EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Digital Markets Act

[...]

Brussels, XXX

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**Executive Summary Sheet**

**Impact Assessment for a Digital Markets Act:** legislative initiative to ensure a good digital market functioning and bringing together the consultations for (i) Digital Services Act package: ex ante regulatory instrument of very large online platforms acting as gatekeepers; and (ii) the New Competition Tool

### A. Need for action

**What is the problem and why is it a problem at EU level?**

Some large online platforms have emerged as gatekeepers of the digital economy, which exercise control over whole platform ecosystems that are difficult to contest by existing or new market operators. This has resulted in a weak contestability of platform markets and unfair business conditions for business users due to the increased dependence of many businesses on these gatekeeper platforms and the resulting gross imbalances in bargaining power and, consequently, identified unfair practices. In addition, digital markets may display certain characteristics that, in isolation or in combination with conduct of the companies operating on the market concerned, fundamentally change the competitive process, leading to sudden and radical decreases in competition preventing markets from self-correcting. Such emerging market failures cannot be tackled on the basis of the existing EU competition rules. The same applies to existing market failures in markets that are not functioning well and delivering competitive outcomes due to their structure. By undermining effective competition and market contestability, these problems lead to inefficient market outcomes in terms of higher prices, lower quality, less choice and innovation to the detriment of European consumers.

Addressing these problems is of utmost importance in view of the size of the digital economy (estimated at between 4.5% to 15.5% of global GDP in 2019) and the important role of platforms in digital markets.

**What should be achieved?**

The general objective is to ensure the proper functioning of the internal market by promoting effective competition in digital markets and in particular a fair and contestable online platform environment.

**What is the value added of action at the EU level (subsidiarity)?**

Member States are increasingly calling for or introducing national measures to remedy the identified problems. This results in different regulatory requirements across the EU. Such fragmentation puts at risk the scaling-up of start-ups and smaller businesses and their ability to compete in digital markets.

### B. Solutions

**What are the various options to achieve the objectives? Is there a preferred option or not?**

To address the unfair business conditions for business users and the weak contestability of platform markets, two options are envisaged. Option I.A foresees ex ante rules in the form of self-executing prohibitions (‘blacklist’) and obligations (‘whitelist’) concerning clearly identified practices by gatekeeper platforms. Option I.B builds on Option I.A but beyond self-executive ex ante rules, it would also contain a closed list of obligations and prohibitions for a further set of identified practices, which would however require an intervention by the competent regulatory body (‘greylist’).

To address emerging and existing market failures in digital markets, two options for a competition-based market investigation regime with remedy powers are envisaged. Option II.A foresees a conduct-focused dominance-based investigation regime, whereas Option II.B consists of a market structure-based investigation regime. The impact assessment also considers sub-options regarding the scope of the market investigation regime (i.e. limited to digital markets or a horizontal scope encompassing all markets).

The preferred policy option is a combination of two pillars:

- Option I.B to address the issues identified in relation to large gatekeeper platforms, i.e. unfair practices of gatekeeper platforms vis-à-vis business users and weak contestability in markets characterised by these gatekeeper platforms; and
- Option II.B: a competition-based market investigation regime with remedy powers to address emerging and existing market failures in digital markets.
**What are different stakeholders’ views? Who supports which option?**

There is general support for both ex ante rules (obligations and prohibitions) for digital gatekeepers and for a case-by-case market investigation regime in digital markets to address competition problems going beyond gatekeeper conduct. Most respondents emphasised that there is a need for a combined approach.

**C. Impacts of the preferred option**

**What are the benefits of the preferred option?**

The preferred option will increase the contestability of digital markets and help businesses overcome the barriers stemming from market failures or from gatekeepers’ unfair business practices. Numerous studies show that increased competition results in economic growth, higher employment and fairer income distribution. Furthermore, during the last 10 years, enforcement under the UK’s market investigation regime resulted in consumer benefits of around GBP 345 million and GBP 887 million, corresponding to 0.02% to 0.05% of UK GDP. This would translate to EUR 2.7 and 6.3 billion if sized to the EU’s GDP.

**What are the costs of the preferred option (if any, otherwise of main ones)?**

The main cost relates to higher compliance costs for gatekeepers as a result of the new rules envisaged by the preferred option. Also businesses other than gatekeeper platforms may incur certain administrative costs when complying with information requests under the market investigation regime. These latter costs are, however, unlikely to represent an increase from current compliance costs incurred by businesses.

**What are the impacts on SMEs and competitiveness?**

Gatekeepers have often become important business partners and many SMEs and start-ups depend on them to be visible online and to reach millions of consumers in the EEA. The preferred option has the potential to open up markets, thereby promoting consumer choice and driving innovation beyond what can be achieved by the existing rules, or competition law enforcement and regulation on their own. In addition, enhanced access to digital markets will allow SMEs – the bulk of many national economies – to increase their productivity and reduce their costs. According to a study from OECD countries, in 2015 only 20% of SMEs engaged in sales through e-commerce as compared to 40% of large businesses.

**Will there be significant impacts on national budgets and administrations?**

A more comprehensive enforcement toolkit will allow businesses to compete on their merits. This will result in economic growth, which in turn translates into higher tax revenues for national administrations. National administrations would incur certain costs where they are consulted on the Commission decisions to impose fines for non-compliance with the legal requirements (obligations/prohibitions) or where they set up units to build up expertise in market investigations and remedy design in digital markets.

**Will there be other significant impacts?**

The preferred option would have an overall positive impact on the development of the European digital economy, as it would ensure competitive and contestable digital markets with the ensuing benefits for European consumers, and foster the emergence of alternative platforms, which could deliver better products and services, as well as a higher level of innovation.

The proposal would be subject to the full respect of the fundamental rights to fair proceedings and good administration as enshrined in the Charter of Fundamental Rights of the EU and the European Convention of Human Rights, which are binding on the EU institutions.

**Proportionality?**

The preferred option does not exceed what is necessary to solve the problem while meeting the objectives.

**D. Follow up**

**When will the policy be reviewed?**

The Commission will review the measures taken to address problems issues identified in relation to gatekeeper platforms three (3) years after the start of the application of the new rules.