

**From:** [REDACTED]  
**To:** [REDACTED] (COMP)  
**Cc:** [REDACTED] (COMP); COMP C2 MAIL  
**Subject:** RE: Meeting request [REDACTED] and national representatives - Digital Markets Act (DMA)  
**Date:** vendredi 8 octobre 2021 12:15:25  
**Attachments:** [image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image001.png](#)  
[Germany - Monopolkommission. DMA. Press release. 05.10.21.pdf](#)  
[Germany - Monopolkommission. DMA. Full text. 05.10.21.pdf](#)  
[\[REDACTED\].report on the interoperability of e-books formats..pdf](#)

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Dear Ms [REDACTED]

We fully understand the short notice of our request and we thank you nonetheless for your swift response to our email.

With that said, we are happy to share our updated input on the DMA, particularly regarding the interoperability of e-books and the scope of ancillary services.

### 1. **Interoperability of e-books – Amazon’s Kindle model**

As discussed in our meeting earlier this year, our main concern with the current text of the **DMA** is that, as it stands, the effective **interoperability of e-book formats is not covered**.

We believe it should be possible for consumers to read any legally acquired e-book in the format of their choice on the device of their choice. However, this isn’t currently possible, mainly due to the existence of dominant and closed ecosystems, such as the Kindle e-reader model.

To put it simply, Amazon’s Kindle e-reader has the particularity to lock customers in a closed ecosystem. Kindle e-books use a specific file format (“AZW”), unique to this particular e-reader which is **neither transferable nor openable on other devices**, such as the widely used [Kobo](#) or [Tolino](#) e-readers. If customers are not able to open an AZW file on an e-reader other than Kindle, a Kindle also won’t allow them to open a file format other than AZW.

The Kindle e-reader does not support e-book formats such as “EPUB”, the file format developed by the [International Publishers Digital Forum](#), which is widely used and recognised as a standard within the book sector. The same goes for audiobook formats bought on the Amazon audio platform Audible.

**The impossibility for the customer to switch platform and provider at will, locks them in a closed ecosystem and reduces their freedom of choice.**

This lack of interoperability in e-book formats is particularly problematic because Amazon’s Kindle is the dominant model in the market. As such, the Kindle format stifles competition and prevents further technological development by third party competitors. Already in 2015, a [report](#) from the European Commission pointed out that Amazon is, indeed, the main player in the European e-books market with shares reaching close to 70% in the US, 60% in the UK and around 40% in Germany and Spain (2015, Batikas, Gomez-Herrera and Martens). Data from more recent years is harder to retrieve, but from what is available, it is clear that Amazon is still the main player in the [European](#) and [U.S.](#) e-book market.

Therefore, as you will understand, we envisage the DMA as a vital legislation and opportunity to overturn this trend and harmful practice.

#### • **European Commission investigation**

As I’m sure you’re aware, the European Commission already highlighted its concerns with Amazon’s dominant and harmful Kindle model:

- In 2017, the Commission announced its decision on a proceeding against Amazon regarding e-book most-favoured nation (MFN) clauses and related matters (see here: [case AT.40153](#)).
- Despite the case focusing mostly on MFN clauses, in paragraph 65 (2) of the

[decision](#) (page 19-20), the Commission held that through its Kindle e-book reader, Amazon operates a closed ecosystem that locks in consumers and represents a barrier to entry or expansion in the market for the distribution of e-books. The exact wording is as follows:

- “The ability of e-book readers to drive sales and lock-in customers: with its Kindle e-book reader, Amazon operates a closed "ecosystem" (or "walled garden"). Customers who own a Kindle can use that e-book reader only for e-books purchased in Amazon's Kindle store. Moreover, e-books bought in the Kindle store cannot be read on other e-book readers, although they can be read on various e-reading devices such as tablets or smartphones (including tablets and smartphones that are not manufactured and sold by Amazon under its own brand) through the Kindle app (so-called "multi-homing"). This results in a situation in which customers that have already purchased Kindle e-books may face costs in switching to another e-book platform, due to the need to acquire an additional e-book reader and the inability to transfer the library of e-books purchased in Amazon's Kindle store to a different e-book reader. Whereas the closed Kindle ecosystem may not represent an insurmountable barrier to entry and/or expansion in the market for the distribution of e-books (since multi-homing on different devices seems to be a common practice amongst e-book readers), **it does reinforce Amazon's market power vis-à-vis its competitors since consumers willing to move to another platform are likely to face switching costs and may therefore effectively remain locked into Amazon's closed ecosystem**.

- **Amazon and digital rights management (DRM)**

To add to the above, Amazon also uses proprietary **digital rights management** (DRM) measures to prohibit the free exchange of e-books between different ecosystems and to protect their own ecosystem. For interoperability to take place, the different ecosystems must allow users to import and export e-books, while still enforcing the DRM restrictions. Chair of the Federal Trade Commission in the U.S., Lina Khan, already highlighted this potentially anticompetitive practice in 2017, in her well-reported antitrust article “*Amazon’s Antitrust Paradox*”, published in the [Yale Law Journal](#).

- **Our position**

While there are no competition proceedings opened yet specifically on the question of e-book interoperability per se, the harm of the practice for consumers and businesses alike is clearly acknowledged and well documented.

