Joint paper by the members of the HLG on Artificial Intelligence -
Mapping out regulatory interplay related to AI issues

I. Introduction

The sub-group on Artificial Intelligence ('AI') of the High-Level Group[1] ('HLG') under the Digital Markets Act ('DMA') was established to discuss, provide advice, expertise and promote a consistent regulatory approach across the different regulatory instruments in relation to AI. At the second meeting of the sub-group on AI which took place on 10 April 2025, the Commission presented a paper mapping potential contestability and fairness issues across the AI value chain and summarising some reflections for an internal discussion within the sub-group.

Following the discussion, the Commission invited the members of the sub-group to provide their own contributions with a view to further mapping regulatory complementarities across different legal frameworks with regard to AI. The Commission invited attention to the following areas:

- Mapping potential contestability and fairness issues across the AI value chain, building on those identified in the Commission's discussion paper and identifying possible gaps;
- Mapping potential issues across the AI value chain relating to the interplay of different regulatory frameworks (data protection, consumer protection, competition, media, electronic communication) with respect to the AI value chain;
- Identifying areas of potential touch points and synergies across EU regulatory frameworks concerning AI;
- Identifying areas where it will be essential to ensure regulatory consistency across different legal instruments;
- Identifying any areas where barriers to enforcement could occur from the ambiguity in how different legal instruments scope key AI concepts; and
- Identifying any instances where regulatory inconsistency or uncertainty may be a discouraging factor for AI innovation or a burden for small actors.

This paper provides an overview of the commonalities and cross-cutting themes identified by the members of the DMA High Level Group. It aims to outline areas of common ground and the added value of a coordinated approach.

Following this introductory section, Section II examines the key issues raised by the sub-group members, while Section III identifies the cross-cutting issues and common threads. Section IV concludes identifying an enhanced regulatory cooperation as the key topic for discussion.

II. Key themes

1. Contestability & Fairness in AI value chain

The DMA contributes to ensuring that the rapidly growing AI value chain remains contestable and fair in the long term to the benefit of business and end users. Gatekeepers enjoy a strong presence at various levels of the AI value chain. General-purpose AI models in particular are increasingly present within gatekeepers' ecosystems. Therefore, the DMA in its current form could contribute to fostering a more open AI value chain insofar as the rules of the DMA affect the conduct of gatekeepers when they deploy AI with their core platform services and in their broader ecosystems. However, there is a need to clarify

[1] The high-level group of digital regulators established under Article 40 of the Digital Markets Act.

to what extent, AI services are covered by the DMA in its current form, and how the current set of obligations would apply to such services.

Against this background, and without prejudice to the enforcement of the existing legal frameworks applicable at EU and Member State level, the HLG sub-group on AI identifies two main interconnected areas where the DMA may be able to contribute to ensuring contestability and fairness:

(i) *Access to AI infrastructure and distribution:* First of all, AI services strongly rely on cloud computing infrastructures which are currently concentrated around very few players. Secondly, by means of their rapid integration into gatekeepers' services, AI technologies are increasingly becoming gateways for digital service providers to reach end users. This is the case, for instance, with the expanding role of AI assistants, chatbots, MaaS[2] and other services that can be integrated within the gatekeeper's ecosystem.

Such increasing level of integration may be a significant obstacle to third parties' ability to offer customised AI services to end users, and by the same token create disincentives for end users to seek third parties' offers. Moreover, it creates incentives and opportunities for self-preferencing by the gatekeepers, and may lock-in users due to a lack of effective interoperability with alternatives. Furthermore, when gatekeepers embed AI technologies into their core platform services, this may, have implications also for content providers on the Internet in particular with regard to their traffic volume and visibility.

(ii) *Access to data*: the ability to establish exclusive partnerships coupled with exclusive access to first-party data for use in Generative AI development may create an unmatchable advantage for gatekeepers compared to third parties. Although public, pretraining, and fine-tuning data are important for the development of AI, user interaction data appears key to ensure contestability in the AI sector. User data is often personal, first-party, proprietary and subject to the various applicable data protection legislation, entailing specific legal grounds for the processing, and is not made available to third parties by gatekeepers. Network effects and feedback loops relating to data obtained by the gatekeepers from the use of these AI systems further exacerbate the data-driven advantages that gatekeepers already enjoy.

