

Public Consultation BoR (21)34 Draft BEREC Report on the gatekeepers

Fields marked with * are mandatory.

General information

On 15 December 2020, the European Commission (EC) published a Digital Markets Act (DMA) proposal, introducing a series of rules for platforms acting as gatekeepers in the digital sector. In September 2020, BEREC proposed a regulatory model for an ex ante intervention in its [response to the Digital Service Act Package \(DSA\) and the New Competition Tool public consultations](#).

During its 46th (virtual) plenary meeting (11 March 2021), the BEREC Board of Regulators has approved the draft [BEREC Report on the ex ante regulation of digital gatekeepers \(BoR \(21\) 34\)](#), which elaborates current BEREC's proposals in further detail and which is now open for public consultation. BEREC encourages all types of stakeholders, including civil society, consumers and citizens, to provide their views on the BEREC's proposals.

Your details

*Language of your contribution

English

*First Name

Confindustria Radio Televisioni

*Surname

Confindustria Radio Televisioni

*Email

confindustriaradiotv.it

Organisation name (in case you are replying on behalf of your organisation)

Confindustria Radio Televisioni

*Country of origin

Italy

* I agree with the [personal data protection provisions](#).

Practical details of the public consultation

Stakeholders are invited to comment and provide their views on the different chapters of the draft report following its structure:

Chapter 1 - Executive summary

Chapter 2 - Introduction

Chapter 3 - Previous work done by BEREC on digital environments

Chapter 4 - Objectives of the regulatory intervention

Chapter 5 - The scope of the regulatory intervention

Chapter 6 - Designation of gatekeepers

Chapter 7 - Regulatory measures for gatekeepers

Chapter 8 - Enforcement

Chapter 9 - Enhancing assistance from National Independent Authorities for an effective enforcement

Chapter 10 - Conclusions

Chapter 11 - Future work

Annex I: Two-Pager on effective definition of measures

Annex II: Two-Pager on dispute resolution

Annex III: Two-Pager on national support

Annex IV: Brief on ex-ante regulation

Stakeholders may also upload a document as a part of their contribution, see below.

In order to facilitate processing of the responses, the comments provided should clearly refer to the certain sections / subsections / paragraphs of the draft report.

Contributions should preferably be sent in English.

Stakeholder may submit their contributions **by 4 May 2021 close of business**.

In accordance with the BEREC policy on public consultations, BEREC will publish all contributions and a summary of the contributions, respecting confidentiality requests. Any such requests should clearly indicate which information is considered confidential.

Public consultation

Please indicate comments on Chapter 1- Executive summary and Chapter 2- Introduction

10000 character(s) maximum

DMA represents an important opportunity to introduce a regulation of the activity of large platforms, which are taking over the entire IT ecosystem, with regard to the economic system of the audiovisual sector. The BEREC document certainly goes in the right direction, as it is aimed at reinforcing the effectiveness of future regulations. It is particularly appreciated the attention to the necessity of a “ex ante asymmetric regulatory intervention towards these digital gatekeepers which is necessary to ensure that competition and innovation are encouraged, that end-users’ interests are protected and that the digital environment is open and competitive”. Despite this, it is considered necessary to focus on some critical points, as follows.

Please indicate comments on Chapter 3 - Work done by BEREC on digital environments

10000 character(s) maximum

CRTV disagrees with BEREC's opinion that the scope of the DMA should not extend to those services that are already governed by the European Electronic Communications Code.

The Code has identified the concept of a market that is not effectively competitive for companies with significant market power, i.e. companies that hold a position equivalent to a dominant position.

It is believed that the problems regulated by the DMA are of a different nature, since, although there are clear similarities between gatekeeping and competitive offenses, the former arises in a very peculiar way.

And indeed, the blocking capacity that platforms are able to exercise both towards the services of their competitors and towards suppliers, has particularities that cannot be assimilated to the cases that were kept in mind by the Commercial Communications Code.

We therefore insist that the application of the DMA must be broad and include all those who, through their control of the digital market, can place barriers to the entry of suppliers or other competitors.

Please indicate comments on Chapter 4 - Objectives of the regulatory intervention

10000 character(s) maximum

It is not very clear how can be provided “a set of directly-applicable obligations only applying to gatekeeper(s) in a particular CPS”. We agree that is necessary “to adjust such measures to the context in which they are applied”, but the obligations have to be certain and easily applicable, in order not to risk creating different interpretations and consequent disputes.

Please indicate comments on Chapter 5 - The scope of the regulatory intervention

10000 character(s) maximum

Please indicate comments on Chapter 6 - Designation of gatekeepers

10000 character(s) maximum

Please indicate comments on Chapter 7 - Regulatory measures for gatekeepers

10000 character(s) maximum

Consensus is expressed with respect to the idea of extending the regulatory dialogue not only to the platforms involved, but to all stakeholders. The involvement, in this activity, of the representatives of all the categories involved (in particular, of the audiovisual sector operators) will be important.

Please indicate comments on Chapter 8 - Enforcement

10000 character(s) maximum

BEREC considers that "it is essential to include a dispute resolution mechanism in the DMA proposal". This statement is acceptable, however it is also necessary to protect the possibility of recourse to national courts without excessive constraints

Please indicate comments on Chapter 9 - Enhancing assistance from National Independent Authorities for an effective enforcement

10000 character(s) maximum

The proposal to provide national Authorities with more investigation tools in relation to the activities of gatekeepers is also welcome. In order to increase its effectiveness, art. 9.2.b should give the authority more room for maneuver that allows the provider to request not only the information already collected but also all the data in their availability (as already provided for by the eCommerce Directive, art. 15.2). Article 9.2.b of the DMA appears too restrictive in the part in which it provides: "the order requires the provider only to provide information already collected in order to provide the service and which are under its control;". This step should be amended to allow the authorities to be able to request from the provider not only the information already collected but all the data in its availability, as already provided for by Article 15.2 of the eCommerce Directive.

Please indicate comments on Chapter 10 - Conclusions

10000 character(s) maximum

Please indicate comments on Chapter 11 - Future work

10000 character(s) maximum

Please indicate your comments on Annex I: Two-Pager on effective definition of measures

10000 character(s) maximum

Please indicate your comments on Annex II: Two-Pager on dispute resolution

10000 character(s) maximum

Please indicate your comments on Annex III: Two-Pager on national support

10000 character(s) maximum

Please indicate your comments on Annex IV: Brief on ex-ante regulation

10000 character(s) maximum

Please upload your file (max file size is 1MB)

Please specify which part of your response should be treated as confidential, if any.

THANK YOU FOR YOUR CONTRIBUTION

Contact

PC_gatekeepers_regulation@bereg.europa.eu