In 2013, we commissioned a study on interoperability to the Johannes Gutenberg-Universität Mainz in order to assess the different file formats available on the market, as well as the possibility of establishing interoperability across all devices. The study, attached for your consideration, demonstrated that **with “EPUB” as a standard format, interoperability across devices is completely possible**. This is even truer now that the EPUB file format has evolved and has become a standard within the book industry.

Our position also aligns with the [Consumers’ Rights Directive](#), which makes disclosing information about interoperability compulsory: “Before the consumer is bound by a distance or off- premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner: where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of”.

We are convinced **there is still time for the interoperability of e-book formats to be included in the DMA**, and we count on your support, as well as the European Parliament and the Council, to make this happen.

## 2. **Retailing activities as ancillary services**

In addition to the issue of interoperability, we still see a need for clarification regarding the current scope of the DMA, to ensure that the direct **retailing activities of online marketplace** (which run in a parallel and indistinguishable manner to their intermediation activities), will also be subject to the relevant obligations of the DMA, in order to avoid a loophole that would solely benefit gatekeepers.

While the intermediation activity of the gatekeeper falls within the scope of the DMA, the parallel retailing activity of online marketplaces acting as gatekeepers does not appear to be subject to the obligations of Article 5 and 6. Should this exclusion remain, it would exacerbate the great vulnerability the book sector has been suffering from ever since gatekeepers entered the market. Ensuring that the parallel retailing activity of gatekeepers also be covered by the DMA is, therefore, necessary to ensure that the DMA fulfils its ambitions

We are happy to attach a special report on the DMA by [Germany's Monopolies Commission](#) (*Monopolkommission*), published earlier this week, which supports our position. As you will see, they too see the problem of leveraging of market power derived by gatekeepers from their position in multi-sided markets. They expressly mention the situation of gatekeepers competing as a seller on their own marketplace.

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With that said, having received support across several committees in the European Parliament on our suggested changes to the questions of interoperability and ancillary services, we would be grateful if you took our input into account, especially for the upcoming trilogue negotiations with the Parliament and the Council.

We would equally be happy to discuss our position further with you, together with our colleagues in the publishing sector, should you be available.

Thank you once again for taking the time to read through our position and we look forward to staying in touch.

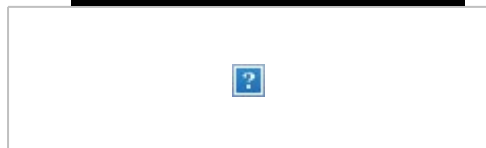
Kind regards,

[Redacted signature]

Telephone: + [Redacted]

Email: [Redacted]

Visit: [Redacted]



[Redacted address line 1]  
[Redacted address line 2]

1000 Brussels

Belgium



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**From:** [Redacted] <[Redacted]@ec.europa.eu>

**Sent:** 06 October 2021 17:19

**To:** [Redacted]

**Cc:** [Redacted] [Redacted]

[Redacted] <[Redacted]@ec.europa.eu>; xxxxxxxxxxxx@xx.xxxxxx.xx

**Subject:** RE: Meeting request [Redacted] and national representatives - Digital Markets Act (DMA)

Dear Mr [Redacted],

Thank you very much for reaching out to us and for your readiness to discuss with us, as well as for your earlier contributions to the ongoing reflections regarding the DMA.

I am afraid that this week is very busy on our side (and apologies for not getting back to you earlier), so it was not possible to set up a meeting in short notice. That said, we are of course very interested in any potential input you may have on interoperability and ancillary services or other areas of the proposal. Please, do not hesitate to share with us any follow-up to your June submission reflecting how your thinking may have advanced on those points.

With many thanks and kind regards,

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**From:** [REDACTED] >

**Sent:** Tuesday, October 5, 2021 10:49 AM

**To:** [REDACTED] <[\[REDACTED\]@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu)>; [REDACTED]

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**Cc:** [REDACTED] >

**Subject:** Meeting request [REDACTED] and national representatives - Digital Markets Act (DMA)

**Importance:** High

Dear Ms [REDACTED], dear Mr [REDACTED],

I hope you're both well.

I'm getting in touch from the [REDACTED] As you may remember, we had an exchange earlier this year to discuss the **DMA** proposal and our priorities for the bookselling sector within the text.

Since then, together with our colleagues from the [REDACTED] we have been monitoring the process at the European Parliament, and have noted a significant amount of attention and work on the topics of interoperability and ancillary services, which are two areas that we have particularly been working on and seeking to reinforce.

In our efforts to keep in touch during the legislative process, and given the evident interest from the Parliament to prioritise these topics in the DMA, we thought this might be a **good opportunity to exchange views** once again to understand your current stance on interoperability and ancillary services, particularly since following our last exchange we were not particularly sure as to whether our position on interoperability was clear and compatible with the DMA as a whole.

We have the chance to receive the visit of two colleagues: [REDACTED] [REDACTED]), lawyer and legal advisor on competition matters and [REDACTED] [REDACTED]), senior counsellor on policy matters and very knowledgeable on interoperability and DRMs. Therefore, we would be grateful if you accepted to meet us **in person**, a group of 6 people, either

**tomorrow Wednesday 6<sup>th</sup> October or Thursday 7<sup>th</sup> October** to discuss these pressing issues for the entire book value chain.

We are aware it is very last minute, but we believe it is a unique opportunity to discuss these topics on the DMA, particularly with German and French representation, and taking into account the upcoming French Presidency and their strong will to reach an agreement on the file.

Thanking you in advance for your consideration and very much looking forward to your response.

Kind regards,

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