (c) the purpose of the investigation.</p> <p>3. The Commission may reopen a market investigation that it has closed where: (a) there has been a material change in any of the facts on which the decision was based; (b) the decision was based on incomplete, incorrect or misleading information provided by the undertakings concerned.</p> <p>4. <b><i>End users or their representatives, civil society organisations, business users or their representatives and any other third party who can show a legitimate interest shall have the right to submit complaints about gatekeepers violating their obligations under the DMA and/or to request the opening of a market investigation pursuant to Articles 15, 16 and 17.</i></b></p>
<p><b>Article 30</b></p> <p>1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned the opportunity of being heard on: (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; (b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.</p> <p>2. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days.</p> <p>3. The Commission shall base its decisions only on objections on which</p>	<p><b>Article 30</b></p> <p>1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings, <b><i>end-users or their representatives and civil societies</i></b> concerned the opportunity of being heard on: (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; (b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.</p> <p>2. Gatekeepers, undertakings and associations of undertakings, <b><i>end-users or their representatives and civil societies</i></b> concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days.</p> <p>3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of</p>

gatekeepers, undertakings and associations of undertakings concerned have been able to comment.	undertakings, <b><i>end-users or their representatives and civil societies</i></b> concerned have been able to comment.
<p><b>Article 5</b></p> <p>In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:</p> <p>(d) refrain from preventing or restricting business users from raising issues with any relevant public authority relating to any practice of gatekeepers;</p>	<p><b>Article 5</b></p> <p>In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:</p> <p>(d) refrain from preventing or restricting business users <b><i>or end-users</i></b> from raising issues with any relevant public authority relating to any practice of gatekeepers;</p>