

From: [REDACTED]
Sent: Wednesday, October 28, 2020 12:06 PM
To: [REDACTED]
Subject: Quick notes from the Spotify meeting

I think the below captures the discussion, pls add if I missed anything.
Thanks!

[REDACTED]

Webex Meeting with Spotify - Director of EU Regulatory Affairs Views on the topic of the Digital Markets Act

3 main topics discussed:

1. How to define gatekeepers?

Spotify remarks on general scope:

- intermediation platforms (similar to the P2B, but has to be a bit broader – not imposing the criterion of possibility of transactions, as that would not include advertising)
- OECD definition from 2019 study is good: platforms that enable consumers and businesses to interact with each other

Gatekeepers: those who create bottlenecks to access the market, meaning that a business has to go through them to access the market or a large part of the market

Not essential that a particular number of companies is covered, but that companies who can really dictate the rules and intervene whenever they want in the market are covered.

COM question: Should there be purely quantitative criteria or an assessment by the regulator to identify gatekeepers?

Answer: pure quantitative criteria may only capture size, not power in a certain market. So qualitative criteria showing that a company is able to leverage its assets to a different market would be useful.

Not enough to only define problematic practices in general without identifying gatekeepers. So combination of quantitative and qualitative criteria would seem desirable.

Spotify question: Concern from many EU businesses that the scope could be very broad, is there a risk of that?

COM answer: the intention is to have a narrow scope, and to support EU businesses.

2. Problematic practices?

Spotify remarks:

- Regardless of what is included in the blacklist, it is very important to have a more open greylist, which would be updated periodically, so that to capture new behaviours (which big companies are likely to develop).
- Some examples of most problematic practices which should be addressed:
 - Forced tying: business users being forced to use certain services in order to access the platforms
 - Self-preferencing: interfering with consumer choices, in order to favour platforms' own product/service
 - Prohibiting businesses from communicating with their customers

COM question: It may be argued that default options for consumers may be helpful, to avoid overwhelming complexity. What are the views on that?

Answer: locking a consumer into a service, without giving them the choice to opt-in, or overriding default settings by consumers (all to favour the platform's own services), goes too far. Spotify has developed a detailed list and shared it with COM in the summer.

Spotify question: is evidence still missing on certain practices, on which Spotify could help?

COM answer: a lot of evidence already gathered, but if more needed will reach out.

3. Link with competition law?

Spotify question: If practices are identified in the black/greylist, which would also be covered by competition law, could competition law still apply? Spotify would advocate it should, in the spirit of complementarity of the rules.

COM:

- confirms the idea is indeed to complement competition law, not have mutually exclusive instruments.

- the relation with MS in the application of these instruments is still to be worked out in detail. The goal is to have a consistent approach in the Single Market.