CCPC Submission to Consultation on the Digital Markets Act proposal

Department of Enterprise, Trade and Employment

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CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí | Competition and Consumer Protection Commission

1. Introduction

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to respond to the Department of Enterprise, Trade and Employment's 'Call for views in response to the European Commission's Digital Services Act and Digital Markets Act proposals'. The CCPC is an independent statutory body with a mandate to enforce competition and consumer protection law in Ireland. Our mission is to use our knowledge, skills and statutory powers to promote competition and enhance consumer welfare. Our vision is for open and competitive markets where consumers are protected and businesses actively compete.

This submission concerns the Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act - 'the DMA'). The CCPC welcomes the DMA's objective to promote effective competition in digital markets and a contestable and fair online platform environment. The CCPC notes that the DMA contains proposals to identify undertakings ('gatekeepers') in the digital sector who have a significant impact in the internal market, and enjoy an entrenched position, which creates the potential for unfair practices that affect businesses and consumers. The DMA proposes a set of obligations that undertakings designated as such should have to abide by. It also proposes to establish a European Commission level body and system enforcing compliance with the DMA, and look at designating new gatekeepers and related practices through a newly created Market Investigations procedure.

This submission highlights the need for more detail on where the CCPC may need to provide information to the European Commission, especially as the body responsible for monitoring compliance with the Platform to Business Regulation ('P2B') in Ireland. The proposed DMA could affect a number of markets, businesses and consumers in Ireland, and have potential implications for the CCPC's mandate of enforcing competition and consumer protection law and how these statutory functions are carried out.

For ease of reading, areas where the CCPC is highlighting particular issues worth immediate consideration and where it is suggesting that further clarification would allow for a better appreciation of the DMA's impact are highlighted in this submission in bold.

2. Purpose and Application of the DMA

The Explanatory Memorandum contained in the DMA proposal outlines that 'unfair practices and lack of contestability' in some digital markets have led to inefficient outcomes. The proposal for a DMA aims to ensure markets across the EU 'where Gatekeepers are present' are 'contestable and fair'. The proposal should 'promote innovation, high quality of digital products and services, fair and competitive prices, and free choice for users in the digital sector.' The CCPC notes the Commission forecasts that the DMA would promote increased consumer surplus[1], and more competition among platforms for business users. Achieving these outcomes would be welcome, and aspects of the DMA bring welcome clarity to some of the practices which have affected businesses and consumers in digital markets. However, limiting the scope of application to the digital sector may constrain the efforts of the Commission to identify wider structural problems in sectors across the economy, and as digital gatekeepers expand across sectors, may ultimately lead to confusion over where the DMA is applied.

Designation of Gatekeepers

The DMA proposal is limited in its intended application to the digital sector[2]. The proposal is further limited to a number of 'core platform services'[3] where the identified problems are considered to be most evident, and where a limited number of large online platforms serving as gateways for business users and end users has led, or is likely to lead, to weak market contestability. The CCPC notes the annexes to the Impact Assessment Report, which include some information on the types of practices and effects that have occurred in digital markets. [4] However, there is a comparative lack of detail in the DMA document itself about these

1 Consumer surplus is a concept in microeconomics which is defined as the difference between a consumers' willingness to pay for a good and the amount that they actually pay.

2 Article 2 DMA - 'Digital sector' is defined to mean 'the sector of products and services provided by means of or through information society services'.

3 Article 2 of the DMA –sets out that core platform services include online intermediation services (incl. for example marketplaces, app stores and online intermediation services in other sectors like mobility, transport or energy); online search engines; social networking; video sharing platform services; number-independent interpersonal electronic communication services; operating systems; cloud services and advertising services, including advertising networks, advertising exchanges and any other advertising intermediation services, where these advertising services are being related to one or more of the other core platform services mentioned above.

4 Commission Staff Working Document, 'Impact Assessment Report'.

practices and past examples of them occurring. **It is suggested that the Commission could usefully put forward a comprehensive evidence base to support the identification of weak market contestability in digital markets, given the potential significant impact of the proposed DMA.**

Designation of Core Platform Services is associated with turnover and end user requirements[5]. Article 3 states that providers of core platform services can be deemed to be gatekeepers if they fulfil a certain list of requirements:

(i) have a significant impact on the internal market,

(ii) operate one or more important gateways to customers and

(iii) enjoy or are expected to enjoy an entrenched and durable position in their operations[6].

