



Unbundling of hosting and content moderation: a draft proposal to help fix competition and freedom of expression challenges in social media markets

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The problem

Social media platforms have revolutionised the way people access and share content. They have acted as tremendous enablers for individuals' right to freedom of expression and information. However, they have also built users' profiles through the accumulation of traces of online navigation and drawn them in with targeted advertising. They have accelerated the dissemination of various kinds of problematic content such as some forms of 'hate speech' and 'disinformation'.

In addition, the major social media platforms act as gatekeepers in the social media markets. They control economic actors' access to the users and are able to raise barriers to entry for competitors. As such, they determine the competition dynamics in the market and in the aftermarkets. On the one hand, economic actors that want access to the users have to accept the conditions imposed by the gatekeepers; on the other hand, gatekeepers deprive users of viable alternatives.

ARTICLE 19 is particularly concerned by the fact that social media gatekeepers act not only as "economic" gatekeepers, but also as "human rights" gatekeepers, with particular impact on the right freedom of expression and information, and the right to privacy. This manifests itself in two ways. First is the companies' ability to dictate standard terms of service (ToS) for their users and to implement content moderation policies that are critical in terms of freedom of expression standards. Second, it also raises concerns where governments are able to pressure these gatekeepers into changing their ToS or policies in way which is not compliant with human rights.

Moreover, at a community level, social media platforms with high market power can exert decisive influence on public debate, which raises issues in relation to diversity and pluralisms in the online environment. It is of utmost importance that media freedom and media pluralism are guaranteed online as they are offline.

Our proposal

The proposal ARTICLE 19 puts forward has its roots in the assumption that high concentration in social media markets¹, coupled with consistent barriers to entry for competitors, plays a fundamental role in the structural competition problems and freedom of expression challenges we need to address in those markets. Therefore, our proposal aims to fix challenges with content curation by diminishing concentration of power in the market and by lowering barriers to entry for alternative curation services.

Although hosting and curation activities are currently provided as a bundle by the vast majority of social media platforms, this does not need to be the case, and it is not something irreversible. The bundle has a strategic economic value, and it contributes to lock in users and to raise barriers to entry to the market for potential

¹ The high level of concentration in digital platforms markets has been identified by, among others, by the CMA Study as well as by Furman review. See: CMA, Online Platforms and Digital Advertising, [Market Study Final Report](#), (2020); Furman et al., [Unlocking Digital Competition](#) (2019).

competitors. In other words, by offering both services together, dominant social media platforms manage to protect themselves from competitive pressure and deprive users from alternatives; they are able to hold their gatekeeping position safely.

This scenario is undesirable from a number of perspectives, and has an impact on competition, innovation, individuals' rights and, to a certain extent, also broader public objectives such as media plurality and diversity. As mentioned earlier, it also results in a number of market failures such as excessive concentration in the market, barriers to entry, and other externalities created by the dominant platforms' behaviors that are not internalised and thus fall on individual users and on society, who pay the costs.

ARTICLE 19 calls for an ex ante remedy to address this situation. This would oblige social media platforms with significant market power to **unbundle hosting and content curation activities**, and allow third parties to offer content curation to the platforms' users. As a way of example, what we envisage is that a user that creates or has a profile on Facebook would be asked by the platform whether they want the content curation service to be provided by Facebook itself, or by other players to be freely selected. The option to stay with the dominant platform should be presented as opt-in, rather than opt-out. We believe that opt in default is more pro-competitive and reduces switching costs (and therefore also avoid that platforms undermine the effects of the unbundling by making the switching hard for users and by nudging them towards a locked-in situation).

Designing the unbundled access to content curation

ARTICLE 19 calls for an asymmetric remedy. We believe that such remedy should be imposed on platforms that have a gatekeeping position or a position of market strength that, irrespective of whether it can be defined as dominance under competition rules, it allows the platform to raise barriers to entry, determine competition dynamics in the market, and deprive users of viable alternatives.

We recommend a form of functional separation, not a structural one. In addition, the platform that provides the hosting should remain free to offer content curation too. What changes is that the platform should keep the two services separate and provide competitors the possibility to offer the curation service on its platform; the platform must also allow users to freely choose among service providers.

The unbundling remedy should be designed to address the contractual layer (contractual agreements between the platforms with significant market power and the alternative players that provide content curation services to the platforms' users) and the technical layer (how to make this technically possible while ensuring data protection, consumer protection and security).

- For the contractual layer, we suggest that platforms provide access to competitors based on fair, reasonable, transparent and non-discriminatory grounds. We also suggest platforms should not be allowed to change the access conditions unilaterally in a way that nullifies competitors' efforts and investments.
- For the technical layer, we believe the more efficient solution to be that platforms should open a curation Application Programming Interface (API) to potential competitors. As such, the efficacy of the unbundling remedy is based on the adoption of interoperability solutions, whose details should be defined by the regulator, guided by independent experts with the relevant knowledge and in cooperation with the platform in order to deal with the substantial information asymmetries in the market. Indeed, as explained by distinguished academic experts, various types of interoperability exist, and each of them could best fit different situations and needs².

² See, in particular: Ian Brown, [Interoperability as a tool for competition regulation](#), preprint of 31 July 2020; Vittorio Bertola (2020), [A Technical and Policy Analysis of Interoperable Internet Messaging](#).

What the unbundling could achieve

ARTICLE 19 suggests that unbundling is a highly pro-competition remedy: it opens the market for content curation and relies on competition among players to deliver more choices and better-quality services to users. Therefore, the unbundling is also capable of addressing the market failures mentioned above. Furthermore, the remedy we suggest is not a novelty in the history of economic regulation; on the contrary, it has been often used in network industries, and especially in the telecom sector, in order to enhance competition and stimulate market entry.

Moreover, the unbundling is less invasive or paternalistic than other instruments to address challenges related to content curation, such as imposing specific curation policies or establishing ‘must carry’ obligations. It interferes only limitedly on digital platforms' freedom of economic activities and it empowers users to make their own choices, rather than imposing strict standards on the market.

Our Recommendations:

We call the European Commission to impose the unbundling of hosting and content curation activities on social media platforms, and in particular:

- We suggest an asymmetric obligation, to be imposed on social media platforms with a gatekeeping position or a position of market strength;
- The unbundling should be coupled with the obligation to provide access based on fair, reasonable, transparent and non-discriminatory grounds, and with the necessary interoperability requirements;
- The remedy should allow users to freely select the content curation provider of their choice.