



EMERG Report on Digital platforms

Digital platforms markets regulation (DIGIT) Working Group

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1. Introduction

The fast-paced digitalisation process and the relevant growing and widespread usage of digital tools have highly impacted individual everyday life and, more generally, contemporary societies and economies. Notably, the recent rapid growth of digital platforms, such as online marketplaces, social networks and operating systems, poses many new challenges, especially from an economic perspective, potentially affecting NRAs' activities and goals or even requiring regulatory intervention.

In this fast-changing scenario, in December 2020 the European Commission presented two legislative proposals on digital services and digital markets, the *Digital Services Act* and the *Digital Markets Act*, aiming at better protecting consumers and their fundamental rights online and, at the same time, leading to fairer and more open digital markets. In particular the Digital Services Act introduces EU-wide obligations that “*will apply to all digital services that connect consumers to goods, services or content, including new procedures for faster removal of illegal content as well as comprehensive protection for users’ fundamental rights online*”. On the other hand, the Digital Markets Act “*addresses the negative consequences arising from certain behaviours by platforms acting as digital “gatekeepers” to the single market. These are platforms that have a significant impact on the internal market, serve as*

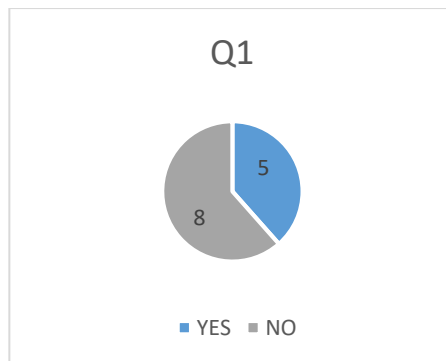
an important gateway for business users to reach their customers, and which enjoy, or will foreseeably enjoy, an entrenched and durable position. This can grant them the power to act as private rule-makers and to function as bottlenecks between businesses and consumers.”¹

In order to provide an in-depth analysis of these new legislative proposals and of the related challenges, as well as to identify the potential competition issues currently at stake, the EMERG Digital platforms markets regulation (DIGIT) working group has organized a joint workshop with BEREC, held on November 4th, 2021. The workshop hosted speakers from DETECON, BEREC and Michigan State University and was joined by over 60 experts from 15 different countries, including experts from Eastern Partnership (EaPeReg). Among the main topics covered, the ongoing EU regulatory initiatives for the digital sector and the implications for the electronic communications sector (DETECON), the BEREC Report on the *ex-ante* regulation of digital gatekeepers (BEREC) and a research overview on platform competition (Michigan State University). The full agenda of the workshop and the relevant material can be accessed on the EMERG website².

Furthermore, starting from September 2021, the DIGIT WG prepared and distributed a questionnaire so as to collect information on digital platforms key aspects within the EMERG countries. 14 EMERG countries took part in the survey (Bosnia and Herzegovina, Croatia, Cyprus, France, Germany, Israel, Italy, Malta, Montenegro, Portugal, Slovenia, Spain, Switzerland and Turkey), whose in-depth analysis is reported in the following paragraph 2.

2. DIGIT survey report

Question 1 - Has your country any initiative (legal/strategy/plan, etc.) in place regarding OTT and/or digital platforms?



YES: Croatia, France, Israel, Italy, Spain
 NO: Bosnia Herzegovina, Cyprus, Germany, Malta, Montenegro, Slovenia, Switzerland, Turkey
 No information provided: Portugal

5 out of 13 respondents reported their country having some kind of initiative regarding OTT and/or digital platform. In particular:

¹Full press release available at this link: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2347

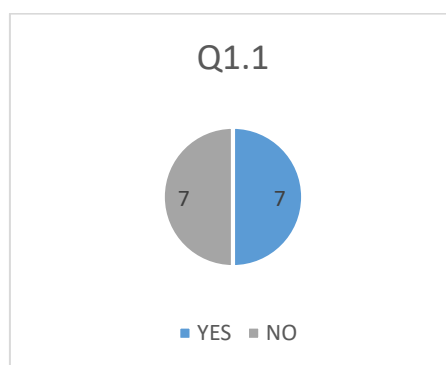
²<http://www.emergonline.org/2021/11/08/emerg-berec-joint-workshop-on-digital-platforms-regulation-4-november-2021-press-release-and-presentations/>

