Proposed Amendments to the European Commission's proposed Regulation on contestable and fair markets in the digital sector (Digital Markets Act)

Introduction

We appreciate the opportunity to suggest possible amendments to the European Commission's proposal on the Digital Markets Act (DMA). In light of the ongoing legislative process, we are keen to constructively help ensure that the DMA is value additive to European consumers, the European tech ecosystem, and fulfills the political mandate of ensuring market contestability and fairness.

We recognise that the moment is now to reassess the way in which the competitive dynamics of Europe's tech ecosystem are regulated. We understand and fully support the EU's ambition to foster a more equitable distribution of the value generated by the platform economy. We believe this should be done by improving the environment for European businesses to further unlock new value by looking into ways in which gatekeeper companies can share more of the data and efficiencies they create to the benefit of European consumers and business users.

To this end, we would like to propose amendments that we believe would strike a better balance between regulatory intervention and the preservation of platforms' value creation, and ultimately benefit European businesses and consumers.

Proposed amendments

1. Definitions

Amendment 1

Article 2
Definitions

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(h) **advertising services, including** any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);	(h) any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider by aby of the core platform services listed in points (a) to (g);
Justification *For companies that run an advertising-based business model there is currently too much uncertainty around the scope and purpose of the "advertising services" core platform service (CPS). Advertising is a key part of a number of online services, in fact allowing providers to run their services for free, and is therefore inseparable from other core platform services. The DMA should therefore consider online advertising services as being part of the CPS surface they are on, namely as an integral part of the business model for a specific CPS rather than a separate and distinct CPS. Accordingly, it should be clarified that the advertising services CPS only encompasses advertising technology services and not advertising served directly on core platform services.*	

Amendment 2

Article 2
Definitions

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(7) 'Online social networking service' means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations;	(7) 'Online social networking service' means **an integrated** platform that enables end users **and business users** to**, for example**, connect, share, discover **content** and communicate with each other across multiple devices **through a single user interface** and, in particular, via chats, posts, videos and recommendations;
Justification *As currently written, the definition of "online social networking services" does not sufficiently take into account their intrinsic multi-sided and multi-purpose nature. Most large social networking sites have naturally evolved to encompass a number of services that are integrated into one single app and user interface. Some of these integrated services run the risk of being considered individual core platform services within a single app experience, which will translate into multiple sign-in flows, dialogue*	

boxes, and full screen pop-ups before a user can use the desired service. Failing to properly address this issue, the DMA would add layers of friction and a breakdown of the overall experience for users of social networks. The integrated app should be the relevant unit when it comes to defining the 'online social networking' core platform service, as the consumers' expectation is that the app delivers value as a single experience rather than an individual experience of every single service and feature.

Amendment 3

Article 2
Definitions

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(14) 'Ancillary service' means services provided in **the context of or together with** core platform services, **including** payment services as defined in point 3 of Article 4 and technical services which support the provision of payment services as defined in Article 3(j) of Directive (EU) 2015/2366, **fulfilment**, identification **or advertising** services;	(14) 'Ancillary service' means services provided in **support of** a core platform service, **namely** payment services as defined in point 3 of Article 4 and technical services which support the provision of payment services as defined in Article 3(j) of Directive (EU) 2015/2366, fulfilment, **or** identification services;
Justification *The Commission's text defines advertising services as both a core platform service and an ancillary service, creating legal uncertainty over the status of these services. Online ads should not be considered ancillary services but rather an integral part of the business of any ad-supported digital services: they are the product that providers offer to their customers and the medium that enables them to offer free services to end users. Moreover, including advertising services to the definition of ancillary services would also not be consistent with the P2B Regulation which defines 'ancillary services' as services that are the technical support for the provision of a service offered to the consumer by the platform (see Art. 2(11) of Regulation (EU) 2019/1150). Additionally, the definition should be more clearly narrowed down to specifically identified services rather than to services that are referred to by way of example.*	

Amendment 4

Article 2
Definitions

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(18) 'Ranking' means the **relative prominence given to** goods or services offered through online intermediation services or online social networking services, or the relevance given to search results by online search engines**, as presented, organised or communicated by the providers of online intermediation services or**	(18) 'Ranking' means the **use of algorithms that determines the surfacing of any given** goods or services offered through online intermediation services or online social networking services, or the relevance given to search results by online search engines;

of online social networking services or by providers of online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;	

Justification

This amendment suggests changes to complement amendments proposed to corresponding article 6(d). The Commission's proposed definition of ranking is extremely broad and could include all types of placement on a variety of digital services. This could include placement of services that aims to facilitate access to these services for an improved user experience (such as navigational tools within an integrated app experience). Accordingly, 'ranking' should be defined as the algorithmic determination of the relative positioning of goods or services that compete with those of the gatekeeper.

