

President Ursula von der Leyen  
European Commission  
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Copy to:

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Executive Vice-President  
A Europe fit for the Digital Age

Vera Jourova  
Vice-President  
Values and Transparency

Thierry Breton  
Commissioner  
Internal Market

Brussels, 10 December 2020

Dear Madam President,

We are writing to you today as the Presidents of the European Newspaper Publishers Association (ENPA) and the European Magazine Media Association (EMMA) which together represent the vast majority of European press publishers with a variety of press offerings in magazine and newspaper form, both digital and print.

The upcoming Digital Market Act needs to be an effective instrument to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers remain fair and contestable. Therefore, it should address efficiently the current imbalances in the following ways:

- Effective rules on anticompetitive behaviour are needed, which would ensure that the gatekeeper platforms cannot **avoid or circumvent**, for instance, intellectual property rights. The misuse of their position to render the access to their service dependent on the **provision of advantages which are disproportionate to the intermediation service provided** must be prohibited. Such a prohibition would ensure that these **gatekeepers can no longer force publishers to provide their content for free and that they remunerate publishers fairly**.
- In addition, this needs to be consolidated with a mechanism which would ensure that Google has to **agree to fair and equitable deals with publishers**. An **arbitration mechanism**, similar to the mandatory Code of Practice in Australia, which would allow an arbitrator to set a binding price. Such a model should apply for **all publishers** of both newspapers and magazines.

However, we are concerned that the European Commission might be envisaging a full harmonisation of the forthcoming rules for digital gatekeepers of the Digital Market Act. This

would mean that the **Member States would not be allowed to maintain or adopt rules that differ in any way from the future regulation**, preventing them from adapting their national laws and depriving them from competence to make changes in the future. Therefore, should the Digital Market Act not meet the necessary regulatory requirements in essential respects, inadequate European rules would be set in stone for the entire European Union and Member States would be prevented from taking any further complementary or supplementary measures.

There is no legal argument or reason for the European Commission to exclude any stricter or more concrete national rules. Indeed, minimum harmonisation is a common and perfectly legal tool.

In light of the detrimental effects that these gatekeepers and their practices have on the press ecosystem, society and our economy as a whole and on the basis of long-standing insight and experience with legal and political disputes opposing them, **we must stress our strong concerns about such a restriction.**

We are worried that the Digital Market Act might fall short of some of our expectations, by **not providing for a comprehensive approach against the fatal self-preferencing practices of the digital gatekeepers**, including on the integration of own products. In addition, another potential shortcoming would be for the Digital Market Act not to prohibit **inappropriate prices or other unfair terms and conditions by the gatekeepers**, which is particularly indispensable for the enforcement of the publishers' neighbouring right.

This would create a situation where the European Union might risk introducing insufficient regulation that would fail to address the abuses of dominant gatekeeper monopolies. **This approach would likewise prevent effective national regulations on competition matters**, which Council Regulation (EC) No 1/2003 so far allows. As a result, the Digital Market Act would fail its purpose and become a law for the protection of these monopolies.

Madam President it is fundamental that the European Commission does not shield the monopolies against effective regulation, notably at national level, to safeguard the freedom of journalistic and editorial media against market dominant platforms in a Europe fit for the digital age.

We thank you for taking these comments into account and we remain at your disposal for any further clarifications you may deem necessary.

Yours sincerely,