The CCPC notes that the draft DMA is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU)[7], which is concerned with the harmonisation of national rules to avoid regulatory fragmentation, as relevant to the establishment and functioning of the Internal Market. The draft DMA is without prejudice to the application of Articles 101 and 102 TFEU as well as similar national provisions of competition law. In terms of the practical application of the powers in the DMA it is understood that it will therefore operate in parallel with the European Commission's existing powers under Article 102 (which will continue to be applicable to the digital sector), with a specific sectoral focus on digital, to address issues that cannot be enforced in a timely way under Article 102, or which would not lead to effects on competition on a clearly defined market (as required by competition law). This reflects the analysis of the European Commission that an instrument is required to address rapid developments in markets prior to the point at which such a market may no longer be contestable (that is to say, the point at which the market has 'tipped').

[5] Article 3 (2) - Annual EEA turnover over €6.5 billion in the last 3 years, or where it is valued at least €65 billion in the last financial year, and provide a core platform service in at least 3 Member States. They must also have over 45 million monthly active end users in the EU, and over 10,000 annual business users.

[6] The Commission shall, at least every two years, review whether the designated gatekeepers continue to satisfy these requirements, and whether new providers of core platform services satisfy the requirements, as well as examining whether the list of core platform services should be adjusted.

[7] In Section 2 'Legal Basis, Subsidiarity and Proportionality'.

Although the measures proposed in the DMA are not based on Article 102 it will extend potential application of ex ante measures to digital market players, alongside the Article 102 system, based on finding of market dominance, where measures are applied ex post. The DMA approach involves a sole focus on issues around digital policy that have become prominent. It conflicts with how structural competition problems can occur across sectors generally. **The CCPC is concerned that if other issues become of equal, or of greater, concern in how they impact competition, it is questionable whether incorporating these in the DMA framework through a Market Investigation is a sufficiently flexible, or timely, approach.**

The fact that the DMA is outside the Article 102 framework raises the question of how it could influence the evolution of the application of Article 102 to the digital sector. Will the implementation of the DMA **reduce the need (or preference) for Article 102** based procedures at EU level, and **affect the traditional application of Article 102,** including through evaluation of past jurisprudence? For example, dominant undertakings have until now been able to adapt their behaviour in light of jurisprudence evolving case law and practices of the European Commission. How will **abuse of dominance national cases work in conjunction with potential EC actions under the DMA as proposed?**

Implementation of the DMA would result in two regimes - Article 102 (dominance based) and Article 114 (ex ante regulation) running in parallel. This could provide an incentive for companies to reassess their business models given that proving dominance under Article 102 is more complex than under the DMA system of designation and ongoing obligations. The CCPC would welcome **further consideration and evaluation whether the DMA would provide an incentive for undertakings to reorganise their business** to shield, or remove, parts of their business from DMA obligations?

There is also the question of the capacity the digital sector has to influence developments in other sectors, and how the DMA would **apply to sectors that are not classed as part of the digital sector, but are digitalising themselves**. This could apply to areas such as payments which cross cut along multiple sectors, and technology such as AI becomes more integrated into physical products and offline services. As platform business models become more complex, **defining the boundaries of a digital sector may prove difficult.** Obligations such as those concerning advertising or retail on platforms will have some effects on other sectors,

but in other areas of the DMA (for example Article 12), the boundary of application is drawn narrowly around digital.[8]

[8] Article 12 – automatic requirement for a gatekeeper to inform the Commission of an intended acquisition, when involving 'another provider of core platform services or any other services provided in the digital sector'.

3. Interaction with Other Legislation

Basis for the Act – Existing Laws

It states in the preamble to the DMA that 'existing Union law does not address, or does not address effectively, the identified challenges to the well-functioning of the internal market posed by the conduct of gatekeepers, which are not necessarily dominant in competition law terms.' The Commission views the means by which some gatekeepers acquire users and use their data to improve services, or expand their scope, causes challenges to competition working effectively. The CCPC notes the recognition in the DMA that some gatekeeper platforms may benefit from network effects and can utilise 'extreme scale' to add new users at little, or zero, marginal cost. The creation of an ecosystem of many users, and the tying of their services, content or preferences to that specific ecosystem, can hinder consumers switching or 'multihoming', and makes challenge by competitors more difficult.

These factors may perpetuate a situation where data[9] (a key driver of development in the digital economy) may flow to gatekeepers, with vastly increased volume, variety and velocity[10], reinforcing their position, and leading to increased dependency upon gatekeepers by market participants. The CCPC welcomes that the DMA recognises existing Union law does not always address these new dynamics and that in some cases they can lead to imbalances in bargaining power and unfair practices towards consumer and business users.