2. Designation of gatekeepers

Amendment 5

Article 3
Designation of gatekeepers

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
7. For each gatekeeper identified pursuant to paragraph 4 or paragraph 6, the Commission shall identify the relevant undertaking to which it belongs and list the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b).	7. For each gatekeeper identified pursuant to paragraph 4 or paragraph 6, the Commission shall identify the relevant undertaking to which it belongs and list the relevant core platform services that are provided within that same undertaking and which each individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b). **When identifying a distinct relevant core platform service, the Commission shall take into account how end users use and experience the service as well as the degree of integration of the end user experience.**

Justification

Amendment complementing changes to the definition of "online social networking services" in art. 2(7). Many core platform services encompass services that provide an integrated experience consisting of various different services and features that together make up the end-user experience. The DMA covers a broad range of core platform services which are not well circumscribed services and can integrate a number of different services including interpersonal communications services, online intermediation services and video-sharing platform services that cannot in this setting be deemed core platform services since the features characterizing core platform services are in this case subordinate to that of the service to which they are attached. The Commission should hence take utmost account of such integrated user experiences when identifying core platform services in order avoid unnecessarily degrading the service for users given users expect such integrated product experiences.

Amendment 6

Recital 15

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(15) The fact that a digital service qualifies as a core platform service in light of its widespread and common use and its importance for connecting business users and end users does not as such give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway and is operated by a provider with a significant impact in the internal market and an entrenched and durable position, or by a provider that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should apply only to undertakings designated on the basis of these three objective criteria, and they should only apply to those of their core platform services that individually constitute an important gateway for business users to reach end users.	(15) The fact that a digital service qualifies as a core platform service in light of its widespread and common use and its importance for connecting business users and end users does not as such give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway and is operated by a provider with a significant impact in the internal market and an entrenched and durable position, or by a provider that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should apply only to undertakings designated on the basis of these three objective criteria, and they should only apply to those of their core platform services that individually constitute an important gateway for business users to reach end users. **In designating a core platform service, the Commission shall not identify more than one core platform services within any single app or website.**
Justification *Amendment complementing changes to the definition of "online social networking services" in art. 2(7) and proposed changes to art. 3(7). Many core platform services encompass services that provide an integrated experience consisting of various different services and features that together make up the end-user experience. That is particularly evident in the case of social networking services which are not airtight services and can integrate a number of different services including interpersonal communications services, online intermediation services and video-sharing platform services that do not in this integrated setting exhibit the characteristics of a core platform service as described in Recital 2 of the proposal. The Commission should hence take utmost account of such integrated user experiences when identifying core platform services in order to avoid the unnecessary degradation of the service to users.*	

3. Obligations for gatekeepers: restrictions on data combination

Amendment 7

Article 5

Obligations for gatekeepers

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
Article **5** *Obligations for gatekeepers*	Article **6** *Obligations for gatekeepers* ***susceptible of being further specified***
(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.	(a) refrain from combining personal data sourced from these core platform services with personal data from other **core platform** services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other **core platform** services of the gatekeeper in order to combine personal data **between core platform services for commercial purposes**, unless the end user has been presented with **the opportunity to** consent in the sense of **Article 6 (1) a)** of Regulation (EU) 2016/679**; alternatively, the gatekeeper may rely on the legal basis included under Article 6 (1) of Regulation (EU) 2016/679 with the exception of lit b) and f) of Article 6 (1) of Regulation (EU) 2016/679.**
Justification *This provision embraces the IMCO Draft Report [2020/0374(COD)] text which introduced additional GDPR legal bases to the text of this provision. In addition to this change, we would also suggest moving this provision to Article 6 and subject it to the Article 7 specification process as it raises important product design questions that will have a significant impact on the user experience and the innovation environment under the DMA. The framework for a regulatory dialogue contemplated in Article 7 of the proposal will ensure that such measures are necessary, proportionate, and can better achieve their goals. A separate key amendment proposed is to remove the requirement to request consent to combine personal data from a core platform service with personal data from "any other service" as this increases legal uncertainty and could lead to a disproportionate proliferation of consent dialogues within a single product experience Specifically, it could create unnecessary and illogical friction for consumers as they simply try to navigate an app. A more measured approach that would align with users' expectations is to require consent for data combinations outside of an integrated product experience.*	

