

Participants: H. Gambs meeting with ACT

Name of main contact person: [REDACTED]

Telephone number: [REDACTED]

Directorate/Unit: [REDACTED]

## Fiche d'entretien

WHO	<p>The meeting is with the Association of Commercial Television in Europe, which represents the interests of 29 leading commercial broadcasters across Europe. DG CONNECT met ACT and some of your other interlocutors (Canal+, beIN SPORTS) on 20 October 2020 at Director level (see the meeting report in the Background). ACT will also meet Commissioner Breton on 18.11.2020.</p>
WHEN	13/11/2020 10:00 - 11:00
WHERE	Microsoft Teams
WHY	<p>Commercial broadcasters have been strongly affected by the Covid-19 crisis, notably due to halted productions, surge in piracy (including illegal streaming of live sports), and difficulties to compete with large streaming platforms.</p> <p>Several speakers will take the floor from the ACT side, to present their perspective on the following topics:</p> <ol style="list-style-type: none"><li>1. [REDACTED] Canal+, ACT Board chair: Sector Status (Covid impact)</li><li>2. [REDACTED], beIN Sports: IP Action Plan - to secure a strong liability regime while upholding exclusive rights and contractual freedom</li><li>3. [REDACTED], Mediaset: DSA liability aspects, overlap with existing copyright regime, approach to Notice &amp; Action</li><li>4. [REDACTED], TF1, DSA: algorithmic transparency provisions</li><li>5. [REDACTED], Viacom/CBS: enforcement aspects, delivering effective solutions to ongoing surge in piracy</li><li>6. [REDACTED], Sky: DSA: tackling harmful content, ensuring appropriate provisions for advertising</li></ol> <p>ACT submitted a 30 page position paper to the Open Public Consultation on the DSA (see the summary in Background).</p>
MESSAGE	<p><b><u>Main messages</u></b></p> <ul style="list-style-type: none"><li>• The DSA package has great ambitions. We want to make the internet a safer place, where fundamental rights are protected and cultural diversity thrives. The DSA will be a horizontal instrument, which will underpin and complement sectoral legislation.</li><li>• We will ensure that online platforms act more responsibly and the DSA is expected to help levelling the playing field between platforms and traditional services.</li><li>• The preparatory work has entered its final stages; we envisage adoption of the DSA package by the end of the year.</li></ul> <p><b><u>Speaking Points</u></b></p> <p><b><u>On the Digital Services Act (revision of the E-Commerce Directive):</u></b></p> <ul style="list-style-type: none"><li>• We need online services to bear a set of clear responsibilities and obligations to fight against illegal content online and to protect freedom of expression online.</li><li>• One of the main aims of the DSA is to create a harmonised regulatory framework for online platforms. However, the core principles of a harmonised liability exemption for intermediaries – as established in the E-commerce Directive – should remain, as it represents the essential foundation of internet regulation.</li><li>• The DSA will provide for clearer and enforceable procedures and obligations for</li></ul>

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online platforms to tackle illegal content on their services. In particular, the updated regulatory framework will aim to harmonise notice and action procedures, bring more transparency regarding content moderation and recommendation, strengthen administrative cooperation and require major platforms to take more responsibility in the fight against illegal content.

- The Commission is also looking at proportionality: the largest online platforms, having systemic impact on society and posing higher risks, may be expected to do more in terms of responsibilities and transparency.
- Any such rules will be carefully balanced against the need to protect fundamental freedoms. In particular, in drafting the new rules the Commission will examine how to adequately safeguard freedom of expression online by setting up checks and balances that prevent unwanted consequences such as over removal of legal content.
- Finally, the new rules will include appropriate cooperation mechanisms between competent national authorities and between the authorities and the platforms themselves. We are also examining whether EU level oversight is needed to ensure compliance and effective enforcement of the new rules.

On the **Digital Markets Act** (ex ante regulatory instrument and market investigation regime for online platforms)

- To ensure a contestable and fair Digital Single Market, where commercial relations are fair, businesses thrive and innovators have a chance to scale up, we need to address the issues that are impeding the healthy and competitive development of the online economy.
- In the context of the DSA package, the Commission will propose rules to address current and future systemic issues and structural competition problems in digital markets.
- In order to achieve this, the Commission will propose a new instrument with two complementary pillars, that:
  - on the one hand, addresses currently identified problems in digital markets through a system of identification of gatekeepers that are subject to listed prohibitions and obligations; and
  - on the other hand, addresses – through more open ended means of investigation – structural competition problems in digital markets.
- This will not be an easy ride and we need your support

On process

- The preparatory work towards the Digital Services Act has entered its final stages. We are currently envisaging an adoption by the end of the year.
- The public consultation closed in September with great success: the Commission received over 3000 submissions. We are carefully analysing the results of the consultation. We are aware that only by listening to the views of relevant stakeholders can we achieve a regulatory framework that is truly fit for the digital age and also allows online services to scale up in the EU market.
- The European Parliament has recently adopted three reports on the DSA in the IMCO, JURI and LIBE Committees. These reports are calling on the Commission to act, and we see a lot of convergence in aims and ideas.

