

AER POSITION ON THE DIGITAL SERVICES ACT AND DIGITAL MARKETS ACT

Executive summary of the submission to the European Commission consultation

About us. The Association of European Radios (AER) is the Europe-wide trade body for commercial radio, representing the interests of companies operating over 5,000 commercial radio stations to the EU Institutions.

We welcome the European Commission's recent announcements of a Digital Services Act (DSA) and Digital Markets Act (DMA). Ambitious proposals should address the unregulated expansion of large online platforms that is putting pressure on radio and audio businesses and limiting the funding of their trustworthy and valued content and services.

1. Recognising the value of commercial radio by closing down the regulatory gap with online platforms on content obligations

Tackling the spread of online disinformation

- By adhering to strong ethics and being subject to national oversight, commercial radio stations are trustworthy and verified sources of information.
- To fight against the spread of online disinformation and protect online users, a co-regulatory framework applying to online platforms is fundamental.

Protecting Europeans against misleading advertising

- (Political) advertising on commercial radio is strictly regulated at European and national level, and subject to self-regulation so it does not harm or mislead listeners.
- To protect consumers and radio businesses, it is key that large online platforms follow transparency and accountability measures for the use of advertising by intermediaries.

Supporting European content creators and intellectual property rights holders

- Commercial radio invests in and produces quality audio content to be broadcasted and disseminated to large audiences on a wide range of platforms.
- When taking the feed of commercial radio stations, large online platforms should uphold the integrity of their signal and abide by any copyright enforcement provisions.

2. Clarifying the responsibilities of online platforms with an adequate regulatory framework

Acknowledging the role of online platforms

- Radio operators are increasingly dependent on online platforms to reach their listeners; putting both radios and listeners captive of platforms' commercial interests.
- The growing importance and impact of online platforms on the European economy and society must be reflected with the adoption of an adequate regulatory framework.

Introducing clear regulatory provisions

- The online removal of illegal content that is detrimental to commercial radios and listeners should follow a harmonised notice and stay down procedure.
- Regulatory provisions applying to online platforms should be applied following the principle of country-of-origin, without leading to a secondary control operated on commercial radio providers.
- The measures should apply to online platforms that are not established in the EU, on the basis of their services being targeted at users in the EU.

Ensuring the effective application of the E-Commerce Directive

- Maintaining the passive/active distinction introduced by the CJEU discards the application of additional de facto liability exemption to the benefit of online platforms.
- The current legal framework does not preclude service providers from taking proactive measures against illegal activities.
- The introduction of a Good Samaritan principle offering an additional liability exemption merely based on good faith and voluntary efforts is not an effective solution.

3. Challenging the role of large online platforms acting as gatekeepers with an ex ante regulatory framework

Preventing risks associated with platforms gatekeepers of commercial radio content

- Commercial radio content online when mediated through platform operators who are gatekeepers to the audience puts at risk the ability to enjoy unfettered access to radio.
- Commercial radio operators are not given access to the data collected by online platforms on radio listeners automatically, curbing the room for innovation.
- The ability of online platforms to generate revenues by free riding on the content investments made by radio operators is detrimental to commercial radio's viability.

Identifying large online platforms acting as gatekeepers

- The European Commission should carry out this designation following criteria on e.g. large user base on an online platform, and specific thresholds (e.g. turnover/assets/market share).
- Alternatively, online platforms with "strategic market status" could be identified as such.
- Identified actors playing a gatekeeper role in the radio and audio environments include third-party radio aggregators, connected platforms (i.e. smart speakers, voice assistants and smartphones), connected cars, search engines and voice assistances, and social media providers

Supporting an ex ante regulatory framework

- The legislative safeguards should go further than those contained in the P2B; a DSA merely mirroring the P2B would lose its value.
- The ex ante regulatory framework should include a principles-based list of obligations and prohibited practices, aligned with a case-by-case approach.
- This list should be complemented with sector specific lists of obligations and prohibited practices specifically relevant to the radio and audio sectors.

Safeguarding a fair-trading online environment

- Practices prohibited in a principles-based list should include e.g. the imposition of "take it or leave it" terms and conditions; discrimination (or self-preferencing) by a platform in favour of its own services or any other services; refusal to share datasets which are necessary to compete.
- Practices prohibited in an audio specific list should include: preventing radio operators with a national broadcast licence from accessing the services of online platforms; manipulating voice requests to redirect listeners to their own competing services; charging a fee to carry licenced radio broadcasters' services on their platforms; placing restrictions on the data they make available to licenced radio broadcasters.
- In addition to prohibited practices, an audio specific list should include must carry and due prominence obligations on designated connected listening platforms.
- A dedicated regulatory body operating at EU level, working closely with Member State regulatory bodies, should be granted enforcement powers.

Read the full position of AER on the DSA / DMA [here](#).