Schibsted

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Digital Services Act og Digital Markets Act - Schibsteds posisjoner

Schibsted driver hovedsakelig virksomhet i Norden, innen de tre forretningsområdene medier, markedsplasser og nye forbrukerrettede digitale tjenester. Vi er også stor eier i Adevinta, verdens største selskap for online markedsplasser.

Schibsted har arbeidet med de problemstillingene som behandles i Digital Services Act (DSA) og Digital Markets Act (DMA) i flere år, og har hatt flere anledninger til å drøfte våre utfordringer og posisjoner med departementet. Vi ser derfor ingen grunn til detaljert repetisjon av problembeskrivelsene i dette svaret.

Overordnet er vi relativt godt fornøyd med DSA og svært godt fornøyd med DMA. Vi tror det blir viktig å forsvare spesielt DMA, slik at forslaget ikke vannes ut i den videre politiske prosessen. Vi er godt igang med dialoger med sentrale stakeholders i EU-parlamentet og har også jevnlig kontakt med kommisjonen, de siste først og fremst for klargjøring på områder der vi mener forslagene er uklare. Vi arbeider selvsagt også overfor den svenske og finske regjeringen for å fremme våre synspunkter og høre deres vurderinger.

I Schibsted har vi argumentert for en vertikal regulering av det digitale markedet. Vårt utgangspunkt har vært at man ville fått en mer treffsikker og tilpasset regulering ved å behandle ulike typer digitale aktører, med sine roller og særtrekk hver for seg. For eksempel delt inn i sosiale nettverk, søkemotorer, markedsplasser og e-handelsaktører. En av grunnene til at vi har ment at dette er det beste er at det er stor forskjell på hvordan man skal forholde seg til formidling av ulovlige varer og tjenester på den ene siden og ulovlige ytringer på den andre. Den siste er den vanskeligste fordi det her er grunnleggende verdier som må avveies, og man må på en annen måte enn for ulovlige varer bedømme eventuell ulovlighet i kontekst.

EU-kommisjonen har som kjent valgt en asymmetrisk, horisontal regulering, der det gjøres noen skiller mellom ulike typer aktører og mellom aktører av ulik størrelse, men der grunnreglene er de samme for alle, og uavhengig av om de formidler ytringer eller varer/tjenester.
Vi har kommet til at vi kan leve med denne, etter vår mening - nest-beste-løsningen, fordi den tar utgangspunkt i en reguleringsmåte som er akseptabel i et ytringsfrihetsperspektiv og

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fordi den gjør viktige distinksjoner mellom veldig store plattformer (VLOPs) og små- og mellomstore aktører.
Det er også en del av vår vurdering at mobilisering for å gå fra en horisontal til en vertikal regulering vil innebære omfattende endringer og, hvis det skulle få gjennomslag, føre til ytterligere tidsbruk før en høyst tiltrengt regulering er på plass.

Vi velger å svare på departementets forespørsel ved å sette inn våre formulerte posisjoner knyttet til DSA og DMA i dette svaret. Vi ber om forståelse for at de ikke er oversatt til norsk og svarer mer enn gjerne utfyllende i en direkte dialog.

Som man vil se av posisjonene så er vi svært opptatt av at reguleringen bare må gjelde ulovlig innhold og vi understreker viktigheten av forpliktelse i forhold til nasjonal lovgivning.
Vi er også opptatt av å styrke notice-and-take-down mekanismen i DSA og av å få et unntak for publisistisk innhold.
I DMA er vi blant annet opptatt av tydelige definisjoner og større klarhet når det gjelder rapporteringsforpliktelser i lys av behovet for proporsjonalitet.
Generelt, og for begge forordninger, er vi naturlig nok noe bekymret for den tiden det vil ta før reguleringene er operative.

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Key messages

- Schibsted welcomes the proposal and the overall objective of clarifying and strengthening the liability framework, especially for very large platforms (VLOPs).
- We agree that the Regulation should only apply to illegal content, which is deemed illegal under national law.
- We welcome the possibility for national judicial or administrative authorities to issue orders to act against a specific item of illegal content, based on national law. It must be the authority of the Member State where the content has been uploaded or has had a damaging effect that issues the order.
- Such orders should be extended to “equivalent or similar illegal content” to ensure the continued safety of online platform users.
- Editorial content should be exempted from online platforms´ terms and conditions.
- The proposal needs to take into account lower risk platforms such as online classified marketplaces and ensure that transparency requirement are proportionate and do not hamper the security work of the platform. Classified marketplaces based on consumer to consumer trading or trading between micro, small and medium-sized businesses and consumers do not present the same risk profile to users as social networks.
- We welcome the additional transparency and reporting requirements for very large platforms; such requirements are vital for the safety of the online environment.

