



## Computer & Communications Industry Association (CCIA) Suggestions for Amending the Proposed Digital Markets Act (Sep 2021)

For nearly 50 years [CCIA](#) has been fighting to ensure that all competitors in the market have a fair chance to succeed on their merits, and [we support creating a DMA that is fit for the digital age](#), so that all technology companies in Europe can continue to innovate, increase competition, and create value for consumers and business users. However, being a novel and somewhat experimental proposal, [the DMA carries a significant risk of unintentionally hampering Europe's digital economy absent improvement](#). We suggest amending the DMA to reduce these risks: **(i) improve regulatory dialogue, (ii) expand adjustment mechanisms for the most harmful side-effects, and (iii) ensure an enforcement framework that encourages fast and effective compliance**, averting unnecessary service disruption and precluding contentious litigation.

### ***i. Improve Regulatory Dialogue***

Regulatory dialogue is necessary to avoid “more of the same”, moving the DMA enforcement from contentious and litigious competition enforcement towards effective compliance that meets regulatory objectives. Given the DMA’s form-based approach (applying out-of-context competition remedies on a one-sized-fits-all basis) there are [numerous unpredictable consequences](#) for Europe’s rapidly evolving digital economy. To avoid this, regulatory dialogue should be a fundamental component of enforcement, ensuring common understanding of the interpretation expectations and the market outcomes to be achieved, not causing delay or softening obligations. This entails: (a) **requiring** the Commission to provide further specification under Article 7(2) and Article 7(7) where there is demonstrable ambiguity in the obligation as applied to a core platform service, (b) **allowing commitments** to address concerns under Article 7 proceedings, and (c) **rewarding good-faith compliance efforts** where there is demonstrable ambiguity, e.g. by not opening parallel non-compliance proceedings during the specification process (Art. 7).

### ***ii. Expand Adjustment Mechanisms***

Given the unpredictability of the DMA’s form-based approach, and [the likelihood of harmful side-effects on consumers and business users](#), the DMA needs adjustment mechanisms and safeguards to give the Commission the power to adjust obligations in specific market contexts where there is substantiated evidence of harmful side-effects. This discretionary power should only be used by the Commission where modification of an obligation is necessary, and not so as to delay effective enforcement. This is already foreseen but on a very limited basis in **Article 8 and 9, which should be expanded** to address important regulatory objectives both internal to the DMA (i.e. “fairness” and “contestability”) but also more broadly (e.g. consumer protection, privacy, security, service improvement, and innovation).<sup>1</sup>

### ***iii. Ensure an Enforcement Framework that Encourages Fast and Effective Compliance***

The DMA will inherently impact numerous core platform services and the many European business users who rely on them. While some seek to use the DMA as a punitive measure to ‘punish digital gatekeepers’, over-compliance (e.g. due to technical ambiguity and the risk of disproportionate or overlapping penalties) could disrupt Europe’s growing digital economy and limit the deployment of pro-competitive innovations in Europe. It would also entail litigation to resolve these ambiguities and proportionality concerns, delaying effective enforcement. While (i) regulatory dialogue and (ii) adjustment mechanisms help alleviate some of these concerns, **realistic timelines** (e.g. 24 months) to implement the proposed technological infrastructure changes, and **proportionate penalties** (e.g. tied to European turnover) are necessary to reduce these risks, and ensure a workable DMA that will achieve its objective of making Europe fit for the digital age.

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<sup>1</sup> The text should also more clearly require the Commission to designate only the core platform services that play a gatekeeping role, ensuring that the DMA does not inadvertently insulate designated gatekeepers from competition with each other.