Digital Services Act and Platform to Business Regulation

The DMA, because of its focus on the Digital Sector, and the *ex ante* application of obligations targeted at gatekeepers, would operate in conjunction with a wide range of Commission legislation and initiatives, including the New Consumer Agenda, the Commission's Digital Strategy, Strategy on Artificial Intelligence, the European Strategy for Data and the General Data Protection Regulation (GDPR).

It will be important to consider throughout negotiations how the DMA could operate in conjunction with the requirements for platforms outlined in the Digital Services Act (DSA).

[9] Data is defined to mean 'any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording'.

[10] OECD, 'Big Data: Bringing Competition Policy to the Digital Era, Background Note'.

The user requirement (45 million active monthly end users) for Core Platform Services mirrors the designation of Very Large Online Platforms in the DSA (it is noted the requirement for 10,000 business users in the DMA is not mirrored in the DSA). In the DSA, as drafted, Very Large Online Platforms are expected to assess systemic risks stemming from the functioning and use of their service, and take mitigating measures, in the field of online advertising or content moderation systems.

It is stated in the Explanatory Memorandum to the proposed DMA, that while it is more concerned with economic imbalances and unfair business practices, to the extent that the DSA is imposing stronger due diligence obligations on very large platforms, 'consistency will be ensured in defining the relevant criteria, while taking into account the different objectives of the initiatives.'

Although the DMA foresees EU level enforcement of a narrow set of unfair practices, unlike the more general application of transparency requirements in the P2B Regulation[11], the DMA anticipates the 'new EU-level Regulator can leverage the transparency that each of the online intermediation services and online search engines have to provide under the P2B Regulation on practices that could precisely be illegal under the list of obligations – if engaged in by gatekeepers'[12].

The CCPC is the designated public body in Ireland responsible for monitoring compliance with the P2B Regulation. The exchange of information arising from the operation of the P2B Regulation could involve new responsibilities for the CCPC. **It would be beneficial, if the DMA is substantially implemented, for there to be more communication and clarification over how any information exchange responsibilities would be exercised, and overlaps between the legislation managed.**

[11] Transposed into Irish legislation through SI No.256 of the 2020 European Union (Promoting fairness and transparency for business users of online intermediation services).
[12] In 1.54 'Compatibility and possible synergy with other appropriate instruments' in Legislative Financial Statement section.

4. Obligations on Gatekeepers

Obligations on Gatekeepers – Chapter 3

The DMA identifies 18 separate obligations that could apply to gatekeepers in the digital sector. The preamble reflects that obligations have been limited to practices that are particularly unfair and harmful, which can be identified in a clear and unambiguous manner, and for which there is sufficient experience. The CCPC believes that these obligations do relate to practices that can impact businesses and consumers, especially when they are, or perceive they are, 'locked in' to using a particular platform. The obligations cover a wide range of circumstances where this may be the case, and are a welcome basis to move forward on. However, the CCPC has noted below some areas where the obligations may not have a significant impact on unfair practices or lack of competition for businesses and consumers.

Once a Gatekeeper has been designated, a series of obligations - Article 5 ('self executing' obligations) and Article 6 (obligations susceptible to specifications) apply to them, relating to use of data, business-to-business transactions, and advertising. These have been identified by the Commission as practices that have, in the past and present, limited contestability or are unfair. The identification of these practices is welcome as it is based on previous cases and case law, and making this part of the DMA will make the obligations more clear to businesses and consumers.

This definition of what a gatekeeper is in a digital market and what negative impacts they can have on the market is welcome. However, **additional consideration is required of how different platforms operate across different markets, and where entrenched and durable positions in these markets, and the potential to operate gateways, exist.**

This may include assessing business incentives under each platform model, in order to ascertain to what level data accumulation or related activities are areas of concern. Articles 5 and 6 do not appear to differentiate in their interpretation and implementation between different platform structures, considering negative and positive implications they can have for competition. There are potential alternatives to this 'one size fits all' model that the Commission could consider. These include an approach whereby obligations were tailored to

each type of gatekeeper, or even individual company, as is being pursued in other jurisdictions. It also could consider a tighter regulatory approach, with more requirements relevant to technical standards, and more detailed regulation of how access is opened up to platform functions, mirroring the approach taken in an area such as telecoms regulation.