Amendment 8

Recital 36

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(36) The conduct of combining end user data from	(36) The conduct of combining end user data from

different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices **by offering a less personalised alternative**. The possibility should cover **all possible sources of personal data, including own services of the gatekeeper as well as** third party websites, and should be proactively presented to the end user in an explicit, clear and straightforward manner.	different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practice **for commercial purposes**. The possibility should cover all **core platform services of the gatekeeper, and personal data originating from** third party websites, and should be proactively presented to the end user in an explicit, clear and straightforward manner.**The user's choice should not prevent gatekeepers' ability to ensure the safety of users, the security and integrity of their services.**
Justification *This amendment suggests changes to complement amendments proposed to corresponding article 5(a). In particular to enable the Gatekeeper to combine data for the purposes of safety, security and integrity. In particular where the end-user expresses their choice not to combine their data across CPSs. It also proposes to reject the IMCO committee proposal to require Gatekeepers to offer an equivalent yet less personalized service - this an oxymoron: a less personalized service cannot be by definition 'equivalent'. For most Gatekeepers designing a service that fulfils the user's desire not to have their data combined will require certain trade offs which are best discussed as part of a regulatory dialogue under article 6 rather than fixed in legislation. The amendments also seek to ensure that the DMA enables a consent framework that is designed with users' expectation in mind and proportionate.*	

4. Article 5: restrictions on account registration

Amendment 9

Article 5
Obligations for gatekeepers

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
Article **5** ***Obligations for gatekeepers*** (f) refrain from requiring business users or end users to subscribe to or register with any other core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;	Article **6** *Obligations for gatekeepers* ***susceptible of being further specified*** (f) refrain from requiring business users or end users to subscribe to or register with any other core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;

Justification
This provision should be moved to Article 6 and be subject to the Article 7 specification process to ensure its proportionality to the specific circumstances of each gatekeeper. If single app experiences were to be considered to consist of multiple core platform services, this provision would raise a whole range of product design questions that gatekeepers should be able to address with the Commission as part of a regulatory dialogue. Getting compliance right from the very beginning will be in the interest of everyone not least because no consumer benefit case has been made for separate sign-ins to services within an app experience. Because from the consumer's perspective the app delivers value as a single experience it should be the relevant unit when it comes to defining a core platform service and users must have the option to retain the integrated product experience as they know it today. Regulatory dialogue would allow companies to make sure they can do so and de-risk the possibility of changing products and user experiences.

5. Article 6: restrictions on using competitor data

Amendment 10

Article 6
Obligations for gatekeepers susceptible of being further specified

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(a) refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users;	(a) refrain from using, in **direct** competition with business users, any data not publicly available, which is generated through activities by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users **when the use of such data would occur absent the freely given consent of those business users and place those users at a competitive disadvantage with the gatekeeper**;
Justification *The scope of this provision should be limited to scenarios where data use would be unfair for the business user. This means that restriction on data use should: (1) only apply to data from direct competitors (e.g. those offerening the same product or a substitute); and (2) where such data use places the business user at a competitive disadvantage. Drawing the net any wider risks undermining existing pro-competitive or legitimate data use cases. This provision potentially ignores the many data use cases that are beneficial to business users. To ensure that this provision does not go beyond what is necessary and does not have the unintended consequence of denying business users with valuable insights, it must stay under Article 6 which allows for specification decisions. Business users should also maintain the possibility to agree to their data being used by the gatekeeper. It should be made clear that this provision does not stand in the way of business users exercising that choice given they very often benefit - and want to benefit - from the data being used. This is in the best interest of the business users, consumers and amounts to a pro-competitive use of data.*	

Amendment 11

Recital 55

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide **and generate** a vast amount of data, **including data inferred from such use**. In order to ensure that business users have access to the relevant data **thus generated**, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.	(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide a vast amount of data. In order to ensure that business users have access to the relevant data, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/ECGatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces **or enabling access of data by the business user "in situ", without a transfer by the gatekeeper.**
Justification *Gatekeepers' investment and incentives to innovate calls for excluding any inferred data from the scope of data sharing.This is would also clarify the text the of the DMA: Business users and end users don't "generate" inferred data because inferred data is the result of companies' investments into data analytics that allows them to infer insights data. Inferred data are data sets that are created through companies' intellectual property and investments. 'Inferred data' are designed for specific businesses and processes and are not easily used in other settings.Accordingly, an over-broad data sharing obligation would allow other businesses to effectively freeride on gatekeepers' investments. Business users should be clear in determining the relevant data from which respective service, and their subsequent request. It should not be on the gatekeeper to determine which data might be relevant from other services for the requesting business user.*	

