



CCIA Position Paper on the EU Digital Markets Act

The Computer & Communications Industry Association (“CCIA”) supports the European Commission (“EC”) initiative to limit diverging national regulatory interventions and ensure coherent interpretation of obligations in the digital economy under the proposed Digital Markets Act.¹ We agree with the EC’s assessment that “[g]iven the intrinsic cross-border nature of the core platform services provided by gatekeepers, regulatory fragmentation will seriously undermine the functioning of the Single Market for digital services as well as the functioning of digital markets at large.”²

As the European Parliament and the Council seek to reach a common agreement on the DMA, CCIA offers five harmonising principles (Part 1), and suggests specific improvements for the DMA’s governance and enforcement framework in line with these principles (Part 2), to ensure that EU regulation of the digital economy is effective and proportionate.³ CCIA considers that, with these limited amendments, the DMA can better meet its aim of “*enhancing coherence and legal certainty in the online platform environment for a preserved internal market*”.⁴

1. Harmonising Principles

1.1. Protect the Open Market Economy with Free Competition

The European Union and its internal market are built on the principle of an open market economy with free competition favouring an efficient allocation of resources.⁵ Numerous studies have confirmed the many ways in which digital services and multi-sided business models (“digital platforms”) reinforce and stimulate competition in the internal market.⁶

The success of single market integration means that national firms must now compete with suppliers across the European Union and abroad. This increased competition is facilitated by the Internet, where an abundance of offers are made available, aggregated and organised by a variety of digital services. Harmonisation is necessary to prevent national rules that seek to protect national firms from this world of competition. Such rules are particularly problematic where they would restrict the freedom of platform operators to compete on the merits, to leverage the abundance of the Internet to improve consumer welfare, to orchestrate their ecosystems, or to otherwise freely design their digital products, services and business models in the interest of consumers. An open market economy requires that digital service providers continue to have the ability to better serve their customers and reduce friction in the digital economy.⁷

1.2. Preserve Dynamic Competition and Innovation Benefiting Consumers

Competition in technology industries is dynamic, creating new products and business models, transforming market boundaries and reaching entirely new customers. Innovation drives this dynamic competition. National regulatory proposals forcing firms to share with business users and rivals their innovations and the benefit of their investments would limit firms’ incentives to compete. Business users’

¹ European Commission “Proposal for a Regulation of the European Council and of the Parliament on contestable and fair markets in the digital sector (Digital Markets Act)” (15 December 2020), available [here](#) (“Proposed DMA”).

² Proposed DMA, pg. 4.

³ CCIA does not at this stage comment on the specific prohibitions and obligations of the proposed Article 5 and 6, as it is still analysing their likely individual and aggregate effects on market dynamics, consumers, business users, and the wider economy.

⁴ Proposed DMA, pg. 69.

⁵ European Union “Treaty on the Functioning of the European Union” (Consolidated Version 7 June 2016), available [here](#), art. 120 (“The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119”); *Ibid.*, protocol 27 (“the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted”).

⁶ See e.g. European Commission “Staff Working Document: Evaluation of the Vertical Block Exemption Regulation” (8 September 2020), available [here](#), pg. 32 (“[A]lternative online distribution models such as online marketplaces have made it easier for retailers to access customers. By using these third-party platforms, small retailers may, with limited investments and effort, become visible to potential customers and sell products to a large customer base and in multiple Member States.”).

⁷ The focus should be on a fair competitive process, not “ensuring fair economic outcomes”. *Contra*. Proposed DMA, recital 5.



competitive incentives are also dampened; they may forgo rivalrous competition in favour of a free ride with regulator mandated access to competitors' innovations.

The value generated by innovation driven dynamic competition, is, by its nature, difficult to predict. The cost to society of deterring the introduction of new goods and services, whether by existing "gatekeepers" or potential rivals who choose a remedy-taker business model, is therefore high. The cost to society of doing so solely for the short-run benefit of some subset of competitors or business users, without regard for the impact on consumers, is even higher.

