

From: [REDACTED]
To: [PAPANDROPOULOS Penelope \(CAB-VESTAGER\)](#)
Cc: [REDACTED] [STENGG Werner \(CAB-VESTAGER\)](#)
Subject: Re: DMA /book and audiovisual sector - Follow up on amendment 14a - DMA Ancillary services
Date: jeudi 3 février 2022 12:16:11

Dear Madam,

With a view of today's meeting on the DMA will find here below a short follow up **note concerning amendment 14.a on ancillary rights**.

Should you need any further information, please feel free to contact us.

Very Best Regards,

[REDACTED]

DMA
One paper note
Book and Audiovisual sector

[REDACTED]

The purpose of the DMA is to adopt a legal framework targeted at gatekeepers in order to ensure a fair, competitive European digital market.

While the definition of gatekeeper is under discussion with the other institutions, it is important to keep in mind that most gatekeepers not only are multisided, but also operate in adjacent markets which are connected in the same vertical value chain-. This allows them to "provide their portfolio of services as part of an integrated ecosystem", as clearly acknowledged in Recital 14 [\[1\]](#).

When a gatekeeper has a dual role and offers an intermediation service (platform) but also the intermediated services (ancillary), competition law practice shows that there is a risk

that the gatekeeper will rely on its first service (intermediation-core platform) to favour its second service (intermediated-ancillary) to the detriment of others.

AV Example: Amazon streaming services: Subscribing to Amazon's premium membership, *Prime*, gives users of the company's marketplace access to a series of additional services such as fast delivery and its streaming service, Amazon Prime (ancillary services). In this context, Amazon can rely on its role as a platform for third party providers of (fast delivery and) AV works to favour its own selling and producing operations to the detriment of those third party providers. This creates a competitive harm, as Amazon has the ability and the incentive to favour its own services at the expense of the third party providers.

Book Example: Amazon Marketplace: End users searching for books will actually find at the same place three categories of books with no way to easily distinguish them from each other: those sold by independent booksellers (using Amazon's intermediation service), those sold by Amazon but published by an independent publisher (supplied to Amazon for its ancillary retail service) and those sold and published by Amazon. In this context Amazon can rely on its role as a major intermediation and retail service to favour the books it sells itself (versus the books sold by third parties) and the books it publishes itself (versus the books of independent publishers). This creates a competitive harm as it exploits the reliance of its competitors (whether booksellers or publishers) on its services to favour itself and weaken further its competitors.

As far as the AV sector is concerned, the harmful conduct covers issues relating to data access. In fact, By relying on its Prime service, Amazon collects data, such as audience data, what people enjoy watching, when they stop watching, streaming preferences and patterns, etc. which are not shared with its third party providers. Essentially, the platform intermediation process deprives third party providers of valuable customer data that they would have in a non-platform-intermediated environment (audience data via box office, television audience measurement and the like) and then puts the gatekeeper in a strong position to compete against them or exploit them.

In fact, data derived from the Amazon's streaming, and other services are used to develop and invest in new content production via Amazon Studios.

Similarly for the book sector, access to data is a fundamental issue, as Amazon is able to collect key sets of data which it does not share, including when these data are generated by sales of books sold or published by its competitors. These data allow Amazon to better understand what consumers are looking for and enjoy, and thus favor its own publishing business and giving it an undue competitive advantage. Amazon also included clauses in its contracts with publishers by which they were forbidden to sell elsewhere their books at better conditions than those offered to Amazon. These clauses were temporarily suspended following an intervention of the European Commission, but Amazon's commitment elapsed in 2022.

The advantages leveraged by Amazon, such as its access to large amounts of data, through its portfolio of services have a substantial impact on the European Audiovisual and book sectors. The industries rely on audience data to get a sense of the content people like to watch or read, allowing them to invest in, produce and distribute culturally diverse content enjoyed by millions of consumers . When marketed on the gatekeeper's integrated ancillary services such as Amazon Prime or Amazon Marketplace, European producers and distributors are excluded from accessing their own work's audience data. However, such data is being used by Amazon Studios and Amazon Publishing for their own production decisions and marketing strategy.

The value of data in all industry sectors is obvious. It is important that the audiovisual and book sectors are not left out of benefiting from data. Without the possibility for the European AV and book industries to access audience data from their public and consumers, independent producers may no longer be in the position to produce relevant and quality content for Europeans and film distributors will lack information on the success of their catalogues. European consumers may suffer in the future from a lack of diversity in the content they can access online.