- **AGCOM** reported that the Italian Council of Ministers, in November 2021, has adopted a legislative initiative, namely a draft annual bill on competition policy (“the Draft Bill”). The Draft Bill is currently under discussion at the Italian Parliament, and it covers a broad spectrum of topics, including local public services, energy, transportation and digital services. One of the highlights of the Draft Bill is the update of the Italian rules on abuse of economic dependence, specifically aimed at targeting abuse of economic dependence by large online platform providers. Economic dependence occurs when an undertaking enjoys a position of significant strength vis-à-vis its counterparties. More specifically, Article 9, paragraph 1 of the Italian law no. 192/1998 characterizes a relationship of economic dependence as one where an undertaking can impose “an excessive imbalance between the rights and obligations” of the parties. Italian law no. 192/1998 prohibits the abuse of economic dependence, regardless of the economic sector involved. The Draft Bill proposes to introduce a (rebuttable) presumption of economic dependence when dealing with digital platforms that play a “key role” in reaching end-users and/or suppliers. More specifically, Article 29 of the Draft Bill provides that the following shall be added to Article 9 of the Italian law no. 192/1998: *“economic dependence is presumed (subject to proof to the contrary) if an undertaking uses intermediation services provided by a digital platform that plays a key role in reaching end users or suppliers, also thanks to network effects or availability of data”*.
- **ARCEP** reported that, with regard to economic regulation, France has no legal initiative concerning the regulation of OTTs or digital platforms. However, France plays a role in the negotiation currently taking place at the European level concerning the Digital Market Act proposal, following P2B Regulation. Besides legislative initiatives, several administrations have implemented specific task forces to monitor platforms’ activities and act if necessary, on the ground of e.g. competition law or consumer law. For instance, the Direction Général des entreprises (DGE) created the PEREN in charge of supporting other administration in order to collect relevant data. Furthermore, following the transposition of the European electronic communication code (EECC) which took place this year, Arcep has new powers regarding OTTs. Regarding regulation on contents, since 2004 France has a legal framework in place to determine the liability of online intermediaries regarding illegal contents and to facilitate the taking down of illegal contents. This piece of legislation has evolved since then. This framework is built on the Directive 2000/31/EU on electronic commerce which is currently undergoing an overhaul (i.e. Digital Services Act proposal).
- **CNMC** mentioned that Spain has adopted several initiatives regarding OTT and/or digital platforms, such as General Law 9/14 for Telecommunications, General Law 7/2010 for Audiovisual Communications and the Spanish Digital Agenda.
- **HAKOM** referred that, with regard to online intermediation services and online search engines, Croatia has enacted a new law implementing P2B Regulation (Official Gazette 138/20) which regulates areas not covered by the Regulation, such as ensuring effective implementation, defining measures against violations of the Regulation, inspection (carried out by the State Inspectorate) and misdemeanor proceedings and measures.
- **MOC** reported that in Israel a public committee (the “Folkman Committee”) has presented its recommendations to the Minister on the subject of OTT audio-visual services. This framework includes the regulation of all audio-visual services in a technologically neutral way, along with a requirement by non-local providers to

undertake local high-quality content creation. No action is currently envisioned on other “platform services” under the Digital Market Act.

- **RAK** reported that there is not such initiative in Bosnia Herzegovina but, in accordance with the Directive 2010/13/EU which has been transposed to the B-H regulatory framework, RAK regulates audio-visual media services provided through the Internet, mostly VOD. This includes broadcasting through video-sharing platforms, mainly Youtube channels of the broadcasters.

Question 1.1 - Has your country adopted any regulation on Telecommunications the scope of which includes OTTs?