1.3. Preserve Business Freedom

Digital economy regulation should preserve business freedom and choice of pro-competitive business models. The freedom to conduct a business is a fundamental right.⁸ Business users exercise this right when they choose to accept the terms of dealing with platform operators. These private enterprises should have the freedom to judge the fairness of their agreements.⁹

1.4. Prevent Distortive Dependencies

Previous experience shows that government mandated access conditions lead to long-running government-led renegotiations of terms of service.¹⁰ In dynamic and diverse digitally-enabled markets, imposing new and untested ex-ante access conditions risks tying future innovation to ongoing regulatory oversight. It warrants careful case-by-case and participative enforcement.

1.5. Provide Legal Certainty

Ex-ante regulation needs a workable and future-proof mechanism for balancing the interests of consumers, suppliers, other ecosystem participants, and the more general interest in an open market economy with free competition. To provide legal certainty, this centralised oversight of the digital economy should be based on a coherent, objective, and administrable governance and enforcement framework that can be adapted in different jurisdictions. This is all the more necessary in the absence of explicit, objective and evidence based measures for assessing fairness and contestability.¹¹

2. Improving the DMA's Governance and Enforcement Framework

2.1. Article 2(2) - Core Platform Service

Discriminatory application of the DMA through the exclusion of relevant core platform services would threaten the open market economy and free competition. The definition of "core platform services" should be broadened to ensure that the DMA does not distort competition by disadvantaging some services, but not other functionally equivalent services.¹²

⁸ European Union "Charter of Fundamental Rights of the European Union" (26 October 2012), available [here](#), art. 16.

⁹ See e.g. EU Council and Parliament "Directive 2019/663 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain" (25 April 2019), available [here](#), ("UTP Directive") recital 16 ("When deciding whether a particular trading practice is considered unfair, it is important to reduce the risk of limiting the use of fair and efficiency-creating agreements agreed between parties.")

¹⁰ For example, the European directive in the telecom sector was originally created with the aim to "reduce ex ante sector specific rules progressively as competition in the market develops". European Parliament and Council "Directive on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)" (7 March 2002), available [here](#), recital 13. Nearly 20 years later, subsequent EU directives governing the telecommunications sector are still working on that aim.

¹¹ The Proposed DMA goes far beyond existing EU law concepts of unfair commercial practices limited to "misleading" and "aggressive" conduct. See European Parliament and Council "Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market" (11 May 2005), amended (2019), available [here](#), arts. 5-9. Even these narrow conduct rules required extensive guidance and explanation. See European Commission "Commission Staff Working Document - Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices" (25 May 2016), available [here](#).

¹² See European Commission "Regulatory Scrutiny Board Opinion [of the DMA]" (10 December 2020), available [here](#), pgs. 1-2 ("the report still contains significant shortcomings: (1) The report does not fully justify the selection of the core platform services to be covered by the initiative. ... The report should better justify why other platform services, such as content streaming



A more fundamental issue is the lack of accommodation for the on-going development of digital products and services. All of the “core platform services” described in the DMA Proposal have evolved significantly in the last years, incorporating new features and functionalities to accommodate evolving consumer demand. For example social media now includes many new features that didn’t previously exist, like news feeds, photo filters, algorithmic ranking, and video editing features. Each of these could have in the past been considered a separate product or service. Static product definitions would thereby chill product development and innovation in Europe, as complainants would demand protection from “unfair” new platform features that make competition difficult. To preserve dynamic competition, obligations that are affected by product boundaries (e.g. related to tying or bundling), should be applied in light of such product developments.

2.2. Article 3(1)(b) - An Essential Gateway

The obligations of the DMA should only apply to companies that are *essential* gateways for business users. Experts largely agree that interventions should be limited to companies controlling a strategic digital bottleneck upon which business users are dependent for market access.¹³ Allowing intrusive access conditions merely because a platform service is “important” would be a quasi-automatic designation punishing successful platform services and distorting the open market economy.¹⁴ It would also increase distortive regulatory dependencies by encouraging business users to avoid exploring alternative ways of accessing markets (e.g. reaching customers directly, or building new platforms). Mandating that technologies for access be developed solely at the expense of the platform operator would be even more distortive.

