



30 June, 2020

CCIA Feedback on Inception Impact Assessment for Proposed Ex-Ante Market Regulation

The Computer & Communications Industry Association (“CCIA”) welcomes this opportunity to provide feedback on the European Commission’s Inception Impact Assessment (“IIA”) for Ex-Ante market regulation.ⁱ CCIA also looks forward to responding to the questionnaireⁱⁱ and participating in the related consultation process.

CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. CCIA is committed to protecting and advancing the interests of our members, the industry as a whole, as well as society’s beneficial interest in open markets, open systems and open networks.

CCIA appreciates the IIA’s acknowledgement of the “wide consensus concerning the benefits for consumers and innovation, and a wide-range of efficiencies, brought about by online platforms in the European Union’s internal market.” Nevertheless, CCIA agrees that there is a need for action at the EU level to safeguard an effectively functioning digital single market from the risk of regulatory fragmentation. CCIA also supports the Commission’s “overarching policy objective ... to ensure a fair trading environment and increase the innovation potential and capacity across the online platform ecosystems in the EU’s single market.” To that end, the IIA states that increasing the “contestability” of online platform ecosystems “would have a positive impact on innovation and research, technological development and growth of the digital economy.” CCIA submits that an overbroad interpretation of “contestability”, i.e. limitations on ecosystem growth, would in fact have a negative impact on these dimensions.

Large digital ecosystems have driven the growth of the digital economy. In the digital environment, where choices are abundant, consumers often prefer convenience, consistency, and a one-stop-shop experience. These efficiencies lower transaction costs, increase consumer welfare, and drive overall technological adoption. In this respect, according to The Digital Economy and Society Index, 42% of Europeans still lack at least basic digital skills.ⁱⁱⁱ A digital ecosystem that offers reliable solutions to a variety of user needs, that does a number of jobs conveniently and well, will often be more important to the marginal user considering a digital alternative than the “social gain” of having to navigate through a swamp of “innovative alternatives”. CCIA submits that the value that broad digital ecosystems provide to their users, and their contribution to the growth of technological adoption, should not be overlooked.

Digital intermediaries often need size. That’s because the business model of large digital intermediaries, particularly those based on software, is premised on significant fixed costs, very low marginal costs, and massive scale. Start-ups and SMEs in this sector often operate at a loss while attempting to achieve sufficient scale to become profitable. Often that scale comes from expanding into adjacent markets. Efforts aimed at increasing ecosystem contestability that would result in reducing that potential scale (or increasing marginal costs) would make such ventures terminally unprofitable. This would ultimately result in less up-front investment, less technological development and less growth for the digital economy.

Lastly, the size of digital platforms is directly related to their positive impact on innovation and research. Network effects mean not only that users benefit from the size of a network, but also that innovations are more quickly disseminated throughout that ecosystem. New tools, features, and functionalities, new



solutions to existing problems, spread more quickly through large ecosystems than fragmented ones. Furthermore, according to the Commission's own estimates, the five largest "gatekeeper platforms" (Amazon, Alphabet, Microsoft, Apple, Facebook), spent a combined €72.8 billion in R&D in 2018, nearly twice the amount spent by the entire EU ICT sector (approx. €42 billion).^{iv} Innovation levels therefore already appear quite high.

Finally, the IIA references the Commission's experiences with the implementation of the Platform-to-Business Regulation as contributing to its analysis underpinning the present initiative. CCIA submits that the Commission's analysis could benefit from revision in light of market circumstances prevalent after the Regulation becomes applicable from 12 July, 2020. This is particularly true given that both address concerns around unfair trading practices and fairness.

Respectfully submitted,

CCIA

ⁱ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers>

ⁱⁱ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers/public-consultation>

ⁱⁱⁱ European Commission "The Digital Economy and Society Index (DESI 2020)", available at: <https://ec.europa.eu/digital-single-market/en/desi>

^{iv} European Commission "The 2019 EU industrial R&D investment scoreboard" (JRC/DGRTD), available at: https://ec.europa.eu/info/news/2019-eu-industrial-rd-investment-scoreboard-report-2019-dec-18_en.