YES: France, Germany, Israel, Italy, Malta, Spain, Switzerland
NO: Bosnia Herzegovina, Croatia, Cyprus, Montenegro, Portugal, Slovenia, Turkey

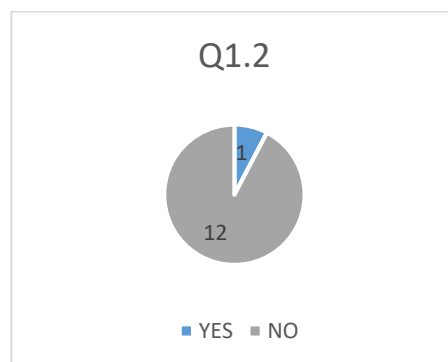
7 out of 14 respondents reported their country having adopted a regulation on Telecommunications that comprises OTTs. It is interesting to note that the majority of them mentioned Number Independent Interpersonal Communication Services (NI-ICS) as an example of regulated OTT service. In particular:

- **AGCOM** reported that The Italian Council of Ministers approved the Legislative Decree n. 207/2021, transposing in the national legislative framework the new European Electronic Communication Code (EU Directive 2018/1972). The Directive includes some provisions, typical of the regulation of traditional telecommunication services, that are now extended and also applicable to OTTs. As an example, interoperability provisions contained in art. 61.2 letter c) of the Directive are applicable, in some circumstances, also to NI-ICS when end-to-end connectivity among end users should be assured.
- **ARCEP** mentioned that France transposed the EECC this year which provides new competences and powers for NRAs regarding OTTs. First, OTTs which qualify as electronic communication services (ECS) may be regulated by NRAs. This concerns for instance NI-ICS. Second, where the information collected from operators is insufficient for national regulatory authorities, other competent authorities and BEREC to carry out their regulatory tasks under Union law, such information may be inquired from other relevant undertakings active in the electronic communications or closely related sectors.
- **BAKOM** referred that in Switzerland the general rules on telecommunications apply to NI-ICS.
- **BNetzA** mentioned that the German Telecommunications Modernisation Act revises the current Telecommunications Act. One goal of this is to transpose Directive (EU)

2018/1972 establishing the European Electronic Communications Code, from 2018, into German law. The Act recasts the regulation of OTT-I services (messaging, webmail services etc.). As “interpersonal communications services”, these are now subject to the provisions of Germany’s Telecommunications Act (Telekommunikationsgesetz). The Telecommunications Modernisation Act (Telekommunikationsmodernisierungsgesetz) came into force on 1 December 2021.

- **CNMC** referred in this field the following regulations: General Law 9/2014 for Telecommunications, currently draft bill under parliamentary procedure that will transpose the EECC, the Recovery and Resilience Plan, Organic Law 3/2018 for Data Protection.
- **MCA** reported that, like other EU countries, Malta has transposed the Electronic Communications Code into national law. This legislation regulates certain aspects of end user rights in terms of ‘*number-independent interpersonal communication services*’, types of OTTs like WhatsApp and FB Messenger.
- **MOC** mentioned that in Israel OTT telephony is fully integrated into the regulatory structure (interconnect, numbering, etc.).

Question 1.2 - Has your country adopted any legal initiative or similar to the European DMA, touching upon competition in digital markets?



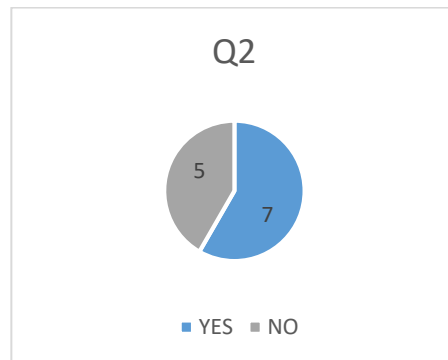
YES: Germany

NO: Bosnia Herzegovina, Croatia, Cyprus, France, Israel, Italy, Malta, Montenegro, Slovenia, Spain, Switzerland, Turkey

No information provided: Portugal

Among the 13 respondents, only **BNetzA** reported Germany having adopted a legal initiative similar to the DMA. In particular, BNetzA referred that the 10th amendment to the German Competition Act has entered into force in January 2021. The newly introduced Section 19a represents the most important change as the Bundeskartellamt will now be able to intervene at an early stage in cases where competition is threatened by certain large digital companies. As a preventive measure the Bundeskartellamt can prohibit certain types of conduct by companies which, due to their strategic position and their resources, are of paramount significance for competition across markets. Such conduct includes e.g. the self-preferencing of a group’s own services or impeding third companies from entering the market by processing data relevant for competition.

Question 2 - Has your NRA any competences in the digital markets?