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## **Background**

### **1. ACT position:**

On the **Digital Services Act**, they argue for far reaching obligations across all platforms on notice and action, specific monitoring and stay-down (using automated tools), and algorithmic transparency.

- They argue that the impact on freedom of expression is not significant because the risk of overblocking (false positives) for copyright content is low.
- They believe that the distinction between active/passive services needs to be maintained, only truly passive services should benefit from the liability exemption.
- They are concerned that the so-called Good Samaritan clarification might lead to a new liability exemption for platforms.
- They call for 'trusted flagger' status rightholders for faster removal (especially for live sports); 'know your customer' obligation on all platforms; dynamic injunctions for entire catalogues.
- They want the DSA to cover also harmful content (such as disinformation or political ads), and liability for advertising content to level the playing field.
- They do not want the Copyright Directive to be reopened by the DSA.
- On the **Digital Markets Act**, they argue for ex ante rules to tackle uncompetitive practices by large online platforms, particularly regarding data and advertising markets. They are concerned that Amazon and Google want to be the default TV operating system, which can undermine broadcasters.

### **2. BTO of the meeting with ACT on 20 October 2020**

ACT: [REDACTED] (ITV), [REDACTED] (Canal+), [REDACTED] (beIN SPORTS), [REDACTED] (ZO-BRUSSEL), [REDACTED]  
COM: [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED] (Canal Plus):

- ACT explained why this is a crucial time for commercial broadcasters: Covid-19 brings long lasting effects, live sports and content production is most affected; online piracy surges.
- Broadcasters contribute to EU society and economy: 1000s of channels, over 20 billion EUR invested in content, 1 million direct and 1 million indirect employment; crisis highlighted importance of broadcasting and quality news/entertainment.
- Concerns: need to adapt regulatory framework (through both ex-ante regulation and more responsibility in terms of liability) to be able to compete on fair terms with structuring platforms.

[REDACTED] (ZO-BRUSSEL):

- Systemic problems need to be addressed by strong obligations.
- Important to keep the active/passive distinction and the liability of platforms, otherwise impossible to enforce obligations.
- "Good Samaritan clause" should not lead to new liability exemption.
- DSA should not undermine the Copyright Directive.
- Automated content management is the only way to deal with millions of uploads.
- Large platforms have wider reach, but risks are present on smaller platforms too.

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(beIN SPORTS):

- Live content, like sports events, is very vulnerable to piracy surge.
- Pirates should not operate anonymously or hide behind proxy; need effective KYC obligations on *all* hosting service providers not just marketplaces; need to restore access to WHOIS.
- Need trusted flaggers to speed up the process; independent third party should attribute trusted flagger status based on objective criteria.
- Stay-down obligation is needed because pirates abuse N&A by re-upload infringing content immediately.
- Need dynamic injunctions: blocking of domain names and live blocking of servers when used for infringement (e.g. UK, IE, ES)

- Algorithmic transparency (moderation, filters, acceleration effects) is important regarding illegal content, also for competition.
- National authorities and EU regulator should have access, including to the source code. Obligation to notify on algorithm evolution.

(ITV):

- Importance of advertising: platforms should not benefit from liability exemption for advertising content.
- DMA/gatekeepers: Amazon and Google want to be the default TV operating system. This can undermine broadcasters; need to ensure fairness.

- DSA should also cover harmful content. Harmful content and disinformation is monetized on platforms.
- Need level playing field between traditional broadcasters and platforms. Self-regulation is not efficient.
- Users should not upload content anonymously, especially in a 'public space'.

COM ( ): The Commission agrees on the importance of the role of broadcasters and the need to update the regulatory framework. The basic liability principles of the ECD are still relevant, but these can be adapted/clarified. However, focus should be on the *responsibilities* of online platforms, regardless of their liability. Large platforms – functioning as 'public spaces' – need to meet higher standards, but smaller platforms will also have important obligations. The DSA has high ambition and will provide for clear obligations, such as harmonised notice and action. The 'Good Samaritan' clause is not a new liability exemption, but it will allow platforms to act more responsibly. There will be an EU wide oversight and cooperation mechanism to enforce the rules effectively. The DSA will be as horizontal as possible and as sector specific as necessary, it may not be the solution to every problem. The DSA won't reopen the Copyright Directive.