6. Article 6: self-preferencing

Amendment 12

Article 6

Obligations for gatekeepers susceptible of being further specified

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;	(d) refrain from **harming competition by** treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;
Justification *The amendment seeks to narrow the scope of the self-preferencing prohibition to instances where such practice is harmful to competition. In some cases self-preferencing can be harmful and be used to favour companies' own services in a way that would harm competition in the market. Equally, self-preferencing can also enable new market entrants to compete against established players and ultimately generate competition and benefit consumers. Self-preferencing also is just another term of 'integration' - consumers value integrated product experiences. As a result, scenarios where self-preferencing is beneficial should be distinguished from others where it is harmful to competition.*	

Amendment 13

Recital 48

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, **displayed** along with the results of an online search engine, which are considered or used by certain end users	(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, **ranked** along with the results of an online search engine, which are considered or used by certain end users

as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are **given prominence and display** in the newsfeed of a social network, or products or services ranked in search results or **displayed** on an online marketplace. In those circumstances, the gatekeeper is in a dualrole position as intermediary for third party providers and as direct provider of products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.	as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are **ranked** in the newsfeed of a social network, or products or services ranked in search results or **ranked on** an online marketplace. In those circumstances, the gatekeeper is in a dualrole position as intermediary for third party providers and as direct provider of products or services of the gatekeeper **leading to conflicts of interest**. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.
Justification *This amendment suggests changes to complement amendments proposed to corresponding article 6(d). A clearer focus on "ranking" serves the purpose of enhancing legal certainty by aligning the Recital with the wording of the actual Article. Art. 6(1)(d) speaks of "ranking" which has its own specific definition. It is advisable to keep alignment throughout the text.*	

Amendment 14

Recital 49

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself **or through a business user which it controls**. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context **cover all forms of relative prominence**, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.34	(49) In such situations, the gatekeeper should not engage in any **harmful** form of differentiated or preferential treatment in ranking on the **essential surface of a** core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself **and which results in a material drop of referral traffic to competing business users that such users would not be able to otherwise replace (in whole or in part) through any other source**. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context **mean the use of algorithms to determine the relative positioning,** including display, rating, linking or voice results**, with respect to competing options on the platform susceptible to be presented to the user**. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking.

	For the avoidance of doubt, user facing navigational tools in, for example, software applications that do not have the object of a search or other rank-producing service are excluded from the definition of ranking for the purpose of this Regulation. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.
Justification *This amendment suggests changes to complement amendments proposed to corresponding article 6(d). The restriction on self-preferencing is drafted in such a broad manner that it risks catching the most common, pro-competitive business conduct such as companies expanding their offers to consumers. Hence, this provision needs appropriate limiting principles: only forms of self-preferencing should be caught that result in a material drop of referral traffic to business users which they cannot compensate through other sources. Otherwise it does not make sense to, for example, limit gatekeepers' ability to provide new, integrated product experiences even though they have no or only a very limited impact on competing business users. In addition, where gatekeepers' products and services are not meant to be competing with third party products and services for user attention (and are not represented as competing for such attention), issues of relative positioning are not and should not be in scope of this provision. Otherwise basic navigational tools within an app experience may fall in scope even though their function is not to rank a gatekeeper service vs a competing third party service. It is worth clarifying that such navigational tools that do not rank any service fall outside the scope of 'ranking'.*	

7. Article 6: required interoperability for ancillary services

Amendment 15

Article 6
Obligations for gatekeepers susceptible of being further specified

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(f) allow business users and providers of ancillary services access to and interoperability with the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services;	(f) allow business users and providers of ancillary services**, where evidence of consumer benefit is found and taking due account of the need for technical standardization processes, ensuring privacy is protected, ensuring privacy is protected,** access to and interoperability with the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services;
Justification *Access and interoperability obligations should be carefully approached and designed, and only introduced when beneficial to consumers and competition. Ensuring effective and meaningful interoperability between digital services requires long-term, cross-industry efforts aimed at developing*	

appropriate standards that can enable such interoperability from a technical standpoint. These obligations should only be applied on a case-by-case basis where a pro-competitive effect for consumers has been identified. Interoperability may not always help achieve the desired outcome of enabling greater competition and choice. Obligations to interoperate should be directed to a specific product or service where there is evidence that interoperability can be beneficial to competition, is protective of the privacy and security of the end-user, and all technical specifications and requirements are concluded before any such obligation is enforced.

