

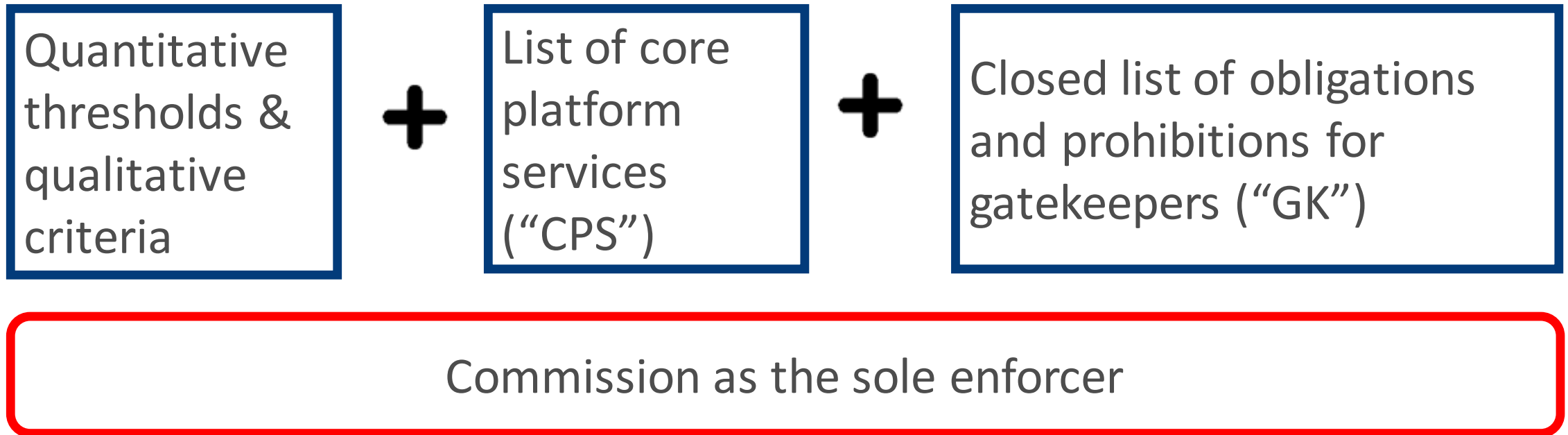
State of play of DMA in preparation of 3DGs meeting

15 December 2021

GROW-G/3

What has not changed

The General Approach (GA) adopted by the Council on 25 November and the European Parliament's mandate to be adopted on 15 December preserve the overall architecture and scope of the EC proposal:



Scope (core platform services)



- online intermediation services;
- online search engines;
- operating systems;
- cloud computing services;
- video sharing platform services;
- number-independent interpersonal electronic communication services;
- social networking services; and
- advertising services.



- No changes;
- some **discussion on** virtual assistants and web browsers



Addition of:

- Virtual assistants
- Web browsers
- Connected TV



Potential landing zone: Addition of: voice assistants (IoT sector inquiry); web browsers to be discussed. Connected TV not likely to be added.

Scope (ancillary services)



Non-exhaustive list

- Payment services
- Identification services
- Fulfilment services
(digital services, NOT physical ones)
- Advertising services

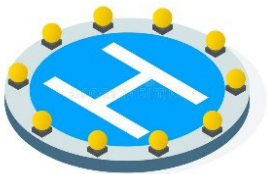


No change,
but discussion
on in-app
services



Addition of

- In-app services
- Parcel delivery services
- Freight transport



- Specification of in-app services as per Council position potentially could pass;
- Unlikely the inclusion of physical services as parcel delivery and freight transport as out of the scope of the DMA to only capture digital services (not physical ones)

Designation of gatekeepers (quantitative thresholds)



Market cap: **65 billion €**

Turnover: **6.5 billion €**

CPS: **1 or more**

Durable position: **3 financial years**



No changes



Market cap: **80 billion €**

Turnover: **8 billion €**

CPS: **1 or more**

Durable position: **2 financial years**



Main obligations and amendments to existing obligations

Commission	Council	Parliament
Data combination (Art. 5(a)) - Banned except GDPR consent	Limitation of consent grounds: No contract and legitimate interest	All grounds of consents but new obligation and link with targeted advertisement (see next slide)
Parity clauses (Art. 5(b)) - Ban of wide parity clauses	Same as EC, only ban to wide parity clauses	Ban to narrow and wide parity clauses
Data Silo obligations (Art. 6(1)(a)) -Banned in case of vertical integration	Data silos obligations not only for CPSs, but also extended to ancillary services	
Un-installation of pre-installed apps (Art. 6(1)(b))	No changes	Two additional obligations: (i) to make un-installation as easy as installation, and (ii) to enable change of default settings
Ban of self-preferencing (Art. 6(1)(d))	No changes	Extension to all CPSs
FRAND access conditions (Art. 6(1)(k)) -Fand obligations for app-stores	Addition of “reasonable” criteria (FRAND access obligation), no extension. *but written declaration by some MS	Extension of FRAND conditions to all CPSs

New obligations introduced by the EP

The EP proposed **two new obligations**

Interoperability

for messenger and social network services
free of charge, but with empowerment
for the EC to define latter interoperability
through delegated act.

Targeted advertising

- Ban on personal data combination for targeted advertising purposes, except if consent under GDPR.
- Ban of targeted advertising for minors altogether (no consent possible)



Interoperability for messenger service (already in Article 61 EEC, but not yet applied in practice)



- Digital Services package requires some solution, but question whether the right place is DMA
- Partly captured by the EC ban on data combination already

Future proof of the DMA



Possibility to update articles 5 and 6 obligations based on a market investigation



Limitation of empowerment

EC only to supplement (not add new) existing obligations in only six enumerative and exhaustive scenario



Two empowerments for the EC:

- 1) adding new obligations; and
 - 2) supplementing existing obligations
- Possible interim measures pending market investigation into new practices


Importance of ensuring that the DMA is future proof and EC should therefore welcome the strong support to this principle by both co-legislators.




Tourism ecosystem focus

Main provisions that could affect the tourism ecosystem


Parity clauses (Article 5(b))




Wide parity clause *i.e.* prohibition of offering the same product or service to end-users through third party online intermediation services at different prices or conditions.




Narrow parity clauses *i.e.* prohibition of offering better conditions on business users' own websites.




Anti-steering provisions (Article 5(c) first part)




Example: a hotel [redacted] could contact an end-user that booked a hotel, and make an offer for another service. [redacted]



Addition of the possibility of directly communicating the offer



Addition of "receive payments for services provided"



EP could be successful in extending the prohibition to narrow parity clauses; on anti-steering provisions more difficult to predict.

Retail ecosystem focus

Main prohibitions/obligations that could affect the retail ecosystem

EC: Data silos obligation (Article 6(1)(a)) i.e. ban on using data in case of vertical integration


Council/EP: extended to ancillary services

EC: Ban on self-preferencing (Article 6(1)(d))

Council: no changes; **EP:** extended to all CPS.

EC: Transparency in advertising intermediation (Article 5(g))

Council/EP: more specification on how providing advertising info.



Difficult to predict, sensible the extension to ancillary services

Difficult to predict, sensible the extension

Use of certain platforms in GROW ecosystems*

Retail	✓	✓	✓	✓	✓	
Proximity	✓	✓	✓	✓	✓	✓
Energy Intensive Industries						
Textile						
Tourism	✓	✓		✓	✓	✓
Mobility-transport-automotive	✓	✓		✓		

*The table does not assess the impact of the platforms in the ecosystems but gives an idea in which ecosystems platforms operate