2.3. Article 3(2)(a) - Presumption of Significant Impact on the Internal Market

The quantitative thresholds proposed by the DMA are not a robust and reliable trigger for the imposition of obligations.¹⁵ For example, the DMA should apply to gatekeepers that are active in only one or two member states. All platform operators have the potential to intermediate between consumers and business users throughout the internal market. Adding regulatory burdens on those that do not impose geo-blocking would increase fragmentation and distort the open market economy. Nascent gatekeepers, notably European startups, would be encouraged to limit their activities geographically, rather than expanding across the entire EU single market.

Similarly, the DMA should not use “fair market value” as an independent criteria for determining significance of impact. Market value is a prediction of future shareholder returns, it is not strictly related

providers, would not meet the selection criteria.”). Similar concerns arise with regards to number-dependent interpersonal electronic communication services, independent advertising services, and others.

¹³ J. Crémer, Y.-A. de Montjoye, H. Schweitzer “Competition Policy for the Digital Era” (2019), available [here](#), pg. 54 (“...dependency of businesses on online platforms as quasi ‘gatekeepers’ to markets and consumers”); Commission ‘Competition Law 4.0’ “A new competition framework for the digital economy”, Report to the Federal Ministry of Economic Affairs and Energy (BMWi) Germany” (2019), available [here](#), pg. 47 (“The growing economic importance of platforms as intermediaries may lead to new forms of dependency, and especially the dependency of product and service providers on platforms”); Digital Competition Expert Panel “Unlocking digital competition” (March 2019), available [here](#), paras. 2.10, 2.25-2.27 and 3.69 (identifying “enduring market power over a strategic bottleneck market”, “control over other parties’ market access”, and the existence of “many dependent users on either side”); Swedish Competition Authority “Report on Digital Platforms in Sweden” (26 February 2021), available [here](#), pg. 26 (“The sector inquiry shows that the degree of intermediation power does not necessarily depend on the platform’s size or on market concentration.”); BEREC “Response to the Public Consultation on the Digital Services Act Package and the New Competition Tool” (7 September 2020), available [here](#) (“the control over a digital bottleneck (i.e. over a gateway for which there is no relevant substitute) for a large amount of end-users, and/or being an unavoidable trading partner for a large amount of business users.”); CERRE “The European proposal for a Digital Markets Act: A first assessment” (19 January 2021), available [here](#), pg. 15 (“size is not directly linked to gatekeeper power”) (emphasis added).

¹⁴ See e.g. European Parliament and Council “Directive 2018/1972 establishing the European Electronic Communications Code” (11 December 2018), available [here](#), (“EECC”) recital 29 (“it is essential that ex ante regulatory obligations are imposed only where there is no effective and sustainable competition on the markets concerned.”)

¹⁵ See European Commission “Regulatory Scrutiny Board Opinion [of the DMA]” (10 December 2020), available [here](#), pg. 2 (“The report should better define and justify the measures covered under the options. It should demonstrate why the proposed set of cumulative quantitative thresholds (under the ‘non-dynamic’ and ‘semi-flexible’ options) can be considered as a robust and reliable trigger across all selected core platform services for the (quasi-automatic) designation of gatekeepers and the imposition of obligations.”)



to existing activities, nor activities in Europe. Companies that are part of a wider group but still operate independently, or which have significant investments from financial institutions, could easily meet the market value threshold. Similarly, the DMA's revenue thresholds should be based on core platform service revenues not total revenues.

2.4. Article 3(6) - Gatekeeper Elements

To provide legal certainty, the DMA, or related EC guidance, should specify the way in which the EC will use and assess the gatekeeper elements of Article 3(6), and clearly define the conditions under which the gatekeeper presumption may be reversed. For example, where a company does not have the ability to harm fairness or contestability it should not be designated. This could be due to the existence of competitive alternatives or where there is multi-homing by monthly active users (a metric which should also be clearly defined).