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Background

Schibsted is a family of digital consumer brands based in the Nordics with world-class Scandinavian media houses, leading classified marketplaces and tech start-ups in the field of personal finance and collaborative economies.

We have actively contributed to the discussion leading up to the proposal for a Digital Services Act by calling for a balanced regulation of platform liability that protects democracy against the worst effects of manipulation and hate, whilst ensuring that this is done in a way that does not unacceptably restrict freedom of expression.

As we also operate classified marketplaces that vary from consumer to consumer platforms selling second-hand goods to facilitate the trade in cars and other vehicles, real estate and job recruiting, we also contribute to the Digital Services Act proposal from the perspective of online classified marketplaces. These marketplaces contribute to the circular economy in Europe through the second-hand effect of selling and buying used goods in local communities.

We note that the Commission's proposal on clearer liability obligations is divided into four categories: all intermediary services, hosting services, online platforms and very large online platforms. We agree with levelling the liability obligations based on level of activity and size, however, we see that there are certain obligations that are more suited for social networks that spread user-generated content such as expressions, pictures, videos etc, than online marketplaces that predominantly offer products and services. We therefore comment on the proposal from these two perspectives; obligations that are especially important for social networks and that need some additional elements in order to increase the safety of users on these networks, and obligations that will apply to our classifieds marketplaces and what challenges these obligations will have for our businesses.

We also need to ensure that the Regulation does not apply to online publishers that are already regulated by national constitutions and other sector-specific regulations.

Liability obligations for social networks

We welcome the effort by the EU Commission to clarify and strengthen the liability of online platforms and very large online platforms. We see that especially very large social networks that have an enormous impact on our society and democratic discussion are not doing enough to protect their users from illegal content. The networks contain a lot of illegal hate speech and other illegal content that can harm its users, but also the democratic institutions in our countries. According to us, the current limited liability scheme has led to the fact that

these networks only take limited measures to remove illegal content and do so based on their own terms and conditions, rather than on the law. This leads to fragmented systems that are unclear to the users and the fact that a lot of illegal content can continue to flourish on these networks.

It is also important to note that social networks are not publishers. They do not have a defined editorial role, they have no editor-in-chief, are not bound by media ethics rules and do not see themselves as publishers. However, they have a clear and active role in spreading the content uploaded by their users and cannot therefore be regarded as mere conduits of content. It is important that legislation acknowledges the networks' role as spreaders of user-generated content, but without having any editorial responsibility linked to that content.

Removal of illegal content (Articles 8 and 14)

We welcome the proposal in Article 8 to allow national judicial and administrative authorities to issue national orders for intermediaries to act on illegal content. It is important that defining illegal content has a basis in national criminal law, as these laws may differ between Member States that have different cultures and traditions. It must however be clear that it is the authority of the Member State, where the content has been uploaded or has had a damaging effect, that issues the order.

It is also important that Member States revise national legislation to clarify the responsibility of intermediaries for illegal content and that the judiciary have the tools needed to compel social networks to take responsibility for and take down illegal content. In 2020 in Sweden, a key market for Schibsted, there were nearly 100 legal proceedings pursued on the grounds of incitement to hatred where the individual posting content online has been found guilty of an illegal act. However, in none of the cases has the liability of the social network distributing and amplifying the content been evaluated. Article 8 is a useful step to clarify this anomaly.

We also support the notice and action mechanism in Article 14 and are of the opinion that it is important that social networks have clear flagging options for users and that the networks, on the basis of the flagging, swiftly remove illegal content from the platform.

To strengthen the safety of users **national orders must include the possibility for judicial and administrative authorities to require not only the specific item of illegal content be removed but also similar or equivalent items too.** Experience from Germany's NetzDG suggests that those spreading illegal content, such as incitement to violence, take advantage of the current notice and action system by posting the same content from different sources. According to the current e-Commerce Directive, the networks must receive notification of

each individual illegal posting in order to intervene. This risks leaving a lot of illegal content on the platform as the same or similar content may be spread from a number of different addresses. The European Court of Justice has ruled[1] that the provision can be interpreted so that notification of one illegal post means that the network must also remove other similar postings – i.e. staydown.

We propose to add "similar and equivalent content" to Article 8 to strengthen the provision with a stay-down element. Similarly Article 14 needs to be complemented with a stay-down element in order to keep users safe and social networks free from all illegal content.