2. <u>Interplay of different regulatory frameworks</u>

The HLG sub-group on AI identified a number of areas of interplay between different regulatory frameworks,[3] acknowledging a need for cooperation and coordination between the authorities supervising their enforcement in relation to AI technologies. The following paragraphs set out some examples of the touchpoints that were identified:

(i) AI integration – DMA and Competition law:

- *Scope interplay*: The DMA applies *ex ante* to the pre-defined core platform services of designated gatekeepers, whereas EU competition law applies *ex post* to anticompetitive behaviour by dominant firms and restrictive practices. While the DMA can also cover

[2] For instance, providers of Model as a Service ("MaaS) make several Foundation Models (FM) available through common APIs without the users having to develop or train these themselves.

[3] Relevant regulatory frameworks include the Digital Markets Act (DMA), the AI Act (AIA), the General Data Protection Regulation (GDPR), the Data Act, the Digital Services Act (DSA), and the Unfair Commercial Practices Directive (UCPD).

gatekeepers that are not dominant under competition law, their AI initiatives may fall under both legal frameworks, in presence of a dominant position.

- *Potential touchpoints in assessing AI integration*: An AI component may form part of an existing core platform service under the DMA (e.g., online social networking service, operating system, or search engine) or rather constitute a distinct service. Both situations may be relevant and have implications for the applicability of both the DMA and competition law.

(ii) *Data portability:* The GDPR, the DMA, the Data Act and consumer protection laws (e.g., the UCPD) address similar AI related practices from different, complementary, angles. For instance, data portability has the potential to bring more contestability for AI services by reducing switching costs. The users' right to port data can also be found in distinct instruments, in the form of contractual obligations for cloud services providers (Art. 25 Data Act), the GDPR's data portability obligation (Art. 20 GDPR) and the DMA's user portability right (Art. 6(9) DMA). In this context, it is beneficial to consider the interplay across these provisions and strive for alignment

(iii) *Dark patterns:* The DSA, AIA, UCPD, GDPR and DMA aim to prevent manipulative design, including in AI interfaces *e.g.,* undisclosed commercial intent in AI-generated search results. The UCPD prohibits misleading or incomplete information and dark patterns in digital interfaces, which are directly addressed by Art. 25 and recital 67 DSA and by the core principles of the GDPR, notably transparency and fairness.[4] Art. 5(1)(a) and (b) of the AI Act prohibit subliminal techniques or the use of AI systems that exploit vulnerabilities based on age, disability or a specific social or economic situation, while the DMA could address such behaviour as a form of circumvention of existing obligations (Art 13(6) DMA). Therefore, a need emerged to ensure consistency by agreeing on "*clear and comprehensible*" disclosure standards that would be adequate across the various relevant provisions in these regulations.

(iv) *Transparency:* Regulatory intersections appear also as regards transparency, e.g.

- *Provision of service rules*: Certain EU legislations (including the DSA, AVMSD, EMFA and TTPA) and their implementing rules on the provision of services focus on protecting minors/harmful content through a number of specific regulatory tools (e.g., deepfake labelling). These rules may intersect with the DMA's transparency requirements and the self-preferencing prohibition for gatekeepers (Articles. 5(9), 5(10), 6(11) and 6(5) DMA), the AI Act's prohibitions on manipulative practices, the DSA's systemic risk mitigation for very large online platforms ('VLOPs') and UCPD where commercial practices are harmful for children (Articles 5, 6, 7 UCPD).

- *Algorithmic explainability:* the GDPR makes explicitly reference to the rights of individuals to explanation in the context of automated individual decision-making, including profiling (Articles 15 and 22 GDPR), which might operate complementarily to the right to an explanation of individual decision-making provided under Article 86 of the AI Act and to the entitlement of recipients of online platform services to know and/or modify the parameters of recommender systems, in line with the transparency obligations concerning the main parameters used, as established in Article 27 DSA.

[4] The European Data Protection Board (EDPB) issued Guidelines on Deceptive Design in Social Media Interfaces in 2022.

- *Advertising rules*: By the same token, there are touchpoints between the AVMSD's restrictions on targeted ads for minors, the DMA's obligations on ad transparency for gatekeepers and the DSA provisions relating to recommender system transparency, ban on profiled advertising relating to minors and additional online advertising transparency.

