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## Comments on the DMA IMCO report

The Nordic confederations: Confederation of Swedish Enterprise, Confederation of Norwegian Enterprise, Confederation of Finnish Industries, and the Confederation of Danish Industry have earlier published a [joint position paper](#) on the DMA. In addition to that, the Confederation of Swedish Enterprise and the Confederation of Danish Industry have in relation to the draft report 2020/0374(COD) from rapporteur Andreas Schwab MEP (EPP, DE) the following comments in relation to relevant amendments in the report.

- [Amendment 37](#): raises the threshold set to determine “significant impact” on the single market to 10 billion EUR annual turnover in the last 3 financial years or an average market capitalisation to 100 billion EUR in the last financial year;

We have no comment to the thresholds as such. However, as Mr Schwab argues that the current threshold should be amended to 10 billion EUR, while at the same time referring to the US corresponding legislative process where the thresholds may end up on even higher numbers (600 billion or so) we wish to highlight that the US market and the EU market are indeed different. When comparing any thresholds, one should also take relevant market conditions, such as legislation and economic basis, that would influence the numbers. Important though is that the thresholds in the DMA capture the actors that have a major impact on the internal market.

- [Amendment 38](#): raises the threshold set to 2 core platform services with each more than 45 million active monthly users;

We do not agree on this amendment as we see no economic logic in introducing such a restriction. The requirements for gatekeepers, including, for example requirements for an extremely high turnover in the bloc and the provision of a core platform service in at least three member states, are convincing indications that the operator has a significant impact on the internal market. The risk of such competition issues that the DMA is intended to counteract – for example, the ability of a gatekeeper to promote their own services or products on their core platform service to the detriment of other business users of the service – is relevant already when a core platform service acts as an important network port for business users to reach end users. There is thus no reason to further limit the scope of the regulation by amending it from one to at least two core platforms.

Under current market conditions, the existing proposals would mean that the DMA would include the Netherlands-based Booking.com and a dozen non-European players. If limiting the scope from one to two core platforms, Booking.com – the only European player – would not be subject to the regulation. As the discussed limitation otherwise lacks clear justification based on economic grounds, it could be perceived as protectionist.

We propose no amendment to the Commission proposal.

- Amendment 39: limits the amount of time a potential gatekeeper would have to notify the Commission of its status to 1 month;

We agree on this amendment as 1 month is reasonable to notify the Commission.

- Amendment 45: the degree of multihoming is added as another factor to take into account in qualitative designation;

We agree on this amendment.

- Amendment 48: shortens the time limits until Art 5 & 6 obligations apply from 6 to 4 months of core platforms services being determined;

We do not agree on this amendment. Although a speedy procedure is welcome, this objective might be lost if this results in more decisions being referred to time consuming court judgements. We must not trade speed for certainty.

It is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. We believe that six months is a reasonable time limit for this procedure.

We propose no amendment to the Commission proposal.

- Amendment 51: ensures specific elements of the GDPR in relation to data processing are not misused when implementing obligations relating to combining personal data;

We welcome this amendment as it clarified how this article relates to the GDPR.

- Amendment 52 (with referens also to amendment 9): specifically mentions contractual obligations in limiting the potential for business users to sell elsewhere at different prices;

We agree on these amendments 9 and 52, however we ask for further clarification regarding the following concerns: First, it should be clarified that article 5(b) covers the use of both narrow and broad MFN clauses. Business users should be able to offer their goods or services to end users under more favorable conditions through any other online intermediation services on their own website and on any third party website. Restricting this would have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services. Although this is implied in recital 37 it should be further clarified in the relevant article 5(b).

Second, in addition to the examples provides for in recital 37, reduced visibility should be added as we see this is indeed a possible consequence for business users that differentiate their offers in different sales channels.

- Amendment 56: ensures the information on advertising that will become available to advertisers and publishers would be free of charge and in real-time;

We agree on this amendment.

- Amendment 62: attempts to prohibit self-preferencing on online search markets where the gatekeeper is competing with 3<sup>rd</sup> parties in products or services it displays as a search result;

We agree on this amendment.

- Amendment 68: the Commission may use 3<sup>rd</sup> party input when determining Art 6 obligations under Art 7(2);

As this amendment is described as “The Commission may decide to *invite interested third parties* to submit their observations” this does not imply any third parties to compulsory intervene. That is good and must come with the requirements for publications to have regard to the legitimate interest of undertakings in the protection of their business secrets.

- Amendment 73: details the public interest ground for reasons related to morality, health or security;

Ok amendment. However, it remains unclear how article 9 could be applied in practice. Thus, we consider that the conditions for exempting an individual core platform service from certain obligations on the grounds of public interest should be further clarified. To ensure competitive digital markets and to contribute to innovation, efficiency and willingness to invest, requires a regulatory framework that produces clear and predictable results.

- Amendment 98, 99, 100: creates a High-Level Group of Digital Regulators to facilitate cooperation and coordination between the EC, Member States and other relevant authority representatives with the task of assisting Commission application of the DMA while aligning with other regulatory frameworks;

We do not agree on these amendments as this seems costly and may slow down the implementation of the DMA. We agree with the current proposal suggesting that national competition authorities should be consulted before important decisions are taken within the framework of the new proposed advisory committee for digital markets. However, we do not consider that national competition authorities should be given a role in the application of the regulations. It would be more appropriate for the Commission, without further intervention from member states, to be given investigative, enforcement, and monitoring powers. This would ensure a harmonized and effective application of EU regulation, which are of course intended to apply to gatekeepers whose digital services are provided in at least three member states and whose impact is thus not limited to individual states.

We propose no amendment to the Commission proposal.