2.5. Article 4(1) - Gatekeeper Rebuttal

The EC should be *required* to re-assess its gatekeeper designation decisions where there has been a material change in market circumstances and upon request by the designated gatekeeper. Such review cannot be limited merely to facts referred to in the EC's decision. Dynamic digital markets can change quickly, and continuing to impose intrusive obligations on companies in materially different market circumstances could cause significant harm to businesses and consumers.¹⁶

2.6. Article 5 - Unambiguous Ex-Ante Obligations

The DMA is intended to target "*those practices (i) that are particularly unfair or harmful, (ii) which can be identified in a clear and unambiguous manner to provide the necessary legal certainty for gatekeepers and other interested parties, and (iii) for which there is sufficient experience.*"¹⁷ To protect the open market economy, Article 5 obligations should be limited to those practices where there is unambiguous likelihood of significant harm regardless of the context in which they occur. Additionally, limiting Article 5 to those obligations which can be complied with unambiguously would increase legal certainty.

2.7. Article 6 - Tailored Ex-Ante Obligations

To preserve dynamic competition, Article 6 should serve as a list of guiding principles, imposed as obligations only following "*a tailored application ... through a dialogue between the Commission and the gatekeepers concerned.*"¹⁸ In existing EU law, imposing access conditions typically requires a market analysis of the industry concerned.¹⁹ Obligations that impact business models, existing or future product designs, or that would mandate access conditions, should be tailored to the harms in a specific industry context, and each obligation ultimately imposed should be proportionate.²⁰ As a corollary, non-compliance proceedings should apply only to breaches of tailored and specified Article 6 obligations.

¹⁶ See e.g. EECC, available [here](#), art. 68(6) ("National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics. ... the national regulatory authority shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision.") (emphasis added)

¹⁷ DMA Proposal, pg. 6. As mentioned above, CCIA does not at this stage comment on the specific prohibitions and obligations of the proposed Article 5 and 6. However, these three criteria do not all appear to be met.

¹⁸ DMA Proposal, pg. 6; *Ibid.* pg. 22, recital 33 ("[I]t is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality.")

¹⁹ For elements relevant to the telecommunications industry market context, see EECC, available [here](#), art. 6(7) (requiring (a) high and non-transitory structural, legal or regulatory barriers to entry, (b) a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry, (c) competition law alone being insufficient to adequately address the identified market failures, and (d) taking into account forward-looking market developments affecting the likelihood of the relevant market tending towards effective competition, (i) all relevant competitive constraints, at the wholesale and retail levels, irrespective of whether the sources and (ii) other types of relevant regulation or measures imposed).

²⁰ See e.g. EECC, available [here](#), art. 68(2) ("In accordance with the principle of proportionality, a national regulatory authority shall choose the least intrusive way of addressing the problems identified in the market analysis.")



2.8. Article 7 - Effective Compliance

Designated gatekeepers are obliged to comply with measures that are “*effective in achieving the objectives of the relevant obligations and proportionate in the specific circumstances of the gatekeeper and the relevant service.*”²¹ To provide legal certainty, the EC should clarify in its Article 6 decision (imposing tailored obligations) the specific objectives pursued. The EC should also be *required* to engage with designated gatekeepers on compliance commitments under Article 7(7).²² Article 7 proceedings should be cooperative and participative, without the threat of infringement proceedings for the same conduct.

2.9. Article [#X] - Pro-competition Safe-Harbour

In order to preserve dynamic competition, the DMA should not apply to pro-competitive conduct in the interest of consumers, including the creation of entirely new products or services.²³ Consumer welfare is a well understood concept and could provide legal certainty as a benchmark. Under this benchmark, increases in dynamic and allocative efficiency for the long-term benefit of consumers are permitted, and competitive incentives maintained. Any fine or behavioural remedy based on such pro-competitive conduct should be suspended pending the conclusion of an evidence-based assessment.

2.10. Article 9 - Exemptions Subject to Conditions and Obligations

The EC should be required to exempt gatekeepers from specific obligations on broader consumer interest grounds where harms of the obligation outweigh the benefits. For example, if an obligation increases consumer complaints over online scams or fraud, the EC should be able to exempt the gatekeeper from that obligation upon reasoned request. Similarly, if a material change in market dynamics makes an obligation no longer proportionate in the specific circumstances of the gatekeeper and the relevant service, the EC should be required to modify that obligation upon reasoned request.

