The book sector and the DMA – key remaining concerns

1. Issue of publishers not being business users

According to the definition of business users under Article 2(17), only those who directly use a core platform service can qualify for the status[1] and therefore benefit from the obligations under the DMA (such as data sharing, the prohibition of self-preferencing/MFNs or interoperability), thus effectively excluding actors like book publishers from the benefit of the DMA.

In the context of their relationship with gatekeepers like Amazon, book publishers are not usually using its core platform service (intermediation) but are acting within one of its ancillary services (online retail, which operates in parallel of the intermediation service) as a supplier. Indeed, publishers rarely sell their content directly but rather rely on other economic actors to distribute their work, such as independent booksellers or platforms like Amazon, who then sell them directly to consumers under their name.

But contrary to booksellers, Amazon is also a direct competitor to publishers, since it publishes its own books, which are also available on Amazon Marketplace (in competition with the books supplied by independent publishers to Amazon). Therefore, the DMA should limit the ability for gatekeepers to exploit their dominance in adjacent markets, whether by using the data generated by the sales of books supplied by publishers to give an advantage to its own publishing business, refusing to share these data with publishers whose books are being sold or prevent the purchase of interoperable e-books on its services.

➢ **Call to action**: Given this situation, we would recommend that the notion of "suppliers of goods or services to ancillary services operated and offered by the gatekeeper in parallel of its core platform service", be added to the list of beneficiaries of the relevant DMA obligations or to the definition of business users, in particular when the gatekeeper competes with the supplier on the same market.

2. Providers of services – scope

We seek clarification regarding the European Parliament's wording under Article 6 1 (f), in particular with respect to the scope of "providers of services".

The obligation allows "*business users, **providers of services** and providers of hardware free of charge access to and interoperability with (…)*"

An e-book is defined by the European Commission as an "electronically supplied service"[2]. We therefore would interpret this obligation as encompassing third-party providers of e-books (electronically supplied services), such as publishers, booksellers and providers such as Kobo or Tolino.

This would allow book publishers or e-reader manufacturers to ensure that their formats are interoperable with the reading software and formats used by a gatekeeper's own e-reader and reading

---

[1] 'Business user' means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users;

[2] European Commission. "Electronically supplied service"
https://ec.europa.eu/taxation_customs/electronically-supplied-services_en

software. In turn, this would mean that e-books and e-readers sold by third-party providers, such as booksellers, would be interoperable with the reading software and formats used by a gatekeeper's own e-reader and reading software, thus leading to a level playing field and an equal chance for innovators to access the market.

3. Interoperability obligation – the case of e-books

Article 6 1 (f) is *a priori* a useful obligation to ensure interoperability of e-books, as it would allow interoperability between a gatekeeper's services or hardware (such as Amazon's e-books and e-readers) and those of third-party providers. This could finally allow booksellers other than Amazon to offer e-books to readers who use a Kindle.

Our main concern with the current wording is the narrow scope of the word "operating system" in this context, which does not clearly cover the interoperability of e-books and e-readers. An e-reader is not strictly speaking "accessed or controlled by an operating system". E-readers, while they do have an operating system, mostly consist of a <u>hardware</u> element that receives instructions from a pre-installed <u>firmware</u>, which is a particular type of system software that helps control a device's hardware and is permanently attached to it.

> **Call to action**: We therefore ask you to consider adding the following wording in red below to Article 6 1 (f) for further clarity. This clarification would not modify the scope or intention of this obligation.
>
> "*allow business users, providers of services and providers of hardware free of charge access to and interoperability with the same hardware and software features accessed or controlled via an operating system, provided that the operating system is identified pursuant to Article 3(7), **firmware or any type of system software** that are available to services or hardware provided by the gatekeeper*"

4. Bundling

Amazon Marketplace and Apple's iBooks are examples of platforms that allow users to buy e-books all over the EU. In the case of Amazon, e-books available on its website can only be bought in a specific e-book format, exclusively compatible with the Amazon-built e-reader, Kindle (which in turn does not read any other e-book format), de facto forcing any consumer who wants to buy e-books on Amazon to purchase a Kindle and be locked into an Amazon controlled ecosystem. Similarly, Apple's iBooks has also built up a closed e-book ecosystem with an incompatible and non-interoperable e-book format.

In contrast, most e-books are provided by publishers and sold by booksellers in interoperable formats, the most common being ePub3, an open technical standard maintained within the World Wide Web Consortium (W3C)[3] community. When publishers supply e-books to Amazon, the e-books provided in an interoperable format are converted by Amazon into its proprietary format, preventing consumers from ever reading the e-book on an e-book reader other than Kindle.

Consumers have an interest in being able to read their e-books on any e-book reader of their choice, regardless of where they legally purchased them, as well as to be offered e-books in interoperable formats, especially when these formats are a standard widely used by publishers and e-readers.

---

[3] https://www.w3.org/groups/wg/epub