

Ex-ante platform regulation Position paper “Regulating Systemic Digital Platforms”

Key messages

Schibsted is an international media group with world-class Scandinavian media houses, leading international marketplaces and tech start-ups in the field of personal finance and collaborative economies. Millions of people interact with Schibsted companies every day, and our digital services aim to empower consumers. Schibsted constitutes an ecosystem of various brands that offer different products and services to users and customers, and where we utilize data across the ecosystem both to attract users and customers, develop and personalise our products and services as well as keep users and customers engaged.

In our business we see how crucial a well-functioning digital economy and a fair competitive environment online is. It is also a key element in the development of the Digital Single Market. We are of the opinion that in order to ensure a level playing field for European businesses in competition with large international platforms, there is a need to ensure that there is efficient and fair competition on the European digital market.

As we have stated in our [position paper on competition policy](#) we are of the strong opinion that EU competition policy should be developed in order to effectively *combat anti-competitive practises* in digital markets and allow digital companies to compete on their own merits. In order to realize this purpose, there is a need to modernize current competition rules in light of the development of digital markets and to ensure that data positions are taken into account in the determination of market power. Moreover, it is important to *give European players the possibility to collaborate with local and regional players* - in order to compete with the large global platforms.

In addition, there is also a need to introduce a limited *ex ante regulation* to complement competition law enforcement. Such regulation must be directed specifically towards certain large international platforms, for which traditional competition law enforcement has often proved too slow and inefficient.

The purpose of the ex ante regulation should be to strike directly at the business models that make certain global platforms so powerful. The regulation should establish clear rules to protect the dynamism of the markets as well as consumers and the media ecosystem.

Furthermore, in order to strengthen scrutiny of the digital markets overall, the EU should create a European Digital Authority to ensure efficient and consistent monitoring and enforcement of such international platforms.

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Background

Giant global digital platforms are at the heart of the economy. Consumers rely on them to access information and businesses need them to access users and user data, to promote services and generally to operate more efficiently. As a digital- and media company, we strongly believe that these platforms are an essential part of the economy and can create great business opportunities, valuable innovation and useful choices for consumers.

However, due to the positions and market power of certain global platforms, we simultaneously experience unfair and uncompetitive practices such as:

- **Google:** Google's position and behaviour represents a huge challenge in our day to day operations, in particular for our ads business which is crucial for the financing of independent journalism.
- **Facebook:** By tying separate services together through functional integration, and favouring its own services to the detriment of competition on the merits, it has boosted its own Facebook Marketplace classifieds service to an unprecedented growth by leveraging its social network to drive ads and traffic to that service.
- **Apple:** It requires certain digital services (including some of Schibsted's news media apps) to exclusively implement Apple's payment system (IAP). Those services that have implemented IAP become customers of Apple and are therefore not able to establish a customer relationship with and collect data about customers that have purchased an online news subscription through their apps as the subscriptions are fully handled by Apple.

Another challenging example, which relates to several of the global platforms that are also operating as browsers is tracking prevention. Apple Safari and, going forward, Google Chrome, will have extensive restrictions for third party tracking. While the intentions - to protect privacy - may be good, in practice the browsers take upon the role as gatekeepers and decide which companies can collect data and how collected data can be used.

We welcome that the EU Commission during the past years has actively been pursuing some of the harmful behaviour we experience from global platforms. However, there are still some cases being investigated and we urge the Commission to open formal proceedings in particular against Apple and Facebook Marketplaces as soon as possible. We also call on the Commission to look into the activities by Google on digital advertising and consent policies and thoroughly review how Google's practices impact the European media sector.

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While competition law in its current iteration clearly plays and must continue to play a crucial role, it cannot resolve all the issues at stake. Furthermore, competition law can also be inefficient in certain cases, in particular where there are systemic harmful behaviors in fast-moving digital markets. Also, as the digital world evolves very quickly and competition law acts mainly after the damage has occurred in the market, we are of the opinion that a limited set of new rules should be put in place to ensure *ex ante* (i.e. before it is too late) a level playing field in the digital space.

