EFFECTIVE AND PROPORTIONATE DMA IMPLEMENTATION
WELCOME

by Bruno Liebhaberg
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OPENING KEYNOTE SPEECH

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OPENING KEYNOTE SPEECH

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PANEL 1: DESIGNATION OF GATEKEEPERS AND PROCEDURE

Richard Feasey, CERRE Senior Advisor and Giorgio Monti, CERRE Research Fellow
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
COFFEE/TEA BREAK

Next session starts at 16.00 CET
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.
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
PANEL 3: ACCESS TO DATA AND INTEROPERABILITY

Marc Bourreau, CERRE Academic Co-Director
Alexandre de Streel, CERRE Academic Director
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
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**
CLOSING KEYNOTE SPEECH

Rita Wezenbeek
Director, DG CNECT,
European Commission
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