Terms and conditions (Article 12)

We agree with the proposal that intermediary services should be able to include further restrictions in their terms and conditions (Article 12). It is however important to determine how intermediaries such as social networks can use their terms and conditions to the

possible detriment of freedom of expression. Important safeguards are needed to ensure that social networks do not use these rules to alter or remove content that has been published under the editorial control of a content provider such as a newspaper. This would lead to double scrutiny and could override the editorial decision by the publisher.

Publishers have a clear editorial responsibility and are already regulated by law, often the national constitution. They also adhere to national press-ethical codes. If social networks can override the decision by the editor-in-chief it could hamper the free press to the detriment of independent journalism. Diversity of opinions and scrutiny by the media is important for a democractic society and must be preserved.

We therefore call for an exemption of editorial content from a platforms' terms and conditions as set out in Article 12.

Liability obligations for online marketplaces

There are different kinds of online marketplaces, such as online retail platforms that are responsible for the presentation and spreading of the products and services on offer and classified marketplaces that allow users to draft the advertisement of the products and services they offer.

[1] Glawischnig-Piesczek vs Facebook Ireland (C-18/18)

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Schibsted´s classified marketplaces are all based in the EU and follow relevant consumer law, product safety, taxation and intellectual property laws as applicable. Our marketplaces allow consumers to sell used goods to each other and enable small and micro-sized companies, often one-person companies to reach their customers through these platforms. Classified marketplaces are also used by private and professional car dealers to sell used cars, by job recruiters to find suitable candidates and by real estate operators to list their properties on these platforms. These platforms contribute to the circular economy by facilitating circular consumption, which through its second-hand effect lowers Co2 emissions and use of water and decreases over-production. Classified marketplaces also have a strong

local foothold, allowing consumers in local communities to interact by selling used goods to each other.

All our classified marketplaces apply the current e-Commerce Directive and its notice and takedown regime, which we believe is still valid and works well for our platforms. As trusted platforms, they have all taken proactive, voluntary measures against illegal activities, such as pre-moderation of advertisements and outright prohibitions from selling certain goods that can be deemed illegal etc. All of this has been done as a self-regulatory measure to protect the users of our services.

Although we already take responsibility for the content being sold through our platforms, some of the obligations in the proposed Regulation will be quite onerous on our business model and could add additional costs and require resources that may be difficult for our classified marketplaces to sustain. This kind of additional burden could hamper the possibility of classified marketplaces to grow and continue to contribute to the circular consumption in our markets.

Our classified marketplaces have a notice-and-action system as an integrated part of the marketplace. Users may use the report-function which is available next to each classified ad that is published on our platform to report illegal activities. Once we get a report of illegal activity, our Customer Security team makes a review of the report and a reply is sent to the reporting user.

Our marketplaces also have dedicated channels through which authorities may report illegal activities. We cooperate closely with national authorities such as the police, the tax authorities and customs and provide these authorities with information upon request regarding users who are under investigation for unlawful activities conducted with the help of our platform. We also cooperate with trusted organisations such as organisations with animal or brand protection programs. These organisations may report illegal activities to our marketplaces, for example the sale of counterfeit goods, and such reports are channeled to and handled swiftly by our Customer Security team in dialogue with the reporting organisations.

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Statement of reasons (Article 15)

We agree with the transparency obligation to inform users when their content has been removed and provide a statement of reasons for this action. There are however, certain risks linked to the obligations in the Article for classified marketplaces, such as disclosing business critical information regarding the process by which we keep the marketplace free from illegal/fraudulent content.

If an ad is removed or stopped because it is regarded as fraudulent, the user behind the ad is not given notice before the ad is taken down. The reason for this is that we want to avoid giving the fraudulent user a heads up, and hence give him/her an opportunity to continue or even conclude the fraud with a third party on e-mail or on phone, and thereby moving the fraud out of our platform´s control.

It is important to see that there could be cases where a detailed statement of reasons could actually be beneficial to the fraudulent users and it should be emphasized that such a statement should not be required to be issued before the ad is taken down.

We also think that the obligation in Article 15.4 on publishing the decision in a publicly accessible database managed by the Commission is disproportionate and needs to be looked at from a risk assessment perspective.

Traceability of traders (Article 22)

We understand the reason behind this requirement and agree that it is important for especially large retail platforms to be transparent about the traders on their platforms. However, this obligation risks an overly prescriptive “one-size-fits-all” approach that poses constraints for classified marketplaces that enable trade of used goods between consumers and allow small professional sellers to reach their customers.

