



The European VOD Coalition

Position paper Digital Markets Act

The European VoD Coalition (the “Coalition”) represents video-on-demand (VoD) companies active across the entire EU, with a range of business models focused on investment in audiovisual content and distribution. This position paper addresses the unsubstantiated calls for a widening of the scope of the Digital Markets Act (DMA) to include streaming services as a core platform service.

The DMA is a specific legislative initiative to keep certain digital markets ‘open and contestable’ by imposing ex ante obligations on companies that act as gatekeepers¹ through very large online core platform services that intermediate between businesses and consumers. This multi-sided market business model displays different features and operates across many different legislative environments very different from those applicable to video-on-demand services.

The audiovisual sector, and specifically VoD or broadcast companies, do not operate these types of platforms. The VOD sector distinguishes itself from online video-sharing platforms in that it operates a closely curated environment with strict editorial controls, subject to clear regulation. The call to include VoD as a core platform service deviates from the intended remedy the DMA provides. The principle goal of the DMA, namely to ensure large online platform services operate in a fair way, would be undermined by a catch-all regulation that would create regulatory confusion, undermine the goal of fixing specific market problems, and could lead to the watering down of general obligations for core platform services.

The VoD sector operates in an ever-growing, highly competitive environment with no “winner takes all” outcome: new entrants face low barriers to entry and consumers are not met by cemented network effects or high switching costs, which instead are features present in the specific digital markets targeted by the DMA. This can be partly attributed to the choice in services being plentiful and the cost of content production remaining high.

Gatekeepers operating core platform services employ intermediation services by definition and are very distinct from pure VoD services. Gatekeepers allow business users to offer goods or services to consumers through their platforms, whereas VoD services operate in a different environment where content is licensed from producers, co-produced with other parties, or produced by the company itself. VoD services have direct contractual relationships to their subscribers, mostly paid although occasionally ad funded, with a clear base in AV rules and regulations.

Unlike core platform services in the scope of the DMA, the AV sector operates with substantial established regulation covering the breadth of their businesses, from consumer protection, advertising, sponsorship, accessibility rules and more. One of the main texts here is the revised

¹ As described in the Impact Assessment: <https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-markets-act>

Audiovisual Media Services Directive (AVMSD). The principle of editorial responsibility compared to most core platform services makes VoD providers already editorially responsible for all the content they make available to consumers. These rules, together with other EU and national rules applying to the VoD sector, create a heavily regulated framework. These include content standards that apply to VoD services since 2007, when they were brought into the scope of AVMSD but also mandated European content investments, quota and prominence rules that contribute to the already significant local investments of VOD providers in Europe. The AVMSD at its core also imposes Country of Origin-based content standards that offer a European-wide consistently high level of protection at the same level as linear television services. This includes, as mentioned, rules on the protection of minors (e.g. age ratings, parental control tools), advertising, hate speech/discrimination/terrorism, accessibility for the elderly and persons with disabilities and more. All in all, it's crucial to underscore that the AV sector, and VOD providers, do not operate in a regulatory vacuum. In fact, they're still very much in the process of adaptation to both the AVMSD and the Copyright Directive and it would be premature to extend further obligations on business segments characteristically different from all those intermediary services caught in the scope of the DMA.

To ensure the continuity of a healthy and innovative digital European market, any new legislation should only fix specific and unequivocally identified problems, as for example identified in the DMA Impact Assessment.

The European VoD market is a highly competitive market with many alternatives for consumers who can switch between providers on a monthly basis or often choose several services. Most offers require payment from the consumer and include contractual terms and obligations. Unduly widening the scope would not reduce asymmetry in favour of smaller players, instead it will take away breathing room for VOD services to compete with the current handful of Gatekeeper companies. The DMA is neither the right time nor place to introduce further measures for VoD services.

Along with a strong DSA, it is time to address very specific gaps in the European digital market. A commitment to the current quantitative thresholds and core platforms services will provide VoD services with clarity and resources to heavily invest in essential content to the benefit of the European consumer.