We strongly believe it is important that any such rules are implemented and enforced exclusively at the EU level to avoid fragmentation and differences in approach and interpretation between the member countries and because of the multi-market nature of the issues at hand.

We support the Commission's initiative in its Digital Strategy on Shaping Europe's Digital Future: *“how best to address more systemic issues related to platforms and data, including by ex ante regulation to ensure that markets stay open and fair”*. Hence, we want to contribute to the definition of the *ex ante* rules to restore a fair competition in the digital space.

Scope

The *ex ante* regulation should apply to a limited number of explicitly defined **Systemic Digital Platforms (“SDPs”)**.

Typically, there is no efficient competition on the markets where the SDPs operate. It is important to have in mind that in certain cases the SDPs have positions similar to natural monopolies and actual competitors cannot be expected. What is important to ensure is that the SDPs are bound by clear principles that can ensure that markets where SDPs operate “stay open and fair”, cf the Digital Strategy on Shaping Europe's Digital Future.

In order to avoid unintended consequences of a new *ex ante* regulation, it is important to have a set of very clear criteria. If not, there is risk that the *ex ante* regulation will hamper smaller European businesses and innovation instead.

To qualify as a SDPs in relation to the new *ex ante* regulation, a number of *cumulative* criteria should be met:

- The SDP must be operating under the same brand and technology and do so in a majority of EU Member States. The latter is to ensure that this regulation really pinpoints the huge giants in this space;
- The SDP is present across vertically-integrated markets across a majority of EU Member States;

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- Third-party businesses are dependent on the SDP for access to a significant amount of users on the “other” side of the market (unavoidable trading partner). This represents a kind of bottleneck power that gives the SDP, for instance, the ability to charge excessive intermediation / access fees, and / or exhibit abusive negotiation power for example by imposing unfair conditions on their business users; and
- There are demonstrable network effects in a majority of EU Member States as the SDP can leverage its market power over one market to enter and compete in other different markets. This leveraging produces exclusionary effects and thus reduces competition to the detriment of consumers.

Proposed principles

The objective of the regulation should be to establish a set of principles that ensure market contestability, consumer choice and innovation. It should address specific “systemic” abusive practices in order to provide legal certainty for businesses, platforms and enforcement authorities alike. In order for the regulation to be future-proof it must be flexible enough to take into account developments in the market.

The ex ante regulation should establish the following principles:

- *Predictability, fairness and transparency:*

The SDPs should be obligated to ensure that the rules they apply for access to and use of their platforms and services are generally fair, predictable and transparent. This includes:

- SDPs should be prohibited from imposing services that are ancillary to the core intermediation services they are offering, such as payment services.
 - SDPs should be prohibited from in effect hindering competitors' access to or effective use of their services by harmful self-preferencing of the SDPs own and/or controlled products or services. Instead, SDPs must ensure fair access to and ability to use their services based on the merits; and
 - SDPs should be mandated to ensure complete transparency into how their algorithms disseminate advertising and content.
- *Access to third-party customer data:*
 - SDPs should not be allowed to refuse businesses operating on their platforms access to data relating to the respective businesses' own services, the

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businesses' use of the platforms or services and/or access to data about the businesses' consumers.

- Moreover, SDPs should not be allowed to dictate the terms for how businesses can access and process data about the respective businesses' users.

Enforcement

To ensure European harmonization and regulatory efficiency and to monitor the speed at which digital markets evolve, SDPs should be under the supervision of a single European Digital Authority or a new body established within the EU Commission.

A new, purpose-built EU Digital Authority should be established and in charge of enforcing the ex ante regulation. The Authority would be tasked with determining which companies fall within the criteria for SDPs. It is important that this decision is made on EU level in order to avoid national fragmentation.

The Authority should also have supervisory powers in order to monitor the compliance of the principles and investigative powers to get information from the SDPs on how they implement the Regulation.

In addition, the Authority should have the possibility to impose remedies in order to sanction those SDPs that fail to fulfill the requirements of this Regulation.