As part of the mission of the DMA to ensure a fair digital market, we call on the co-legislators to ensure the following:

- the scope of the relevant obligations under Article 6 should be extended to ancillary services controlled and offered by the gatekeeper, in order for the data sharing obligations and the MFN & self-preferencing prohibitions to also apply to these services.
- The data foreseen in Article 6 should be made accessible to business users as well as suppliers to the ancillary services, in order to ensure that the industry which allows for the gatekeeper to provide such ancillary services has the necessary access to data, enabling them to compete on fair ground.
- that recital 14a clarifies, for legal certainty, that ancillary services include online retail and distribution services offered in parallel of a gatekeeper's core platform service.
- that article 2.14 includes in the list of ancillary services, "supplier services".

[1] Recital 14: *"A number of other ancillary services, such as identification or payment services and technical services which support the provision of payment services, may be provided by gatekeepers together with their core platform services. As gatekeepers frequently provide the portfolio of their services as part of an integrated ecosystem to which third-party providers of such ancillary services do not have access, at least not subject to equal conditions, and can link the access to the core platform service to take-up of one or more ancillary services, the gatekeepers are likely to have an increased ability and incentive to leverage their gatekeeper power from their core platform services to these ancillary services, to the detriment of choice and contestability of these services.*

De : [REDACTED]

Date : lundi, 10 janvier 2022 à 13:05

À : STENGG Werner <xxxxxx.xxxxxx@xx.xxxxxx.xx>

Cc : [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], PAPANDROPOULOS Penelope

<xxxxxxxxxxxxxxxxxxxxxx@xx.xxxxxx.xx>, [REDACTED]

[REDACTED]

Objet : Re: DMA /book and audiovisual sector

Dear Ms Papandropoulos,

Following M Stengg's message, please find attached the list of amendments proposed by the Coalition on the DSA for the Plenary.

Our group remains at your disposal to speak of the DMA and the DSA.

Very best regards,

[REDACTED]

On behalf of :

[REDACTED]

De : STENGG Werner <xxxxxx.xxxxxx@xx.xxxxxx.xx>

Date : samedi, 8 janvier 2022 à 09:12

À : [REDACTED]

Cc : [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] PAPANDROPOULOS Penelope
<XXXXXXXXX.XXXXXXXXXXXXXXXXXX@XX.XXXXXX.XX>, [REDACTED]
[REDACTED]

Objet : RE: DMA /book and audiovisual sector

Dear [REDACTED]

Many thanks for your message. Please get in touch with Ms Papandropoulos (in copy), who is leading on the DMA within our cabinet.

Kind regards
Werner Stengg

From: [REDACTED]
Sent: Friday, January 7, 2022 4:41 PM
To: STENGG Werner (CAB-VESTAGER) <XXXXXX.XXXXXX@XX.XXXXXX.XX>
Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: DMA /book and audiovisual sector

Dear Mr Stengg

We are a coalition representing stakeholders from both the book and the audiovisual sectors.

These two sectors have faced important changes with the establishment on our territories of huge digital platforms tackling the market of our industries.

Indeed, their important gatekeeper power has made them unescapable for us.

At the same time, access to data is key for all areas of business, including ours.

When Amazon sells online a book whether directly or on behalf of the publisher, it is the only one to have access to the data deriving from this transaction, including qualitative information on the purchaser's profile.

The same is true for the audiovisual sector regarding Amazon Prime. But European SMEs need access to the data generated with their works and products.

Therefore, during the negotiations in Parliament and Council on the DMA, we have advocated for the addition of the “ancillary services” to Article 5 and 6 (particularly article 6.i that gives access to data) so as to reach this goal. This advocacy has been heard.

Nonetheless, a final clarification was needed on the definition of ancillary services, and we requested a new Recital 14a as follows:

Amendment 244

Recital 14 (a) new : Gatekeepers may also provide other ancillary services, **for instance retailing or distribution activities**, that are targeted at end users alongside their core platform services. Such ancillary services can compete with business users of the core platform service and contribute significantly to the imbalance in a given market and ultimately increase unfairly the gatekeeper’s power, including in relation to the gatekeeper’s business partners, such as suppliers of goods or services, relying on such ancillary service. To prevent gatekeepers from unfairly benefiting from the leverage provided by provision of parallel services, such ancillary services should also be subject to the obligations applicable to core platform services.”

This amendment was adopted during the plenary session of Parliament.

On the eve of the trialogue, we would therefore be glad to have the opportunity to explain you our views on this topic and we remain at your disposal to fix any date that would suit you.

Very best regards,

On behalf of :

A large black rectangular redaction box covers the signature and name of the person on behalf of whom the letter is written. The redaction is complete, obscuring all text in this area.