Computer & Communications Industry Association
(CCIA Europe)
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1040 Brussels

Mr Alberto Bacchiega
Director, Digital Platforms Directorate
Directorate-General for Competition European Commission
Place Madou 1
1210 Brussels

Ms Rita Wezenbeek
Director, Platforms Policy and Enforcement Directorate
Directorate-General for Communications Networks, Content and Technology
European Commission
1049 Brussels

15 June 2023, Brussels

Subject: Reconciling conflicting provisions on data portability in the Digital Markets Act and the Data Act

Dear Mr Bacchiega, dear Ms Wezenbeek,

I am writing to you on behalf of the Computer & Communications Industry Association (CCIA Europe) to express concerns about potentially conflicting obligations related to data portability in the Digital Markets Act (DMA) and the upcoming Data Act. If unresolved, this conflict has the potential to significantly undermine the right to data portability for users as established in the DMA, and unfairly expose liability for companies designated as gatekeepers.

Although the trilogue negotiations on the Data Act proposal are still underway, we understand that Article 5(2) of this proposal will remain largely untouched. We wanted to raise this issue directly with you, too, as we are concerned that the interplay between the Data Act and the DMA has not been appropriately addressed in the context of the Data Act negotiations.

While both the DMA and the Data Act aim to empower users with new data portability rights, Article 5(2) of the Data Act prohibits companies designated as gatekeepers under the DMA from receiving users' data. As a result, a gatekeeper company may interpret the Data Act as requiring it to decline user requests to export data to services (including Core Platform Services) operated by another gatekeeper. In doing so, the exporting gatekeeper would risk non-compliance with Article 6(9) of the DMA.

Given the overlapping scope of the two legislations,[1] this conflict will affect users' ability to move data from one gatekeeper company to alternative or diverse services operated by another gatekeeper company.

This would effectively result in user lock-in, limited competition, and reduced contestability among gatekeeper companies, even for products that do not meet the criteria of "Core Platform Services" under the DMA (given the Data Act prohibition in Article 5(2) applies at the gatekeeper level). Such an outcome contradicts both the purpose and the specific provisions of the DMA.

More generally, users should have the freedom to choose which services they want to export their data to, regardless of whether such services are Core Platform Services and/or are operated by a gatekeeper company under the DMA. Gatekeeper companies that receive a user request to export data to a different service operated by another gatekeeper should not be put in a situation of legal uncertainty as to how to comply with the DMA without at the same time infringing the Data Act.

In light of the above, CCIA Europe urges you to encourage the Council of the EU and the European Parliament to avoid any conflict with the DMA and remove the gatekeepers' ineligibility to receive user data under Article 5(2) of the Data Act.

Alternatively, as you work through the implementation of the DMA, and absent further modifications to the Data Act, CCIA Europe invites you to consider adopting guidelines detailing how to effectively comply with the two regulations at the same time. In DMA enforcement cases where designated gatekeepers are legally prevented from honouring users' portability requests under the Data Act, we invite the European Commission to consider waiving the liability of designated gatekeepers.

Thank you in advance for your consideration, and I remain at your disposal for any further information.

Sincerely yours,

Alexandre Roure
Director, Public Policy
Computer & Communication Industry Association (CCIA Europe)
EU Transparency Register: 15987896534-82

[1] The relevant portability provisions of the DMA and the Data Act apply to data generated by any natural or legal person when using a service which falls within their scope (Article 2(20) DMA, Article 2(5) Data Act). Virtual assistants are an example of a service explicitly captured in both legislation (Article 2(2)(h) DMA, Article 7(2) Data Act).

Cc:

- Lucia Bonova, Head of Unit, Digital Platforms I, Digital Platforms Directorate, DG COMP
- Michael König, Head of Unit, Digital Platforms II, Digital Platforms Directorate, DG COMP
- Thomas Kramler, Head of Unit, Digital Platforms II, Digital Platforms Directorate, DG COMP
- Filomena Chirico, Head of Unit for Digital Markets, Platforms Policy and Enforcement Directorate, DG CONNECT
- Yvo Volman, Director, Data Directorate, DG CONNECT
- Bjoern Juretzki, Head of Unit for Data Policy & Innovation, Data Directorate, DG CONNECT