YES: France, Germany, Italy, Malta, Portugal, Spain, Switzerland

NO: Croatia, Israel, Montenegro, Slovenia, Turkey

No information provided: Bosnia Herzegovina, Cyprus

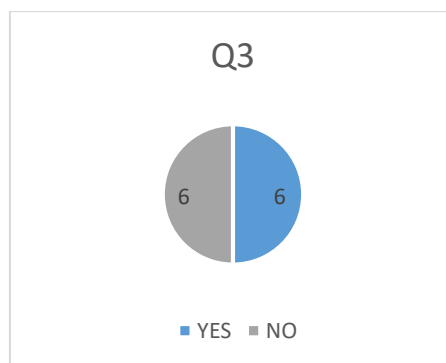
7 out of 12 respondents reported to have competence, to some extent, in digital markets. In particular:

- **AGCOM** reported to be competent in several areas of digital markets. As far as online intermediation services and search engines are concerned, the Italian Parliament has adopted a Budgetary Law which attributes to AGCOM the enforcement powers established at national level by EU Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services. Another body of national legislation involving online intermediary services regards secondary ticketing national legislation. More precisely, Law n. 232/2016 has introduced a general ban on massive secondary ticketing practices for tickets of entertainment live events and shows, including online secondary sales carried out by secondary ticketing websites. AGCOM is responsible for the implementation of the said ban. As far as video-sharing platforms, online search engines, online social networking services and advertising services are concerned, AGCOM has significant competences as it is responsible for the application of the national and EU legislation in the audiovisual sector. At EU level, the audiovisual Media Services Directive (AVMSD) has been recently reviewed and updated (Directive 1808/2018). The revised AVMSD, transposed in Italy through the Legislative Decree 8th of November 2021, n. 208, strengthens the role of AGCOM in digital world by reinforcing the « country of origin principle », and by extending certain audiovisual rules to videosharing platforms and social media services. AGCOM has also some additional statutory powers, coming from national legislation, regarding specific rules on external pluralism, that can also involve search engines, social networking sites and online advertising services. Indeed, with regards to external pluralism, AGCOM has significant powers related to some limitations for undertakings operating in the broadcasting and audiovisual media market (e.g.: cross-sectoral ownership in telecommunication and audiovisual markets), and, at the same time, it attributes to AGCOM powers to oversee compliance with those restrictions. According to this body of legislation, AGCOM should verify the existence of dominant positions within the «Sistema Integrato delle Comunicazioni (Integrated Communications System), called «SIC». Within this SIC, are included daily newspapers and periodicals, radio and audiovisual media services, cinema, online advertising providers also on digital platforms, including search engines and social networks. Moreover, AGCOM also ensures that operators fulfil the obligation to subscribe to a national registry of

communication providers, which is relevant for checking transparency on the ownership structure of communication providers. This obligation also applies to online players (audiovisual service providers, video-sharing platforms, search engines and online intermediaries encompassed in the P2B Regulation). In addition to that, AGCOM has some significant powers in the enforcement of some specific bans on advertising practices that can impact the online world. Indeed, AGCOM is responsible for enforcing Article 9 of the Italian Law Decree no. 87/2018 (the so called «Dignity Decree») which prohibits any form of advertising, sponsorship or communication presenting promotional content relating to games or betting with cash prizes. This ban can impact also on video-sharing platforms, search engines, social media and all online advertising players, as it covers any form of advertising, including indirect advertising, however carried out and by any means, including TV and radio broadcasting, the press, billboards, internet, digital and electronic tools, and social media. Finally, some specific competences that, in general terms, are attributed to AGCOM and can affect market players in the online world are related to the protection of copyright in the online world. On this matter, Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive) has been recently transposed by Legislative Decree no. 177 of 8 November 2021, entered into force on 12 December 2021.

- **ARCEP** reported to be competent to regulate any service which qualify as electronic communication services. It concerns explicitly NI-ICS. Arcep may also collect, under certain conditions, information from relevant undertakings active in the electronic communications or closely related sectors.
- **ANACOM** mentioned to be the central supervisory authority for e-commerce, within the field of application of the national law which transposed the e-commerce Directive, without prejudice to the powers of sectoral supervisory authorities.
- **BAKOM** reported having competences on NI-ICS as they are subject to general rules on telecommunication services.
- **BNetzA** referred to be developing concepts and methods to support the initiative 'smart networks' launched by the Federal Ministry for Economic Affairs and Energy. The authority deals extensively with digitisation issues, with a particular focus on the network sectors electricity, gas, telecommunications, postal and railway. The Bundesnetzagentur's regulatory activities also raise a variety of questions related to digital transformation and interconnectivity processes. One of the core aims in particular is to identify the implications of the digitisation with respect to the regulatory objectives in each of the sectors.
- **CNMC** reported to have competences in Digital markets regarding electronic communications and audiovisual content.
- **MCA** mentioned to be the competent authority for the e-commerce Directive and for trust services under the Regulation on electronic identification and trust services for electronic transactions in the internal market.

