

From: [REDACTED]
Sent: Friday, November 13, 2020 1:07 PM
To: CNECT DSA TEAM <CNECT-DSA-TEAM@ec.europa.eu>; CNECT F2 DMA <CNECT-F2-PLATFORMS-POWER@ec.europa.eu>
Subject: FW: Flash report call with Association of Commercial Television 13 November 2020

Fyi and records, ACT views relevant for the DSA and DMA.

From: [REDACTED]
Sent: Friday, November 13, 2020 12:53 PM
To: GROW LIST E4 <GROW-LIST-E4@nomail.ec.europa.eu>
Cc: GAMBS Hubert (GROW) [REDACTED]; [REDACTED] GROW E4 <GROW-E4@ec.europa.eu>
Subject: Flash report call with Association of Commercial Television 13 November 2020

Dear all,

Hubert and I had a call today with the Association of Commercial Television. Its members reiterated issues (see below the main points) that they face in their relation with online platforms (and which they have also presented in their response to the OPC on the DSA package, as well as in meetings with DG CNECT). They are eager to see the soon to be published IP Action plan and the DSA package respond to these issues.

All the best

[REDACTED]

[REDACTED] (Canal Plus):

- 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;
- There is tendency for broadcasters to be presented as “traditional” players, but they have embraced the digital revolution, are innovating and are using all channels, including digital.
- Covid-19 brought adverse effects for broadcasters: advertising revenues went down and content production is most affected; online piracy has surged, and effective solutions against this problem should be a priority.
- The Covid crisis has highlighted importance of broadcasting and quality news/entertainment.
- Concerns: need for comprehensive and long-term strategy for the sector. The new regulatory framework (through both ex-ante regulation and more responsibility in terms of liability) has to allow broadcasters to compete on fair terms with structuring platforms.

(beIN SPORTS):

- Live content, like sports events, is very vulnerable to piracy surge (through IPTV, social media etc)
- There are many issues not addressed by existing or upcoming regulation.
- Art 17 Copyright directive is not sufficient to fight against illegal streaming (e.g. no protection when illegal content is accessed through links shared via platforms). Dynamic injunction would be the adequate remedy.
- 2017 Communication on fighting illegal content online encouraged the use of dynamic injunction. In some MS (France) courts are reluctant to issue such orders due to lack of legal basis.
- IP action plan to be published in November: will it clarify definition of expeditious removal and clarify responsibilities of hyperlink creators?

(Sky):

- instant take down is possible, and sometimes being done now, so it is important that new rules don't allow large platforms to go backwards (e.g. use new rules as an excuse to have longer take down times than now).
- P2B has not had any effect in this sector, as platforms find ways to circumvent any rules which are not very detailed and clear. The approach to try and negotiate with gatekeepers platforms, without the perspective of real sanctions if they keep being unfair, just leads to business users being more exposed to retaliation from the gatekeepers. Also NDAs prevent business users from coordinating for collective redress.
- tackling harmful content is also important, not only illegal content (not necessarily the same rules, but some responsibility for removing harmful content should exist). The process that platforms use to address harmful content should be regulated.

(Mediaset):

- Digital markets susceptible to monopolization due to network effects, single homing. Data amassed by systemic platforms enhances their power. Dual role of some systemic platforms gives incentive for self-favouring
- New instruments should address in holistic way what 3 issues:
 - o Asymmetry in regulatory conditions for companies that compete (systemic platforms vs broadcasters subject to different regulatory regime). E.g. Video sharing platforms have no editorial responsibility, while broadcasters do
 - o Ability of digital incumbents to leverage market power to enter new markets – reinforcing their position
 - o Gatekeeping role of platforms which dictate unfair terms to business users
- So limited liability regime should not apply to attention brokers. US is also considering review of Communication Decency act.
- Examples of market power:
 - o the success of Android ensures google is the default search engine -> access to data much above competitors -> barriers to entry/expansion.
 - o Youtube offers no transparency on its ranking. It has incentive to prioritize user generated content vs professional content -> hinders capacity to invest in original content

- If users single home, the platform they use becomes sole means to reach consumers -> significant market power.
- Facebook & Google dominate advertising market so can dictate terms
- DSA should also cover harmful content. Harmful content and disinformation is monetized on platforms.
- Need level playing field between traditional broadcasters and platforms: a blacklist of prohibited practices for gatekeepers, strengthened investigation powers for authorities, new rules for access to data, transparency.
- Piecemeal approach and lots of carve-outs (like in Copyright Directive, AVMSD) is not effective in addressing issues with gatekeeper platforms.

██████████, TF1:

- Algorithm are omnipresent and always secret. Access to algorithms should be considered in the asymmetric approach towards large platforms (e.g. to check if they are allowing illegal content, trying to squeeze out competitors etc). If we accept to be governed by secret algorithms, we are exposed to commercial interests of various actors.
- Algorithmic transparency (moderation, filters, acceleration effects) is important regarding illegal content, also for competition. Political consensus seems to be emerging on this.
- Nothing has changed following P2B

██████████, Viacom/CBS:

- DSA should uphold good copyright protection standards and improve the system with specific interventions: KYBC, enhanced enforcement, stronger rules on notice and stay down, repeat offenders, introduction of trusted flaggers, restoring WHOIS database (used to identify who was operating certain domains, not available since GDPR application).

COM (Hubert Gambs): recalled the context of digitalization and recognized importance of broadcasters. Explained the complexity of the task to address all the issues mentioned, and that COM is looking very closely at all of this. Important to have a balanced proposal that will withstand scrutiny.