Firstly, it is important to ensure that the obligation does not apply to private sellers as it would be far too onerous for our marketplaces to collect and display all the required details about all the individuals selling used goods on the platforms.

Secondly, our classified marketplaces are valued among smaller professional sellers for the ease of use of the platform. All additional administrative burdens and technical challenges that the requirements in Article 22 pose, risk alienating sellers from our marketplaces.

In order to decrease the administrative burden, we propose to keep the requirements limited to the necessary information needed in order to know your business customer and to what is absolutely necessary to identify the trader. For our classified marketplaces it is reasonable to ask for the following information:

a) Name, address, telephone number and email address
e) Trade registration number

f) Self-certification on products and services complying with Union law.

The other requirements, such as bank account number, are not information our marketplaces can easily collect from traders and it is not information of use to the marketplace.

In addition we are of the opinion that Article 22.6 should set a minimum requirement for what information is necessary to display and how it is displayed.

Reporting requirements (Article 23)

We are of the opinion that the reporting requirements in this article are far-reaching and will be hard for our classified marketplaces to adhere to. We caution against some of these obligations such as the requirement to report the amount of suspensions and use of

automatic means for content moderation as such information is business critical and should not be required to be exposed.

We call on a risk assessment to be made in this regard and are of the opinion that such reporting requirements should only be obligatory for very large platforms.

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Key messages

- Schibsted welcomes the Commission's proposal and believes that it will contribute to a fairer and more competitive digital economy. The proposed obligations for digital gatekeepers will enable digital companies such as Schibsted to innovate, grow and develop new services for users in all our markets.

- We agree with the proposed approach to establish a combination of clear qualitative and quantitative criteria for defining gatekeepers, and stress the need to ensure obligations fully and exclusively target only those gatekeepers that cause the most harm to the digital market.

- To ensure legal certainty, it is important to be clear from the outset which companies will be designated as gatekeepers according to the Regulation.

- We support the proposal to specify specific, self-executing obligations (Art.5) which could allow remedies to be introduced quickly and efficiently, in particular the obligations related to greater transparency in online advertising (Art.5(g)).

- Some of the obligations in Article 6, such as the obligation to provide business users with their own customer data in Art.6.1(i), are of such importance for Schibsted’s ability to

develop our services that they should be moved to Article 5 for legal certainty and speedy implementation.

- We concur that enforcement of the Regulation should take place at the EU level and is clearly in the hands of the EU Commission. However, we see a risk that a lengthy designation process may lead to these rules not being applicable for a long time. We therefore support the use of interim measures (Art.22) for speedy adoption.

Background

Schibsted is a family of digital consumer brands based in the Nordics with world-class Scandinavian media houses, leading classified marketplaces and tech start-ups in the field of personal finance and collaborative economies. Schibsted constitutes an ecosystem of various brands that offer different products and services to users and customers. We utilize data across the ecosystem both to attract users and customers, develop and personalise our products and services as well as keep users and customers engaged.

Giant global digital platforms are at the heart of the economy, and some of them have become digital gatekeepers that – due to their size and scale – are able to set the rules in the market and act as private regulators of the relationship between businesses and their users. Consumers rely on the gatekeepers to access information and services, and businesses need them to access users and user data, to promote services and generally to operate more efficiently.

Although these platforms are an essential part of the economy and can create great business opportunities, valuable innovation and useful choices for consumers, we experience unfair and uncompetitive practices in accessing data about our users on these

platforms and lack of transparency in the online advertising market that is crucial for our income generation.

We are therefore very supportive of the proposal for a Digital Markets Act and hope that negotiations will proceed swiftly to allow the Regulation to enter into force and deliver practical results as soon as possible.

Scope

We are of the opinion that the scope must be limited only to those digital players that are truly unavoidable trading partners for business users and their customers, present across vertically-integrated markets across a majority of EU Member States. These gatekeepers exercise a market power that gives them the ability to charge excessive intermediation/access fees and/or exhibit abusive negotiation power by, for example, imposing unfair conditions on their business users.

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We agree with the proposed qualitative and quantitative criteria in the draft Regulation. Especially the fact that gatekeepers have a significant impact on the market and are unavoidable trading partners for businesses to reach their customers are important elements to consider. The criteria must be clear and future-proof to prevent gatekeepers from either circumventing them by company arrangements or unreasonably challenging or delaying the designation process.