Potential Impacts of the Obligations

These obligations have the potential to bring benefits to businesses and consumers participating on these platforms, by targeting some of the structural problems in digital markets which have led to consumers and businesses being sometimes 'locked in' to gatekeepers. Giving consumers and businesses more flexibility to 'opt out' of platform requirements, limiting the negative effects on future competition of large data holdings by platforms, creating more interoperability and options for consumers to multihome or switch, and creating more transparency for business and consumer users, could benefit competition and consumer welfare in a mutually reinforcing way, stimulating innovation and choice by themselves. However, measures such as these run the risk of restricting innovation or the development of services, and it is important there is a mechanism for assessing effects in this area after implementation of the DMA. It is observed however, that the restriction in scope of the measures on interoperability and portability, will also limit the potential impact on innovation.

Businesses and Gatekeepers

Limiting the ability of platforms to stipulate 'most favoured nation' (MFN) clauses[13] will allow a variety of businesses[14], including SMEs, to retail their products in a way that takes account of the market power of a platform (which may provide services at the cost of a large commission, or the withholding of data that may even be eventually be used by the platform to compete against the business). The requirement proposed in the DMA is more stringent than that included in the P2B Regulations, which requires the platform to inform the relevant business of these practices. **Consideration should be given to how a final DMA requirement**

[13] Article 5, (b).

[14] Allowing business users to offer the same products or services on third party online intermediation services are prices or conditions that are different from those offered though the online intermediation services of the gatekeeper.

in this area is implemented in a way consistent with provision in the P2B Regulation and wider European legislation.

Allowing users to conclude contracts outside of the gatekeeper's systems and refrain from requiring businesses users to use, or interoperate with, gatekeeper business services[15], will give businesses and consumers more flexibility and choice over how they acquire services. This is pertinent at a point where the payments industry is being rapidly influenced by technology, and potential gatekeepers are increasing their involvement in payments systems.

Consumers, Business and Gatekeepers

Obligations that make the platform refrain from using personal data from one service with that obtained from other services[16], from using in competition with business users data generated by the core business activities of the seller[17], and providing business users with free, high quality and continuous information about the data generated by sales of their own products[18], means participating businesses will not be as vulnerable to the platform competing against them with 'their' data. Potential limitation of consumer data use across gatekeeper services[19] may reduce the 'pooling' and combination of significant volumes of their personal data across different services. The use of this pooling has left platforms able to offer advertising services that cannot be challenged effectively by competitors, which may lead to negative outcomes in the advertising market. [20]

Increasing interoperability between ancillary services[21], allowing the installation of 3rd party app stores[22], and continuous and real time access to data portability information[23], will allow consumers to explore alternatives outside platform ecosystems, and potentially reduce use of ancillary services that are dependent on use of a core platform service. However, the limitation of these obligations to ancillary services may also limit how many consumers are

[15] Article 5, (c).
[16] Article 5, (a).
[17] Article 6, (a).
[18] Article 6, (i).
[19] Article 5 (a) states this can only occur when the end user has been presented with the specific choice and consented to it.
[20] CMA, 'Online Platforms and Digital Advertising: Market Study Final Report'.
[21] Article 6, (f).
[22] Article 6, (c).
[23] Article 6, (h).

able to seamlessly switch or multihome services, which in turn would leave the gatekeepers concerned with continual advantages in gathering data and product/service development**. It would be useful for the Commission to build an ongoing assessment of the value, and lasting value, of data into implementation of the DMA.** Consumers and businesses should not become locked into a platform, with no viable option to switch to, or multihome in parallel.

Advertising Market

Requiring more information about search engine ranking, allowing advertisers and publishers the information to carry out an advert inventory, and receiving more information about the price paid for adverts, could provide more transparency in an area where platforms have been effectively able to act across multiple sides of the market (advertiser and agency), with distinct information asymmetries to market participants on either side.

Points for Clarification and Potential Expansion

However, despite the potential of these measures to benefit competition and participants in digital markets, there are points that may need clarification or modification. Obligations relating to a platform being 'in competition with' other products on their own platform may need closer definition, with platforms able to offer many different types of product, some with new innovations or features. **The requirements around 'continuous', or 'high quality' information provided to business or consumer users need closer definition. Similarly, terms such as 'Ancillary Services' or 'effective use' need to be clarified in the context of their use in this section.**

There is also the question of how these requirements will be made operational across all the parts of a Platform that qualify. Platforms have been able to gain users and data by operating across markets, but within distinct 'spheres' that partially overlap – for example advert financed businesses, transaction businesses, and operating systems/app stores. It is unclear if these obligations can successfully apply across all spheres (for example they seem more targeted at freeing up ancillary than core services). They will have to be sufficiently flexible to cope with evolving, and new, models of gatekeepers. [24]

[24] Christina Caffarra and Fiona Scott Morton, Vox EU, 'The European Commission Digital Markets Act: A Translation'.