- *Editorial independence*: Finally, the European Media Freedom Act (EMFA)'s editorial independence provisions have an interplay with the AI Act's transparency obligations for high-risk AI systems.

3. Regulatory interplay & enforcement gaps

As described in the previous section, the DMA is part of a larger digital regulatory framework. Given the diverse objectives of the various legal instruments supervised by the authorities represented in the HLG, a certain degree of interplay may arise. For example, in the case of seemingly complementary provisions on matters such as transparency and accountability, questions arise on how the regulated entities can achieve compliance to the various regulatory frameworks in a coherent way. One key issue in this regard is how to provide all the information required under the different transparency obligations while keeping the volume of information manageable for both users and reporting entities.

In addition, we should strive for coordination between authorities in order to achieve a more coherent, effective and complementary enforcement. One such example is the case of information sharing obligations, where the DMA aims to increase fairness and contestability by reducing information asymmetry while the GDPR aims to limit the amount of personal data processed to that strictly necessary in order to protect users, especially vulnerable ones. In such cases, coordination. will be the cornerstone of an effective enforcement.

Another question regarding the overall digital regulatory framework in the EU, may arise from the absence of coherent terminology and operational definitions across relevant legal instruments, including, if appropriate, a cross-cutting definition of relevant AI services and components.

In summary, the lack of consistent terminology relating to AI, the need to align requirements of different jurisdictions, and the importance of enforcement consistency are among the most pressing issues to address regulatory consistency and enforcement gaps.

III. Cross-cutting issues

1. Coordination and cooperation between regulatory bodies

It is clear that coordination between the various regulatory bodies dealing with legislation applicable to AI technologies is a crucial aspect of ensuring consistent enforcement. All relevant regulatory frameworks need to be interpreted coherently to avoid over- and underenforcement. Against this background, further work is needed to develop a common understanding of AI related issues and, subsequently, enforcement practices should reflect such common understanding.

Overall, coordination between different regulatory bodies dealing with AI is essential to ensuring that AI is developed and deployed in a way that is consistent with EU values and principles. The mandate of the HLG under the DMA covers this and allows enhanced coordination and cooperation between the relevant regulatory bodies within the forum of the HLG as provided for in the DMA.

As regards concrete enforcement cases, the need for collaboration and cooperation between digital regulators, at both the EU and national levels, was emphasised in the recent *Meta Platforms Inc and Others v Bundeskartellamt* judgment of the CJEU (Case C-252/21). The ruling highlights that authorities at both national and EU-level are bound by the principle of sincere cooperation when enforcing EU law. Cooperation and coordination in this regard should be made more effective between the competent authorities.

2. SME support

Members of the HLG subgroup on AI highlight the importance of support for Small and Medium-sized Enterprises ('SMEs'), both in order to enable them to enjoy the benefits of the DMA, as they are often the main beneficiaries of DMA obligations, and as the real economic actors that stand to benefit from the impact of the DMA. The need to ensure that SMEs benefit from legal certainty and that they do not face overly burdensome barriers to compliance with AI-related regulation was also noted.

In particular, it will be critical to inform SMEs of opportunities created by the DMA. For instance, interoperability obligations can open opportunities in markets that used to be controlled by gatekeepers. Similarly, data related obligations can grant SMEs access to this critical input in the development of AI services.

The Commission's DMA team has already started outreach to several SMEs that provide AI services and has received positive feedback from these interactions. During these interactions, the DMA team has provided a high-level description of the DMA and its obligations to gatekeepers. SMEs will benefit from coherent enforcement of different regulations, that can result from the inter-agency cooperation discussed above, as this will lead to legal certainty and easier compliance, where relevant. The joint guidelines of the Commission and the EDPB on the interplay between the DMA and the GDPR, currently under public consultation, are an example of this.

IV. Conclusion

Based on the points of convergence outlined in the previous sections, cross-regulatory cooperation between competent authorities would help facilitate clarity and coherence when it comes to the interplay between the multiple frameworks of legislation applicable to the AI value chain.

This is particularly relevant where multiple frameworks apply to the same practices or operations, such as the development and deployment of AI systems by gatekeepers.

The sub-group therefore suggests to the HLG to pursue this workstream in order to explore possible mechanisms of effective cooperation, including in relation to enforcement activities, with regard to interplay of the DMA and other regulatory instruments relating to AI.