

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

Duck Duck Go,Inc.

*Surname

Duck Duck Go,Inc.

*Email

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

Duck Duck Go, Inc.

*Country of origin

United States

* 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

BEREC's draft report provides for a sound, effective enforcement framework, building on the breadth of experience of its members in regulating complex technological markets.

We welcome the addition of "open internet" principles as a founding principle of the DMA, in particular the recognition that the neutrality of devices as "platforms" is as important as the neutrality of networks. Like BEREC, we find that default settings are a powerful way to lock in consumers and argue that they should be addressed by the regulation. In our view, gatekeepers should not be able to set as default, including by way of pre-installation, a core platform service (CPS) on another core platform service (should it be their own platform or a third-party platform). Preference menus (i.e., letting consumers choose their preferred default service among a list of options displayed according to their market share) should be a prominent remedy in the regulator's toolbox. In search, we've shown that preference menus can be a great means to diversify the market while empowering consumers, to the extent that sufficient attention is given to their design and implementation. Search engines should be able, on their app or websites, to prompt users back to the preference menu so that they can programmatically change all of the device's search defaults. Currently, Google does not have this available on any Android phone. Without regulatory requirements, Google will likely never change this – for an example outside the preference menu context, Google requires users to take more than 15 steps to merely do a subset of the preference menu outcomes, such as changing the search default in Chrome (see <https://spreadprivacy.com/one-click-away/>). We provide more details on our proposals and the flaws of the existing Google preference menu on Android here: <https://spreadprivacy.com/tag/preference/>

Because consumers mainly access the web through browsers, the search engine default on browsers is critical for search engines. For this reason, web browsers should be considered a core platform service, so the regulator can prohibit companies from securing the most important search default on a user's device. BEREC's ongoing work on the main bottlenecks of the Internet ecosystem will be important in that regard and we stand ready to provide BEREC with appropriate data stemming from our market experience. We attach here a White Paper on the Search Engine Market, which shows the role of browsers in establishing and maintaining Google's dominance in search: https://staticcdn.duckduckgo.com/press/DuckDuckGo-White-Paper-on-search_March-2021.pdf

We commend BEREC's three-pronged approach for defining, adapting, and imposing obligations. The proposed mix of directly applicable obligations, sector-specific obligations, and flexible remedies based on the regulation's core principles will give the framework the strength and adaptability needed for effective enforcement. Digital markets evolve fast, and the regulator should have discretion in designing appropriate remedies against novel

practices, guided by the principle of consumer empowerment.

We share BEREC's views on setting up participatory mechanisms of enforcement, inspired by the experience of BEREC members in managing structured avenues for stakeholder dialogue at the technical level. One important reason for the failure of the Android preference menu, implemented as a remedy to Google's illegal behavior on Android (see 2018 Android decision announcement), was the lack of input from other market players during the Google-EC discussions (e.g., auction format, design features, eligibility, etc.). Trapped in an asymmetric "dialogue" with Google, the Commission wasn't able to comprehend the impact of Google's proposed mechanism on the mobile search engine market. In fast-moving, complex digital markets, a swift and flexible approach to remedial design, which includes sufficient technical expertise and innovative approaches such as A/B testing, will be necessary.

Please find attached DuckDuckGo's position on the proposed Digital Markets Act for further details.

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

10000 character(s) maximum

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

10000 character(s) maximum

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

Please indicate comments on Chapter 8 - Enforcement

10000 character(s) maximum

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

10000 character(s) maximum

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)

fb00865e-93a5-41af-8ce5-f606618ec564

/DuckDuckGo_s_position_on_the_Digital_Markets_Act_March_2021.pdf

84c2e2be-06c9-4e87-9421-6b87ae9c1029/DuckDuckGo_s_White_Paper_on_search_March_2021.pdf

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