The differences between platform business models and the technology and protocols they are based on may make implementing data portability and interoperability requirements particularly complex. The principle can apply across gatekeepers, but in practice the technical standards to do so will need to be detailed, and potentially unique to each gatekeeper or at least type of gatekeeper. The Commission must ensure they have the appropriately resourced expertise to do so.

At present, many of the obligations do not appear to take account of how they are transmitted to users. Measures such as a business utilising their 'own' data, or consumers taking advantage of new interoperability between ancillary services, will only benefit competition if they are actively used. Willingness to do so could be affected by wider awareness, how options are communicated, and how easily they can be taken up. Consideration should be given to how a platform may provide and present them to users – could this play on biases, inertia, or incorporate techniques such as steering or dark patterns, and what guidance may the Commission give on the subject? [25] [26] The CCPC welcomes the proposed requirement to enable users to have to freely opt in to the combination of their data from different sources. It is stated in the DMA that this 'should be proactively presented to the end user in an explicit, clear and straightforward manner.'[27]

The CCPC also notes that the proposals do not allow platform competitors access to fuller datasets to train algorithms (instead prioritising platform participant access to their own data), and interoperability and portability is linked mostly to ancillary services, meaning competition may be limited in core services, with data portability still dependent on multi homing. The draft DMA, while restricting data pooling from different services offered by the platform, may also not cover pooling under the many (and increasing) data sources platforms have access to, including advertising and app tools, connected devices, and voice activated devices.[28]

[25] European Parliament, Study Requested by the European Parliament's Committee on the Internal Market and Consumer Protection, 'New Aspects and Challenges in Consumer Protection: Digital Services and Artificial Intelligence'.
[26] CERRE, 'Digital Markets Act: Recommendations Paper'.
[27] Paragraph 36 – Preamble to the DMA.
[28] ACCC, 'Digital Platform Services Inquiry: Interim Report'.

Under the proposed DMA, the list of obligations will be regularly reviewed. It would be particularly interesting, over the medium term, to gauge the effect of the obligations on emerging digital sectors where competition may not be *in* the market but *for* the market between gatekeepers. This may be driven by network effects and the generation of increasing value to scale, data and technological investment required, (examples of this may be voice activated services, or web services), or an existing gatekeeper creating a new market with low to zero pricing that targets existing users of other gatekeeper services. If, in the future, markets have developed in a similar fashion, there may be a need to assess the merit of strengthening obligations in some areas.

5. Market Investigations

The DMA will give the Commission new powers to carry out Market Investigations which could be applied to a range of different questions. The CCPC welcomes the broad scope of the application of market investigations. As pointed out above, identifying new unfair practices and new platforms that are acting as gatekeepers will mean the DMA can evolve in line with developments in the digital sector. Market Investigations could assist in identifying these practices at an early stage, or requesting information on new practices within platforms where the degree of transparency to public authorities is not very high.

This section sets out the rules for carrying out market investigations that designate platforms as gatekeepers (Article 15). When such a Market Investigation has identified systemic non-compliance (Article 16) with Article 5 or 6 obligations that has further strengthened their gatekeeper position (Article 3), any proportionate behavioural remedies (or structural when there are not effective behavioural remedies available) may be imposed. Article 17 provides that the Commission may conduct a market investigation to consider whether a service may be added to the list of core platform services, or to detect practices that are not addressed in the regulation.

The system for remedies is tied to the system of obligations under Articles 5 and 6. The CCPC also notes Article 33 provides for the opening of a market investigation when three or more Member States request the European Commission to do so, because they consider that there are reasonable grounds to suspect that a provider of core platform services should be designated as a gatekeeper.