We would support clarifications, for example, in the definition of "monthly active end users" in Art. 3.2.b and to clarify Article 3.2 (a) so that the undertaking needs to provide the same core platform service in at least three Member States.

We see significant risk of legal uncertainty in slow, lengthy designation procedures and delegated acts, and this is a concern widely reflected by companies operating in the digital market. The process laid out in Articles 3.3-7 must not lead to a lengthy and overly-administrative process that will delay the implementation of the obligations in the Regulation.

Obligations for gatekeepers (Articles 5 and 6)

We have been calling for specific obligations on gatekeepers that are important to develop our digital services and to stay relevant with our users. In particular we have called for obligations that add predictability, fairness and transparency to the relationship between us as a business user and the gatekeepers, but also obligations that ensure that we can get access to our own customer data when our customers access our services via a gatekeeper platform.

We are supportive of the proposed obligations in Article 5 and 6 and believe that these will help level the playing field in the digital market.

The inclusion of the obligations in the DMA are particularly important for the ability of companies like Schibsted to continue to grow and innovate:

- (Article 5 (a) - refrain from **combining personal data** sourced from these core platform services with personal data from any other services offered by the gatekeeper;
- (Article 5 (g) - **Transparency for advertisers and publishers about the pricing and remuneration in advertising** services provided by the gatekeeper);
- (Article 6.1 (a)) - refrain from **using, in competition with business users, any data** not publicly available, which is generated through activities by those business users ;.
- (Article 6.1 (d)) - refrain from **treating more favourably** in ranking services and products offered by gatekeepers itself ;
- (Article 6.1 (f)) - allow business users and **providers of ancillary services** access to and interoperability with the same operating system;
- (Article 6.1 (g)) - **provide advertisers and publishers, upon their request and free**

of charge, with access to the performance measuring tools

- (Article 6.1 (i)) - **provide business users, or third parties authorised by a business user, access and use of their user data** ;
- (Article 6.1 (k)) - apply **fair and non-discriminatory general conditions** of access for business users to its software application store .

In particular, Article 6.1(i) is important for Schibsted as a digital news provider. We sell digital subscriptions through app stores and experience problems in accessing information about those purchasing the subscription. For example, Apple requires some of Schibsted's news media apps to exclusively implement Apple's payment system (IAP) for customers to purchase in-app subscriptions. Customers purchasing subscriptions through the iOS App Store become customers of Apple even though they are signing up to one of our services. As the news publisher, we are not able to establish a customer relationship and cannot offer relevant content to them, help them via our customer service or understand their preferences to innovate and develop our products and services.

It is of utmost importance to us that we have access to data so that we can offer the most relevant content to our customers. We therefore must have free access to our own customer data and be able to decide how to comply with legal obligations when it comes to the processing of our user data. We believe that gatekeepers should not take the role of regulators and dictate how we should comply with legal obligations.

It is also important that a gatekeeper that is active in multiple markets cannot use data generated on their platform to compete with other players in the same market. Well applied, Article 6.1(a) can tackle situations where a gatekeeper such as Google, because of its dominant position in search, maintains a lock on all kinds of data generated by publishers, advertisers and other intermediaries to maintain its dominant position across the broader digital advertising ecosystem. It can also prevent gatekeeper platforms tying separate

products and services to their core platforms and favouring their own services to the detriment of competitors. For example, Facebook has artificially boosted its Facebook Marketplace classifieds service with unprecedented growth by leveraging its social network to drive ads and traffic to that service.

We also support greater transparency obligations in Articles 5(g) and 6.1(g) that aim to ensure publishers and advertisers have the possibility to understand market dynamics (such as pricing) and access performance measurement tools in the online advertising chain. Today, Google can lock the YouTube ad inventory into its own advertising network, thereby hindering the development of alternative advertising networks.

We therefore call on the EU institutions to maintain these obligations in the Regulation.

Given the vital importance of the obligations set out in Articles 6.1(a), (g) and (i), and to ensure they cannot be diluted or circumvented in the process of 'regulatory dialogue', we propose these provisions are inserted in Article 5.

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Enforcement

To avoid regulatory fragmentation in the digital single market, we support enforcement of the DMA at the EU level and in the hands of the EU Commission. We stress the importance of the Commission setting aside enough resources to ensure efficient and speedy implementation.

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Begge posisjoner er forankret i Schibsteds konsernledelse. Vi er beredt til å svare på spørsmål og bidra i videre konsultasjoner knyttet til Norges posisjoner når det gjelder de foreslåtte forordningene.

Vennlig hilsen

Einar Hålien
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