



Brussels,  
RSB

## **Opinion**

**Title: Impact assessment /Digital Markets Act**

**Overall opinion: NEGATIVE**

### **(A) Policy context**

In many digital markets, there is a trend towards concentration of a few players. Some large online platforms have emerged as gatekeepers of the digital economy. They control a significant portion of transactions between consumers and businesses. This can make it difficult for existing or new market operators to compete. This can translate into higher prices for consumers or lower revenues for producers, lower quality, or less choice and innovation. The existing EU competition rules seem not the most effective and efficient way to tackle some of these existing or emerging market failures.

This initiative is part of the Commission's overall digital strategy announced in its Communication 'Shaping Europe's digital future'. Its aim is to tackle existing and emerging market failures through two pillars: regulatory measures and a market investigation regime.

### **(B) Summary of findings**

**The Board notes the useful additional information provided in advance of the meeting and the commitments provided on continuing to work on the finalisation of the report.**

**However, the Board gives a negative opinion, because the report contains the following significant shortcomings:**

- (1) The impact assessment is unfinished. Work on integrating the two pillars of the initiative is incomplete.**
- (2) The report does not sufficiently justify the restriction of its scope to digital markets. It does not justify the selection of platform services within the digital sector nor does it clarify the concept of gatekeeper platforms.**
- (3) The report does not provide an integrated problem definition for the initiative. It does not appropriately describe the shortcomings the initiative intends to address and does not provide a proper evidence base for them.**
- (4) The report does not provide policymakers with real choices on the different policy options. It does not provide a full range of options and it does not develop these in sufficient detail. It therefore cannot assess their impacts on different stakeholders.**

- (5) The report fails to assess all risks and trade-offs of the policy options. It does not clarify the extent to which the preferred option, and in particular the interaction between the regulatory measures and the market investigation regime, is coherent and futureproof.**

**(C) What to improve**

(1) The report should provide convincing analytical arguments and evidence for limiting the scope of the market investigation instrument to digital markets, given the support from stakeholders and academic experts for a wider scope.

(2) The report should set out clear, evidence-based arguments for determining why selected core platform services within the digital sector are considered problematic and should therefore be regulated. It should also clarify and justify how it defines ‘gatekeepers’. If any of these issues require a policy decision (e.g. quantitative thresholds, qualitative parameters), the report should present and discuss the relevant options, including which platforms they would cover.

(3) The problem description should provide a common and integrated analysis of the problems the initiative aims to tackle. It should better explain the distinction between existing and emerging market failures. The report should strengthen the evidence base for the problems it identifies, including by referring to concrete (enforcement) cases and examples of sudden and radical decreases in competition. It should also assess to what extent market power can limit competition in the existing core platform markets, in addition to adjacent or related markets. It should include an analysis of how weak competition affects consumer and supplier benefits.

(4) The report should further justify and specify the measures included in the different policy options. It should include alternative options where policy choices need to be made. For the regulatory pillar, the report should explain and substantiate which practices would be included in the black, white and the grey lists. For the market investigation regime, it should clarify what the ‘clear legal test’ would consist of. It should describe how the criteria of contestability and fairness can be made operational and inform such a legal test. It should explain how in practice market-wide remedies would work. The options section should also assess to what extent ‘future proof’ ex-ante rules or a market investigation regime could provide self-standing and mutually exclusive solutions to solve the identified problems.

(5) The report should include a more complete analysis of the impacts of the options. It should provide a more granular assessment of the impacts of the different practices regulated under the ex-ante rules on the different stakeholders. The report should further specify main trade-offs and how the risks presented by anti-competitive practices balance against the possible benefits for sellers on platforms and for consumers. The report should also better analyse to what extent the market investigation regime would be more effective and coherent than future regulatory intervention.

(6) The report should explain how the market investigation regime would work in relation to the regulatory regime. It should analyse how the governance of these regimes would best be organised to avoid a fragmentation of supervisory capacity and of oversight results. In addition, the report should identify and analyse possibilities for synergies with other existing and planned authorities supervising digital markets. The envisaged corrective

measures under both regimes should be explained.

(7) The report should present the views of key stakeholder groups on the problems, options and analysis. It should explain to what extent and how the initiative takes into account possible objections of key stakeholder groups.

**(D) Conclusion**

**The lead DGs must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**

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| Full title          | <b>Digital Markets Act</b>     |
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