Future designation of gatekeepers through a Market Investigation is where the DMA will have to balance a variety of factors. As stated above, assessment of a potential gatekeeper acting across a variety of markets and on multiple sides of markets (both online and offline)[29], and defining the boundaries of the digital sector of interest, to scrutinize the effect the platform

[29] Federal Ministry for Economic Affairs and Energy, 'A New Competition Framework for the Digital Economy: Report by the Commission 'Competition Law 4.0'.

is having on a market, will be a complex area relevant to the DMA. [30] **It is suggested that these market investigations should reflect these complexities and provide a comprehensive catalogue of where negative impacts are being caused by a platform in the digital sector.** This may have effects which filter through elsewhere, for example assisting bodies such as the CCPC in monitoring for compliance with the P2B Regulations, or encouraging businesses using platforms to make use of complaint and query systems mandated by this regulation. **Clarity on the procedures by which a body such as the CCPC could feed through the perspective of Irish consumers and businesses into a market investigation would be beneficial.** Assessment will have to be open to new methodologies that may show a platform is having a gatekeeping effect on a digital market. [31] **Consideration should also be given to how the proposed market investigations will interact with similar powers that already exist in national law in some EU member states.**

[30] European Parliament, 'New Developments in Digital Services: Short – (2021), Medium – (2025) and Long-Term (2030) Perspectives and the Implications for the Digital Services Act'.
[31] OECD, 'Abuse of Dominance in Digital Markets'.

6. Investigative and Enforcement Powers

The CCPC notes the new powers in the DMA that the Commission can utilise in investigating and enforcing compliance. This section outlines the powers the Commission can use to investigate non-compliance, and enforce compliance decisions, prominent among them fines and interim measures. While the CCPC believes these powers will enable the Commission to enact measures against non-complying gatekeepers swiftly, they should be perhaps analysed in the context of the Commission's recent experiences with measures imposed on platforms.

Specifically, there have been different opinions shared about whether fines have been a sufficient deterrent to platform behaviours that have had a negative impact on competition in the market, or on consumers. However, non-financial measures against platforms, such as in the *Google Shopping* case, have required a high degree of ongoing management and co-ordination, even after their imposition. It may be that the investigative and enforcement powers proposed in the DMA, while being useful, fall into the same position.

These measures proposed in the DMA allow for interim measures, non-compliance decisions, fines upon the gatekeeper of up to 10% of their total turnover, and periodic penalty payments of 5% of daily turnover. These may deter breaches of obligations by gatekeepers, and increase the probability the obligations detailed in the DMA will work consistently across platforms.

However, because remedies are to a large extent tied to the obligations, this section does not cover one aspect which may have contributed to platforms accumulating data and acting as gatekeepers – the facilitation of digital mergers and so-called 'killer acquisitions'. This is an area where some of the literature has expressed concern that too much emphasis has been given to the risk of incorrect intervention (Type One Errors) versus the risk of incorrect clearance (Type Two Errors).[32] Article 31 places an obligation on platforms to inform the Commission of planned acquisitions in the digital sector, but does not impose additional requirements. Although obligations may assist businesses participants on a platform, if they fail to strengthen competition and challenges to gatekeepers, they may only partially mitigate negative impacts upon competition. **The CCPC suggests that the Commission should consider**

[32] Lear, 'Ex-post Assessment of Merger Control Decisions in Digital Markets'.

whether any further action is needed digital mergers beyond the notification requirement and to relate those requirements to the ongoing evaluation of the Market Definition Notice[33].

There is also the question of whether implementation would require a stand-alone regulator to oversee compliance and remedies, and if there was such a need, what relationship it would have to NCAs. The CCPC notes the discussion in the study commissioned by the European Parliament's Internal Market and Consumer Protection Committee – that a central Regulator would function best as a specialised agency, situated outside DG Comp and DG Internal Market. [34] It would be beneficial, in addition to the information about staffing and costing contained in the DMA, if there Commission was able to set out more detail the scope and type of work it foresees the new agency doing. The CCPC also notes the provision in Article 32 of the proposed DMA that the Commission shall be assisted in decisions by a Digital Markets Advisory Committee (with representatives appointed by Member States), with a non-binding advisory power.

[33] https://ec.europa.eu/competition/consultations/2020_market_definition_notice/index_en.html
[34] European Parliament, Study: requested by the IMCO Committee, 'Enforcement and Cooperation Between Member States: E Commerce and the Future Digital Services Act'.

7. Conclusion

The clarity the DMA proposes by defining gatekeepers, and in turn, identifying how negative impacts upon business and consumer market participants manifest, has the potential to make consumers and businesses less reliant on individual platforms, with more resultant flexibility to modify the level of mediation by a platform. However, how the measures apply across different areas of platform activity, and how they may prevent market tipping, require further consideration. This submission has highlighted a range of areas where clarification and more information would be useful to assess the workings and impact of, and the evidence base for, the DMA. The CCPC is available to discuss any of the matters raised in this submission further with the Department of Enterprise, Trade and Employment.

Ends