cerre Centre on Regulation in Europe

EFFECTIVE AND PROPORTIONATE DMA IMPLEMENTATION

11 January 2023

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WELCOME

by Bruno Liebhaberg
CERRE Director General

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OPENING KEYNOTE SPEECH

Andreas Schwab
Member of the European Parliament

cerre Centre on Regulation in Europe

OPENING KEYNOTE SPEECH

Alberto Bacchiega
Director, DG COMP,
European Commission

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PANEL 1: DESIGNATION OF GATEEKEEPERS AND PROCEDURE

Richard Feasey, CERRE Senior Advisor
and Giorgio Monti, CERRE Research Fellow

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GATEKEEPER DESIGNATION

- Designation **per gatekeeper** or per CPS
- **Symmetric** evidential standards for the **rebuttal of the quantitative presumption** by platforms and the Commission
- **End-users** calculation

PROCESS AND INSTITUTIONAL DESIGN (1)

- **Oversight** and compliance tools
    - Effective **compliance report**
        - Gatekeepers to demonstrate effectiveness
        - Compliance as an evolving task for gatekeepers/Commission
            - Adapt to changing market conditions
    - Governance of **regulatory dialogue**
- ***Responsive*** **enforcement**
    - Focus on **persuasion** fist, fines an instrument for unwilling compliance

PROCESS AND INSTITUTIONAL DESIGN (2)

- **Participatory enforcement**
  - At each stage, **third parties** should be able to comment (and have meaningful info to do that)

- **Institutional design**
  - **National authorities:** complaints and joint investigation teams
  - DMA **High-Level Group:** legal consistency across digital law instruments and case coordination

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COFFEE/TEA BREAK

Next session starts at **16.00 CET**

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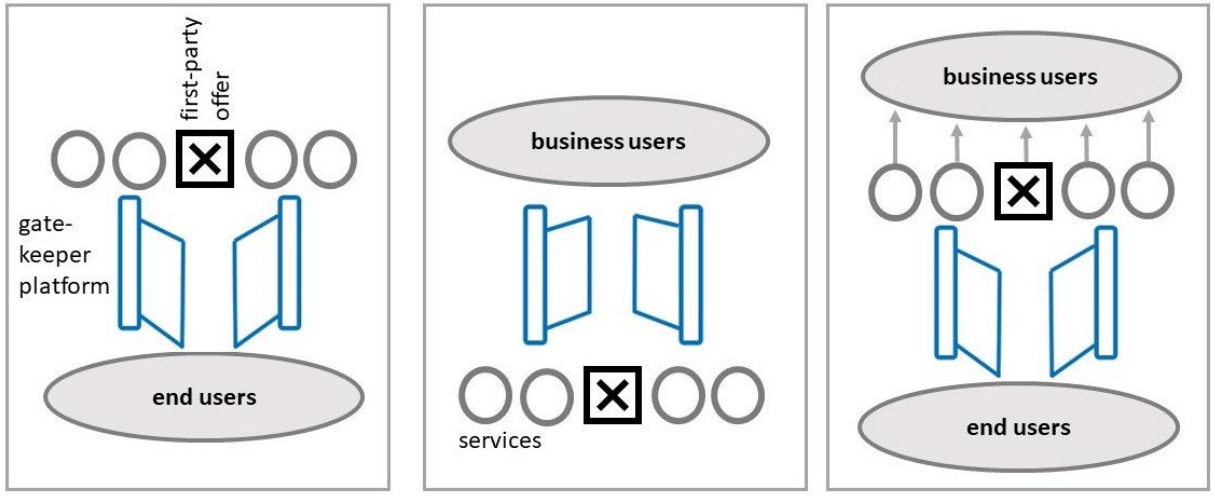
PANEL 2: SELF-PREFERENCING AND SWITCHING TOOLS

Martin Peitz, University of Mannheim
and Alexandre de Streel, CERRE Academic Director

THE SELF-PREFERENCING PROHIBITION

Article 6(5)

The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking and related indexing and crawling.



Scenario 1 Scenario 2 Scenario 3

RECOMMENDATIONS ON SELF-PREFERENCING

- Do not to use this prohibition as carte blanche; do not engage in mechanistic enforcement.
- The application of Article 6(5) could be restricted to the design of rankings as a non-price strategy.
- The prohibition should apply on the end user *and* the business user side.
- It can be challenging to detect self-preferencing bias as opposed to legitimate differential treatment. Identify acts of true self-preferencing; i.e. such practices that are likely to be against market contestability and the long-term interests of consumers.
- Use guidance from economics to specify adequately, under Article 8 of the DMA, the self-preferencing prohibition.

RECOMMENDATIONS ON SWITCHING TOOLS AND CHOICE SCREENS

- Legal **clarifications on scope**
  - **Non-standards browsers** such as search app and in-app browser
  - **Other services** than browser, VA and SA: within browser default
  - **Non proprietary default**
- Effective **mechanisms**
  - **Design and architecture** of switching tools
  - **Reversibility** possibility
  - At every **first use of new device** and at **no charge**
- Avoiding **unintended consequences**
  - Misleading third-party prompts and **slamming**
  - Excessive prompts and **choice fatigue**
  - Harming the **small platforms**

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PANEL 3: ACCESS TO DATA AND INTEROPERABILITY

Marc Bourreau, CERRE Academic Co-Director
Alexandre de Streel, CERRE Academic Director

RECOMMENDATIONS ON INTEROPERABILITY

- **Legal clarifications** needed
  - **Geographical scope:** EU or beyond?
  - Process to handle **requests for vertical interoperability**

- Effective **mechanisms**
  - Access and interface **managed by gatekeeper** under equivalence of input requirement when proportionate
  - **Licence** regime for access seekers

- Avoiding **unintended consequences**
  - Reducing **investment** and innovation with free vertical interoperability
  - Reducing **multihoming** with horizontal interoperability

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RECOMMENDATIONS ON DATA PORTABILITY

- Legal **clarifications**
  - **Scope:** which data, in particular observed data, context, adversarial portability
  - User **consent:** granularity, by business users
- Effective **mechanisms**
  - **Combining** portability with privacy, security and integrity
  - Open **standards** and protocols
  - Measurement of availability and **performance**
- Avoiding **unintended consequences**
  - Crowding out Personal Information Management Systems (**PIMS)**

RECOMMENDATIONS ON SEARCH DATA ACCESS

- Legal **clarifications**
  - **Material scope:** data, scale, timeliness, beneficiaries
  - **Geographical scope:** EU or beyond

- **Effective mechanisms**
  - Combining **contestability** with **privacy and security**
    - **Technical:** K-anonymity, differential privacy, synthetic search logs
    - **Institutional:** trusted data intermediaries and data sandboxing
  - Negotiation framework to determine **FRAND**

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CLOSING KEYNOTE SPEECH

Rita Wezenbeek
Director, DG CNECT,
European Commission

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THANK YOU!

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Improving network and digital industries regulation

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