Question 3 - Are there any other National institutions that have legal competencies regarding the digital markets and services, considering a holistic approach? If YES, to what extent?



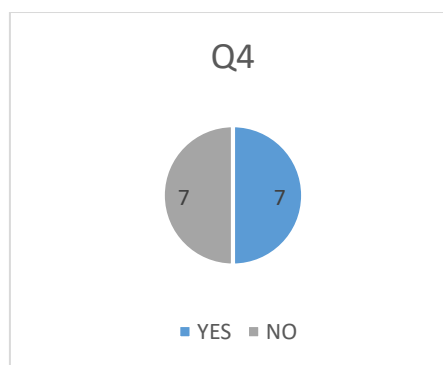
*YES: Croatia, France, Israel, Portugal, Spain, Switzerland
NO: Bosnia Herzegovina, Germany, Italy, Malta, Slovenia, Turkey
No information provided: Cyprus, Montenegro*

6 out of 12 respondents reported the presence in their State of other National institutions with legal competences regarding digital markets and services. Among these, in particular:

- **ANACOM** reported that in Portugal the Competition Authority has competences in the digital sector, although in the specific context of the DMA a competent national authority has not been identified yet.
- **ARCEP** mentioned the following French institutions to have competences in the digital sector:
 - The French competition Authority (NCA) is competent to address any infringement regarding competition law.
 - The Ministry for Economy which has an administration (DGCCRF Directorate-General for Competition, Consumer Affairs and Fraud Control) in charge of applying competition law (competence shared with the competition Authority), unfair business practices law, and consumer law.
 - The French audiovisual regulator (CSA) is competent to impose certain obligations on video-sharing platform providers based on the Audiovisual Media Services Directive transposed in France in December 2020.
 - The French data protection and privacy authority (CNIL) is competent on the protection of natural persons with regard to the processing of personal data and on the free movement of such data based on the General Data Protection Regulation.
- **BAKOM** reported that in Switzerland the Competition Commission is in charge of other competences on Digital Markets.
- **BTK** mentioned that, in Turkey, the competent institution has not been determined yet. However, the Competition Authority has announced that it is drafting a legislation on digital markets. On the other hand, developments and foreign studies in this regard are being followed by BTK, as well. According to BTK, due to its comprehensive experience, it would be more accurate to determine national regulatory authorities as the competent institution for the economic regulation of digital markets.
- **CNMC** reported the following Spanish institutions having competences in the digital sector:
 - Ministry of Economic Affairs and Digital Agenda on topics such as consumer protection and information society;
 - Spanish competition authority (CNMC) exercises control ex post on competition;

- Spanish Data Protection Agency.
- **HAKOM** referred that, according to the Law implementing P2B Regulation, in Croatia Ministry of Economy and Sustainable Development is the competent body for the implementation of Regulation (EU) 2019/1150 (P2B Regulation), whilst the State Inspectorate is in charge of inspection.
- **MOC** reported that in Israel Jurisdiction is split between various entities: Ministry of Communication, Competition Authority, Privacy Authority, Ministry of Justice (intellectual property).

Question 4 - Have you any data (e.g. number of users, market shares, data traffic) regarding the impact of OTT and digital platforms on your national market?



*YES: Bosnia Herzegovina, France, Germany, Italy, Portugal, Spain
NO: Croatia, Cyprus, Israel, Malta, Montenegro, Slovenia, Switzerland*

When it comes to Question 4, the breakdown by countries shows that an equal number of countries replied both positively and negatively regarding the collecting of data on the usage and impact of OTT and digital platforms in the national market.

