

EU Digital Markets Act: ARTICLE 19's proposed amendment to Article 10

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ARTICLE 19's concerns about Article 10

One of the key problems of the current digital ecosystem is the exploitative effect of various conducts by gatekeepers towards end- users. This is problematic from a purely economic perspective and also has a negative impact on end- users' rights. If one player is able to dictate a quality standard in the market, this also affects the protection of end- users' data and human rights, including right to freedom of expression and non-discrimination. The DMA proposal seems to overlook this perspective and to focus mainly on the relationship between core platform services and business users.

A prime example is Article 10(2)(a) which limits the possibility to consider a gatekeeper's practice unfair to situations where there is "an imbalance of rights and obligations on business users and the gatekeeper is obtaining an advantage from business users that is disproportionate to the service provided by the gatekeeper to the business users." However, when the imbalance of rights and obligations is on end-users, they are left alone to deal with the unfairness because the DMA does not consider this fairly typical exploitative case as something deserving of action.

In order to address this problem, we propose that Article 10(2)(a) makes a clear reference to the imbalance of rights and obligation on end-users and seeks to correct this imbalance also.

Proposed amendment

Current version	Proposed amendments
<p>Article 10</p> <p>2. A practice within the meaning of paragraph 1 shall be considered to be unfair or limit the contestability of core platform services where:</p> <p>(a) there is an imbalance of rights and obligations on business users and the gatekeeper is obtaining an advantage from business users that is disproportionate to the service provided by the gatekeeper to business users; or</p> <p>(b) the contestability of markets is weakened as a consequence of such a practice engaged in by gatekeepers.</p>	<p>Article 10</p> <p>2. A practice within the meaning of paragraph 1 shall be considered to be unfair or limit the contestability of core platform services where:</p> <p>(a) there is an imbalance of rights and obligations on business users or end- users and the gatekeeper is obtaining an advantage from business users or end- users that is disproportionate to the service provided by the gatekeeper to business users either group; or</p> <p>(b) the contestability of markets is weakened as a consequence of such a practice engaged in by gatekeepers.</p>