2.11. Article [#Y] - Exempted Agreements with Business Users

To avoid distortive regulatory dependencies, business users who can access the market without the gatekeeper should not benefit from the DMA’s protections. Existing EU law on unfair trading practices exempts large suppliers from its protections, and applies only where there is a significant difference in bargaining power.²⁴ Similarly, large omni-channel suppliers who operate retail locations and their own online presence should not be able to use benefits derived under the DMA to compete unfairly with “gatekeeper” marketplaces.²⁵

The DMA is an internal market instrument and hence should avoid issues of extraterritorial jurisdiction. Accordingly, the DMA should not extend to protecting business users outside of the EU. The EU may have a legitimate interest in strengthening the bargaining power of European suppliers and business users and subsidising them with access conditions and other privileges. However, forcing platform operators in Europe to provide these benefits to business users everywhere in the world could make

²¹ DMA Proposal, pg. 41, art. 7(5).

²² Note that in the competition enforcement context, commitments offered by firms have often exceeded what would have been required to address any competition concerns. See N. Dunne, “Commitment Decisions in EU Competition Law” (Journal of Competition Law & Economics, 2014), available [here](#).

²³ European Commission “Commission Staff Working Document Impact Assessment Report (Part 1/2) Accompanying the document [DMA Proposal]” (15 December 2020), available [here](#), para. 305 (“Given that the rules only aim to prevent unfair and harmful conduct, they should not hamper market entry (even) by gatekeepers if the latter is based on fair means of competition.”)

²⁴ UTP Directive, available [here](#), recital 9 (“The number and size of operators vary across the different stages of the agricultural and food supply chain. ... A dynamic approach, which is based on the relative size of the supplier and the buyer in terms of annual turnover, should provide better protection against unfair trading practices for those operators who need it most.”)

²⁵ See e.g. European Commission “Commission Staff Working Document Accompanying the Document Report from the Commission to the Council and the European Parliament Final report on the E-commerce Sector Inquiry” (10 May 2017), available [here](#), pg. 115, para. 366 (“...marketplaces represent an important gateway for smaller and medium-sized retailers to sell cross-border whereas they are less relevant for cross-border sales of large retailers with a turnover above EUR 50 million.”)



platform business models uneconomical or unsustainable, causing them to exit and reducing open market competition.

Lastly, allowing business users to negotiate more favourable terms and conditions depending on their preferences would preserve business user freedom. For example, some business users may want more generous access conditions, and be willing to pay higher service fees in exchange. Alternatively, some business users may prefer lower service fees in exchange for more limited access conditions. Both should have that contractual freedom.

2.12. Article [#Z] - Exemption for National Markets

Existing EU law on unfair trading practices allows Member States to set lower standards if the specificities of the sector involved make the conduct unproblematic.²⁶ To further preserve dynamic competition and incentives to invest in innovation, the DMA could grant designated gatekeepers the freedom to appeal to Member State authorities and Courts to allow conduct otherwise prohibited by the DMA, in duly justified cases, where harms addressed by the DMA are unlikely to arise in that particular national context.

2.13. Chapter V - Fines and Penalties

In fixing any penalty for non-compliance, the EC should credit designated gatekeepers for internal compliance mechanisms like the appointment of compliance officers, and internal impact assessments addressing “fairness” or “contestability” claims by business users.

The EC should not have the discretion to penalise *de minimis* non-compliance, particularly with regards to access conditions which are inherently ambiguous. Where a designated gatekeeper uses automated systems, a single, innocent and minor product design change could theoretically reduce access conditions for thousands of business users (whether they know it or not). For legal certainty, such a situation should not give rise to multiple non-compliance decisions (if even one), nor a finding of systemic non-compliance. This is particularly relevant given the very short time frame for implementation of the DMA, the significant product design changes that it will inevitably entail, and the concomitant risk of overly cautious compliance that could be detrimental to consumers.

Similarly, a non-compliance decision should be based on a thorough assessment of the designated gatekeepers’ core platform service and all the obligations imposed on it. Core platform services can undergo thousands of product updates a year, each affecting thousands of business users protected by a number of DMA obligations. This multiplicity requires that the EC assess conduct holistically and issue a single non-compliance decision.