According to the questionnaires, in overall it can be observed that almost all countries that responded positively have taken steps in collecting data regarding the usage of OTT services. It is important to note that in 2021 BEREC published the “BEREC Report on harmonized definitions for indicators regarding over-the-top services, relevant to the electronic communications market”³ in order to help NRAs to collect relevant data regarding the OTT services, namely voice, video and messaging interpersonal communication services provided over the internet (NI-ICS) and on video streaming services. A further aim is to have a harmonized data collection process in order to be able to conduct a comparative analysis on the EU level.

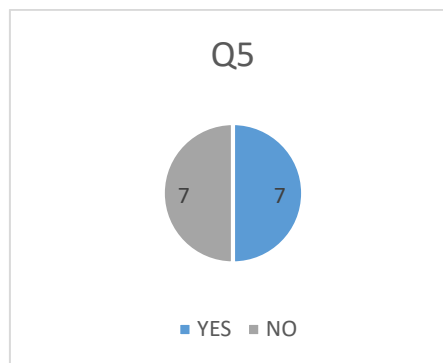
- **CNMC** Spain provided the data that - 53% of Spanish people consume online content at least once a week and annual rate has increased 23%. Also, 7 out of 10 instant messages are sent via OTT⁴.
- **ANACOM** Portugal has developed a study on the “Information on the use of OTT services in Portugal and in the EU, based on the results of several consumer surveys” in 2018, and, in the context of BEREC, collects and monitors data on OTT.

³[https://berec.europa.eu/files/document_register_store/2021/10/BoR_\(21\)_127_Report_on_OTT_services_indicators_clean.pdf](https://berec.europa.eu/files/document_register_store/2021/10/BoR_(21)_127_Report_on_OTT_services_indicators_clean.pdf)

⁴ <http://data.cnmc.es/datagraph/>

- Germany reported that **BnetZA** monitors markets for online communications services (OTT-I services) and digital platforms in Germany⁵.
- In Turkey, **BTK** collects OTT data from mobile network operators on the basis of the most mobile data used by the subscribers for each OTTs and also considers publicly available data for digital markets.
- In Italy, some data regarding OTT services, gathered by outsourcing organizations are periodically published on AGCOM's website⁶.
- **ARCEP** France has some data concerning the use of those services by consumers (e.g. time spent using those services)⁷.
- In Bosnia and Herzegovina, **RAK** in cooperation with the Council of Europe has conducted the report on user habits among adults in Bosnia and Herzegovina regarding the media consumptions as well as the usage of digital services (Facebook, Viber, WhatsApp, etc.).

Question 5 - Is your NRA aware of any competition issues involving OTT or digital platforms in your country?



*YES: Croatia, France, Germany, Israel, Italy, Spain, Turkey
NO: Bosnia Herzegovina, Cyprus, Malta, Montenegro, Portugal, Slovenia, Switzerland*

7 out of 14 countries that responded to the questionnaire have an awareness on competition issues that arise from digital platforms and core-platform services as defined in the DMA proposal.

The most obvious competition is the one between video-sharing platforms and pay-TV services.

- **HAKOM** Croatia reported that they would take into account the competition issues between traditional services such as IPTV and OTT video streaming services in the forthcoming analysis of the relevant markets in an appropriate manner.
- **MOC** Israel is also aware of the uneven playing field between pay-TV and audio-visual OTT services the later not being subject to any regulatory framework.

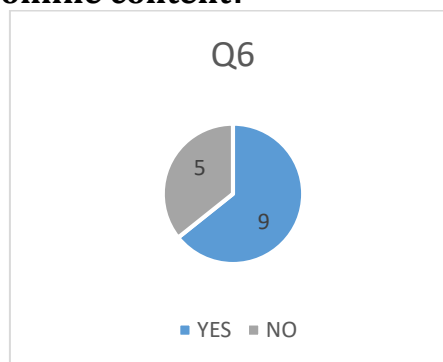
⁵ https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2020/20200522_OTT.html
<https://www.bundesnetzagentur.de/DE/Sachgebiete/Digitalisierung/Konsultation/ENG/Interimresults-node.html>

⁶ <https://www.agcom.it/documents/10179/25239507/Studio-Ricerca+23-12-2021/83300fb0-d4dc-4854-a1cf-6c0ab35d2d0f?version=1.1>

⁷ https://www.arcep.fr/uploads/tx_gspublication/rapport-barometre-numerique-edition-2021.pdf

- **BKT** Turkey stated that they would pay special attention to the competition between mobile markets and OTT services, which will be considered in the related market analysis.
- The Spanish regulatory authority **CNMC** which exercises *ex-post* control on issues regarding the competition in digital markets has dealt with the cases of anti-competitive behaviour of digital platforms such as the recent case of AMAZON/APPLE Brandgating⁸.
- **ARCEP** and **AGCOM** mentioned that in France and Italy there are many cases concerning OTTs or digital platforms, namely Big Tech that are pending before the Competition Authorities.

