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Amendment proposal for Article 5(a) in the Digital Markets Act

Article	Current text	Proposed text
Article 5(a)	[In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:] (a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Regulation (EU) 2016/679.	[In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:] (a) refrain from (i) combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, (ii) signing in end users to other services of the gatekeeper in order to combine personal data, and (iii) combining personal data sourced from these core platform services with personal data from sources or services where the gatekeeper is present as a third party, such as services provided by entities not under the full ownership of the gatekeeper, unless the gatekeeper solely operates as a data processor in accordance with Regulation (EU) 2016/679 art. 28.

<u>Justification for proposed amendment:</u>

We support the inclusion of Art. 5(a) prohibiting the combining of personal data by gatekeepers.

The proposed change would remove the consent option - “unless the end user...has provided consent” - as this in practice renders the prohibition without practical effect. Certain gatekeepers already pertain to nudge users towards consent to track users extensively across the web.

(a)(i) and (a)(ii) are copied from the original proposal and unchanged, but listed in order to make the text easier accessible, taking into account the addition of the proposed new (a)(iii).

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The addition of (iii) clarifies that gatekeepers cannot collect data from external sites to use for their own purposes. This would prohibit extensive tracking by gatekeepers across the web for the purpose of building extensive user profiles. This is often a precondition to allow users to use gatekeepers' services. This is to the detriment of users' privacy and further strengthens the gatekeepers' position in the markets, and is in practice required for sites to allow in order to use core platform services.

The addition of (iii) would also help clarify the definition of "third party services" in the current text . For instance, a gatekeeper's service could be a service directly implemented by a company on a web site, and the gatekeeper would collect the data directly through their direct presence on a web site. In that scenario, they would not necessarily collect data *from* a third party service, but *as* a third party present on a given web site.

An exemption from (iii) is provided for the gatekeeper if they are the *data processor* as defined in GDPR. This would mean that gatekeepers may process data from external sources, but only as a service provider processing data in accordance with instructions from their customers (the data controller in this scenario) and limited to the purposes defined by their customers.