2.14. Maximum Harmonisation of Conduct Rules

The DMA provides useful harmonisation with regards to diverging Member States “fairness” and “contestability” rules, but it does not prevent divergence done on the grounds of “competition”.²⁷ To provide legal certainty, the DMA should also provide maximum harmonisation with regards to diverging conduct rules. In other words, Member States should not be able to prohibit or oblige conduct already covered by the DMA merely by invoking a “competition” objective.²⁸ By that same token, national courts should not entertain claims brought under the DMA by private litigants that could risk diverging national interpretations of its obligations.

²⁶ UTP Directive, recital 20 (explaining that Member States can offer business users less protection “in duly justified cases”).

²⁷ Proposed DMA, arts. 1(5)-1(7). This distinction however is somewhat unclear. See e.g. J. Laitenberger (former Director-General for Competition, now Judge on the General Court of the European Union) “The many dividends of keeping markets open, fair and contestable” (27 April 2017), available [here](#) (“Fairness is indeed a rationale that sits right at the core of the rules we apply.”)

²⁸ See e.g. European Parliament and Council “Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market” (11 May 2005) as amended, available [here](#), art. 4 (“Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.”)



Even with these safeguards, complainants will argue that breach of the DMA is sufficient proof of anticompetitive abuse of dominance, whether under EU or national law. They will bring follow-on damages claims.²⁹ This will reduce legal certainty and chill innovation incentives. But this could be prevented by ensuring that conduct and behaviours covered by the DMA confer immunity from such antitrust claims. In particular, DMA non-compliance decisions should not be used as proof of dominance, abuse, anticompetitive harm, or any other constitutive element of a competition claim.

2.15. Article 38 Review

Every three years, when the effectiveness and proportionality of the DMA is evaluated, the EC should also evaluate the need for continued intervention and oversight of the core platform services concerned. The EC should be required to consider whether certain provisions of the DMA can be removed. This evaluation should be done independently, not by the body enforcing the DMA. It should incorporate data from industry submissions, and should include an assessment of the DMA's positive, negative, direct and indirect effects. The EC's longer-term objective should be to eliminate any unnecessary regulation in favour of an open market economy with free competition.

2.16. Increased Resources

The EU should ensure that the EC has sufficient resources to undertake all of its tasks under the DMA. Recent experience suggests that resourcing requirements for regulation of the digital economy should not be underestimated.³⁰ Given the dynamic nature of competition between large technology companies, limiting enforcement of the DMA to only a handful of companies would significantly distort the open market economy. Even sequential enforcement of the DMA would unfairly disadvantage those competing gatekeepers who are the first targets of enforcement. To protect the open market economy, the EC's enforcement capabilities should not be limited by a lack of resources or dictated by discretionary enforcement priorities. Like with competition enforcement, the EC body responsible for enforcement of the DMA should operate independently outside political influence.

The EU should also ensure that the European Courts have sufficient resources to adjudicate disputes arising under the DMA. This is particularly important given the lack of existing EU legal precedent defining the business "fairness" and "contestability" objectives pursued.³¹ This will become increasingly important as digitally-enabled products and services multiply.

Conclusion

CCIA believes that in order to meet its stated goals, the DMA should protect the open market economy and free competition, preserve dynamic competition and innovation for the benefit of consumers, preserve business freedom, prevent distortive regulatory dependencies, and ensure a framework for digital economy regulation that will provide legal certainty and harmonisation. We look forward to working with policy-makers to ensure good regulatory outcomes for Europe.

About CCIA

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks. For more, visit www.ccianet.org.

²⁹ Facilitated by recent law making. See European Parliament and Council "Directive 2014/104 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union" (26 November 2014), available [here](#).

³⁰ See e.g., European Data Protection Board "Contribution of the EDPB to the evaluation of the GDPR under Article 97" (18 February 2020), available [here](#), pg. 3 ("the EDPB notes that most of the [Supervisory Authorities] state that resources made available to them are insufficient.").

³¹ P. Ibáñez Colomo "The Draft Digital Markets Act: a legal and institutional analysis" (22 February 2021), available [here](#), pg. 29 ("Thus, the measures adopted under Articles 3, 5 and 6 are to be assessed exclusively by reference to the concepts introduced therein. By the same token, any disputes would revolve around the interpretation of the meaning of the said concepts.")