8. Compliance dialogue

Amendment 16

Article 7
Compliance with obligations for gatekeepers

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.	2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18. **The Commission may only take enforcement action under Article 25 after a gatekeeper has been found in non-compliance with a decision under Art 7(2).**

Justification

A decision under Article 7(2) for Article 6 provisions should be a necessary step before the Commission can take action under Article 25. This form of procedural sequencing would allow for a regulatory dialogue as suggested in Recital 58 and for companies to ensure compliance without facing enforcement action against their good faith compliance measures. This would also prevent the Commission from treating gatekeepers inconsistently when applying Article 16 on systematic non-compliance, if some gatekeepers go through an Article 7(2) process and others not. This would not prevent the Commission to take action under Article 25 if a gatekeeper does not comply with the measures specified in a decision pursuant to Article 7(2). Article 7(3) would have to be amended accordingly. The Commission must weigh evidence of consumer benefits and efficiencies submitted by gatekeepers to support their implementation proposals. Otherwise, there is a high risk that provisions are applied without taking into account the full picture of the outcomes for users.

Amendment 17

Article 7
Compliance with obligations for gatekeepers

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
	2a (new). For the obligations laid down in Article 5, the gatekeeper may notify the Commission of the measures it has taken to ensure effective compliance. Should the Commission find those measures inadequate at any point in time, it shall first inform the gatekeeper before making use of its powers under Articles 25, 26, and 27. The gatekeeper shall be given the possibility and sufficient time to bring its measures into full compliance before the exercise of the Commission's powers under Articles 25, 26, and 27.
Justification *Currently there is no consultative procedure for Article 5 provisions even though some provisions will force companies to take important product design decisions. Companies have no possibility to check their good faith compliance efforts with the regulator. This gap could be addressed by giving companies the opportunity to file their good faith compliance measures for Article 5 provisions with the regulator. If the Commission finds those measures to be inadequate it should first let gatekeepers know and give them a chance to bring those into full compliance. Only after this process should the Commission be able to exercise it's full enforcement powers. Otherwise gatekeepers could be punished with severe fines and collect their first 'strike' under Art. 16(3) despite having acted in good faith.*	

Amendment 18

Article 7
Compliance with obligations for gatekeepers

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
7. A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances**.** A gatekeeper may, with its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances.	7. A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances. A gatekeeper may, with its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances. **The Commission shall be bound to respond to the gatekeeper's submission promptly and refrain from opening any enforcement proceeding for**

	non-compliance pending the outcome of an Article 7(7) request.
Justification *The consultative process for Article 6 provisions should be improved. Whenever a company asks for clarification under the Article 7(7) process, the Commission should be obligated to provide an answer. Currently it does not have to do so which leaves companies in compliance uncertainty even though they have explicitly signaled that uncertainty to the Commission under an Article 7(7) request. The Commission should also be barred from opening any enforcement proceedings for non-compliance pending the outcome of an Article 7(7) request. The Article 7(7) process currently is a key element in facilitating regulatory dialogue, as laid out in Recital 58. That process, however, could be seriously undermined if companies find themselves exposed to enforcement action while they seek guidance from the Commission.*	

Amendment 19

Recital 58

Commission's proposal [COM/2020/842 final]	Proposal for Amendment
(58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. **However, it may in certain cases be appropriate for the** Commission, following a dialogue with the gatekeeper concerned, **to** further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. This possibility of a regulatory dialogue should facilitate compliance by gatekeepers and expedite the correct implementation of the Regulation.	(58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability, **protect the value consumers derive from gatekeeper platforms** and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. Gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. The Commission **should provide assistance to gatekeepers on how to interpret these obligations** following a dialogue with the gatekeeper concerned, **and, where appropriate, a consultation of interested third parties, it shall** further specify in a **decision** some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. This possibility of a regulatory dialogue should facilitate compliance by gatekeepers and expedite the correct implementation of the Regulation.
Justification	

The amendment serves to improve regulatory processes to facilitate compliance with the obligations which will be in everyone's interest. The Commission should provide assistance in specifying obligations which would help gatekeeper's compliance efforts. This would also guarantee that the implementation of obligations is proportionate and, to the greatest extent possible, preserves the value that consumers derive from gatekeeper services.