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Consultation on the review of the DMA (Article 53 of the DMA)

Otto Group is an international E-Commerce and Service Group with 30 significant corporate groups in the segments of Platforms, Brand Concepts, Retailers, Services, and Financial Services – with a clear focus on innovation and digital transformation.

Otto Group welcomes the current consultation of the European Commission and the opportunity to provide its view on the effectiveness of the Digital Markets Act (DMA) so far.

Companies of the Otto Group are customers of companies designated as gatekeepers under the DMA. This concerns, in particular, advertising services but Otto Group companies also have strong relationships with other core platform services linked to their retail business, such as social media services or search engines.

Otto Group appreciates the legislative intention of the DMA to keep digital markets open and contestable and to provide a clear set of obligations for designated gatekeepers.

However, regarding the provision of AI products and services, it is still uncertain whether the DMA will live up to its ambition of improving competitive conditions in affected markets.

AI – currently with a strong focus on large language models – already has and will even more in the future have a decisive impact on the e-commerce: Consulting expertise is digitally adapted; product descriptions are optimized by AI to achieve better visibility in search engines; based on text prompts and uploaded images or sketches, an AI application generates photorealistic design proposals for the further product development process.

Otto Group strongly supports that the potential of AI for innovation and efficiencies in e-commerce will be realized both to the advantage of consumers as well as retailers and all companies along the supply chains. This requires a regulation that, on the one hand, does not impede innovation but, on the other hand, also protects contestability of markets.

Challenges for safeguarding contestability of markets in the new AI landscape

Obstacles to the usage of AI originate in uncertainties that come with many new technologies, in the current regulatory landscape as well as the tangible risk that AI

products and services will be controlled by a handful of market operators, including those already designated under the DMA as gatekeepers.

These concerns could be addressed by a revised DMA.

Otto Group has a strong interest in using both AI products and services provided by market entrants, startups as well as established tech companies. However, some AI-based products provided by companies already designated as gatekeepers under the DMA as well as other large providers with significant market power cannot, for the time being, be replaced by third parties' products.

This applies particularly to AI products and services that are linked to other core platform services provided by designated gatekeepers. For example, users of gatekeepers' advertising services are partially required to use the gatekeepers' AI features (e.g. in bidding for advertising space). Gatekeepers' core platform services are and will remain essential for retailers due to their market position and reach. Effectively, there are no alternative services that could serve as substitutes.

The quality of core platform services and their output in the ads sector largely depends on the quality and amount of accessible data. Market players tend to guard access to data that is generated by their services and are unwilling to give away this essential advantage to competitors or to lose opportunities for monetarization. With the increasing usage of AI services by consumers, anyone who controls these services will also control access to the data generated by this usage. On the other hand, any emerging AI or AI feature will need such data for training and improvement to make it persist on the market. This leaves gatekeepers, who already have data and infrastructural capabilities deriving from their core platform services, with a significant advantage in the development, improvement and training of AI systems as well as monetarizing them. Their customers, such as retailers, are essential to attract end-users, because they are the ones selling goods or services to the consumer. However, they are and likely will be - in the future even more effectively - cut-off from this data flow. Dependencies on gatekeepers' AI systems will likely increase.

We are concerned that by using their own AI, gatekeepers will take over an even larger part of the value chain than today. Retailers may be reduced to mere logistics providers at the end of the purchase process, just delivering consumer goods without any other contact to their end-customers. However, their contractual and data privacy obligations as well as the associated efforts will remain. End-customer access is at risk of being controlled by gatekeepers. This also holds true for various service and content providers such as news outlets. Retailers and content providers will be deprived of valuable online traffic and data insights to develop new and more customer-friendly products and to have access to new revenue streams. As a result, transactional costs will likely increase, ultimately leading to higher consumer prices. Moreover, there is a risk that at some point only very few large

marketplaces with significant market power will be left as only these have the capacity as well as necessary data resources to develop their own AI solutions in competition to gatekeepers' services.

This development would not solely be fueled by a natural evolution of innovation and competition but considerably by the gatekeepers' leveraging their existing market power to build a non-contestable position also on the newly emerged AI market. To keep markets for AI products and services as well as neighboring or downstream markets contestable, innovative, diverse and competitive, such a circle would need to be interrupted. In addition, diversity of AI product and service providers with differentiated but broad relevant and reliable databases will also reduce the risk of biases, discrimination and uniformity in AI-generated outputs.

Keeping markets open

Regarding AI products and services, retailers, service and content providers as well as third parties need the possibility to gain access to online traffic at the forefront of the value chain, e.g. already in a consumer's search phase, and traffic should be directed to the content providers (online shops, news providers, etc.) without keeping consumers artificially in a gatekeeper's ecosystem. Customers of gatekeepers, such as retailers, should not be cut off by gatekeepers' AI products and services from direct interaction with consumers and valuable data streams. Direct access to the consumer has priority. Any right to access gatekeepers' data at FRAND terms can only be a second-best option.

Users of gatekeepers' core platform services should be allowed to use alternative AI products and services. In addition, it should be possible for retailers to offer their own AI service, such as a chat bot, at the same entry point as gatekeepers, and users should be able to make a real, equal choice which service they prefer.

Finally, it should also be possible for retailers and other customers of gatekeepers to differentiate themselves within the gatekeepers' services/offerings from products /services of their competitors.

Chance for a better regulation

Existing laws or upcoming regulation that lead to legal uncertainty need to be amended.

Under the current framework, it is unclear to which extent AI applications of gatekeepers fall under the obligations and prohibitions of the DMA. Do AI services constitute distinct services not falling under the DMA regulation or are they supplements to existing core

platform services as defined by the DMA? Whereas the DMA's language is a strong argument that, for example, AI services supplementing search engines are already within the scope of the DMA, the situation is less obvious for other AI features. A revised DMA needs to clarify this.

As regards the catalogue of obligations and prohibitions under the current DMA, we consider the extension of main principles such as interoperability with other services, no self-preferencing, data transparency (also regarding advertising) and access to consumers/customers to AI products and services as one of the most crucial obligations.

On a general note, the implementation of Art. 5 and 6 of the current DMA needs to be substantially improved. Although in current proceedings, the EU Commission included stakeholders in various workshops, the development of remedies that would satisfy the DMA's requirements appeared largely opaque, complicated by opposing interests of gatekeepers, competing service providers and their customer base. Streamlining the process with adequate timelines analogous to merger control market testing would be a desirable option safeguarding objectivity as well as balanced results.

Otto Group

With a strong heritage as a family business and firmly rooted values, the Otto Group is looking to the future with confidence. Over the past 75 years, the company has developed from a catalog-based mail order company into an international digital retail and services group with 36,300 employees and a large number of key companies, brands and holdings in over thirty countries, primarily in Germany, the rest of Europe and North America. Its business activities extend to the Platforms, Brand Concepts, Retailers, Services and Financial Services segments. In the 2024/25 financial year (ending February 28), the Otto Group generated revenues of 15 billion euros. As the largest online retailer of European origin, it is shaping the digital retail and digital services of the future by drawing on its strength, market significance and values. Driven by a passionate and entrepreneurial performance culture, the Group is exploiting its vast market expertise and technological competence to inspire its many millions of customers with high-quality products, unique choice of goods and an array of services. The Otto Group is proof that a value-oriented approach and business success can go hand in hand. Environmental protection has been another corporate objective since 1986. It takes its ecological, social and digital responsibility seriously – and will continue to do so.