Question 6 - Has your NRA ever received end-users' complaints regarding the online content?



YES: Bosnia Herzegovina, Croatia, France, Israel, Italy, Portugal, Spain, Switzerland, Turkey
NO: Cyprus, Germany, Malta, Montenegro, Slovenia

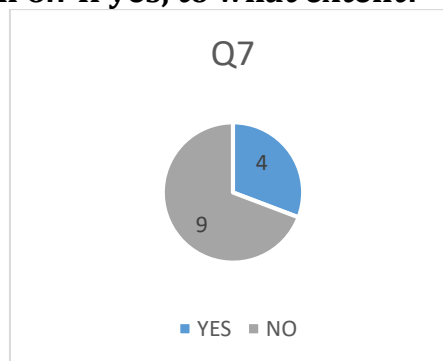
9 out of 14 countries that responded to the questionnaires reported receiving complaints by end users on subjects related to the digital ecosystem. Even though many NRAs currently do not have competencies to deal with such complaints, the frequency and intensity of the complaints illustrates the significance of difficulties faced by end users in relation to the everyday use of the core platform services.

- **CNMC** Spain reported on complaints from either Spanish users or those from other Member States regarding audiovisual content rating.
- Although residual, **ANACOM** Portugal has received complaints regarding a) illegal content on the Internet; b) transparency of digital platforms - mostly transparency of service terms and conditions; and e) Internet fraud.
- **BTK** Turkey stated that end-users reported crimes such as: deemed obscene, sexual exploitation and abuse of children, gambling etc., with regard to Law No. 5651.
- **HAKOM** Croatia reported receiving several inquiries regarding hate speech on social networks. Also, one user asked HAKOM why Google did not mark his house properly on maps (although the user himself marked it correctly), and why HAKOM cannot force Google to make a correction.
- **RAK** Bosnia and Herzegovina receives complaints with regards to the online content on a regular basis, mostly considering hate speech. However, lack of competences is the reason why these complaints cannot be handled.

⁸ <https://www.cnmc.es/en/ambitos-de-actuacion/competencia/conductas-anticompetitivas>

- **ARCEP** France in October 2017 developed a reporting platform “J’alerte l’Arcep”. It allows any user to report to the Authority malfunctions encountered in their relationship with their fixed or mobile telecoms operator, ISP or postal operator. Since November 2020, this platform is open to app developers and we received some alerts. It is worth remembering that, in February 2018, Arcep published a report detailing the restrictions that devices’ operating systems, and especially smartphone OS, were able to impose on them.
- **MOC** Israel occasionally receives such complaints, which are generally forwarded to the relevant authorities (police in some cases, privacy authority, consumer protection authority, etc.)
- **AGCOM** reported that as for the transparency of digital platforms, they received several complaints regarding technical issues with the DAZN live streaming service and the related refund requests. Some complaints also focused on the difficulty in communicating with the customer service. With regards to exposure to disinformation, in 2021 AGCOM received some complaints by citizens and Italian civil associations about misinformation regarding contents distributed online, mostly related to COVID-19 pandemic issues, such as the alleged effectiveness of domiciliary cares, alleged ineffectiveness of the anti-COVID vaccines and more generally on the measures adopted by the government to contrast the COVID-19 pandemic.

Question 7 - Has your NRA any legal competences in the area stated in the Question 6.? If yes, to what extent?



YES: Italy, Portugal, Spain, Turkey
NO: Bosnia Herzegovina, Croatia, Cyprus, France Germany, Israel, Malta, Montenegro, Slovenia
No information provided: Switzerland

Only 4 NRAs reported having some legal competencies which are directly or indirectly related to the online content.

- **CNMC** stated they have competences regarding audiovisual content rating, while the Spanish Ministry of Economic Affairs is competent in consumer protection within the telecom sector.
- **ANACOM** Portugal deals with all complaints addressed to this Authority, clarifying end users about their rights and forwarding them to the competent authorities whenever applicable.
- In Turkey **BTK** reported they occasionally receive such complaints, which are generally forwarded to the relevant authorities (police in some cases, privacy authority, consumer protection authority, etc.)

3. Conclusions

Digital Platforms have become the subject of the regulatory interest for several reasons. The development of technology in the past few years has greatly influenced the diffusion of new digital products and services that affect all aspects of life. Digital platforms are at the center of these developments as they serve as intermediaries connecting end users and businesses in the trading of goods and services in exchange for the personal data of customers. It is recognized that regulators need to keep pace with these new trends as they have brought up new challenges for both consumers and businesses stemming from the significant market power that the large digital platforms exercise.

The Digital Market Act (DMA) is a new regulatory instrument of the European Commission dating to December 2020, which together with the Digital Service Act form the so-called Digital Service Package, aiming at setting rules in the digital ecosystem. The three main goals of DMA are a) contestability, namely promotion of competition among digital platforms, b) fairness for business users who use digital platforms as intermediators to reach customers for their products and services and c) protection of end user rights.

In pursuing these objectives, the proposed DMA defines a closed list of digital services which are designated as the “Core Platform Services (CPS)”, as follows:

- ✓ Online B2C intermediation services which include marketplaces and App stores.
- ✓ Online search engines.
- ✓ Online social networks.
- ✓ Video-sharing platform services.
- ✓ Number independent interpersonal communications services.

The DMA proposal provides an asymmetric regulation, which will apply only to CPS providers, designated as gatekeepers according to the criteria defined in the DMA. In March 2022 the legislative negotiations on the DMA proposal, in the form of a *trialogue* between the European Parliament, Council and the European Commission, were completed and it is expected that the proposal will be approved by the end of 2022.

In its “*Report on the ex-ante regulation of digital gatekeepers*”⁹, BEREC finds that the cooperation of the EU competent authority with NRAs for electronic communications will be crucial for the successful enforcement of the regulatory measures on the digital gatekeepers. Namely, BEREC considers that “the EU competent authority should rely on the valuable experience from the National Regulatory Authorities (NRAs), especially for tasks such as e.g. i) gathering of relevant national data from business users and end users, ii) the real-time monitoring of national markets and of compliance with the regulatory measures, iii) providing an information and complaint desk, iv) dispute resolution for many cases”.

The rationale behind this is the wide spectrum of expertise that NRAs hold in respect to *ex ante* regulation of the electronic communications sector, which can be effectively applied to the benefit of the European Commissions' Advisory Board in the enforcement and implementation of the Digital Market Act.

⁹ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10043-berec-report-on-the-ex-ante-regulation-of-digital-gatekeepers

According to the survey among EMERG countries, almost all EU members already have certain competencies or have launched the initiatives with regards to the OTTs and digital services, namely NI-ICS, either through the transposition of the EECC or implementing their own national legislative initiatives. From the perspective of the non-EU members, there are a few cases of regulatory initiatives concerning NI-ICS and the remaining ones are mostly related to video-sharing services.

Following discussions and conclusions from the joint EMERG-BEREC Workshop held on 4 November 2021, it is recommended that EMERG countries keep exploring conditions for legislative initiatives in their countries, as well as improving skills and knowledge in order to keep pace with the new EU regulatory development considering digital markets and digital services.

It is of utmost importance that EMERG benefits from the MoU with BEREC and in that sense continues to follow the BEREC activities regarding these issues.

To that end, EMERG will continue its work within the Digital Platform Working Group, focusing on the following areas:

- ✓ Follow the implementation of the Digital Market Act in the European Union and the role of NRAs in digital ecosystem.
- ✓ The digital service neutrality - Digital Platforms are a key part of the Internet value chain acting as a gateway in upper layer of the chain and influencing the user experience in accessing the open internet which is now not only conditioned by ECSs but also Digital Platforms. EMERG will follow BEREC work on Internet ecosystem and provision of the open internet access.
- ✓ Collection of relevant data on digital platform usage as well as OTTs led by the BEREC “Report on harmonised definitions for indicators regarding the OTT services”.
- ✓ Monitoring the digital markets.
- ✓ Promoting the sharing of knowledge and information, also organizing *ad hoc* workshops and webinars on the topic.