

## Overview of proposals related to online advertising in DSA, DMA and other legislation

Last updated 29 June 2021

### 2.1 Ban targeted ads

#### 2.1.1 Ban ads using personal data

Text proposed	By who?	In what context?
<p style="text-align: center;">Article 2a</p> <p style="text-align: center;">Targeting of digital advertising</p> <p>1. Providers of information society services shall not collect or process personal data as defined by Regulation (EU) 2016/679 for the purpose of determining the recipients to whom advertisements are displayed.</p> <p>2. This provision shall not prevent information society services from determining the recipients to whom advertisements are displayed on the basis of contextual information such as keywords, the language setting communicated by the device of the recipient or the geographical region of the recipients to whom an advertisement is displayed.</p> <p>3. The use of the contextual information referred to in paragraph 2 shall only be permissible if it does not allow for the direct or, by means of combining it with other information, indirect identification of one or more natural persons, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological,</p>	<p>Paul Tang, Patrick Breyer, Karen Melchior, Rasmus Andresen, Kim Van Sparrentak</p>	<p><a href="#">LIBE draft opinion on DSA, Amendment 295</a></p>

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<p>genetic, mental, economic, cultural or social identity of that natural person or persons.</p>		
<p style="text-align: center;">Article 13a</p> <p style="text-align: center;">Targeting of digital advertising</p> <p>1. Providers of intermediary services shall not collect or process personal data as defined by Regulation (EU) 2016/679 for the purpose of showing digital advertising.</p> <p>2. This provision shall not prevent intermediary services from displaying targeted digital advertising based on contextual information [such as keywords, the language setting communicated by the device of the recipient or the digital location/geographical region where the advertisement is displayed.]</p> <p>3. The use of the contextual information referred to in paragraph 2 shall only be permissible if it does not allow for the direct or, by means of combining it with other information, indirect identification of a natural person or a clearly identifiable group of recipients/persons, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.</p>	<p>Paul Tang, Karen Melchior, Alexandra Geese, Martin Schirdewan, Eva Kaili, Rasmus Andresen, Kim Van Sparrentak, Maria-Manuel Leitão-Marques, Ismail Ertug, Cornelia Ernst, Birgit Sippel, Evelyn Regner, Tiemo Wölken, Alex Agius Saliba, Lina Gálvez Muñoz, Marcel Kolaja, Clare Daly</p> <p>Similar language minus the part in red proposed by Marina Kaljurand, Christel Schaldemose</p>	<p><a href="#">LIBE draft opinion on DSA, Amendments 430 &amp; 431</a></p>

<p style="text-align: center;">Article 2a</p> <p style="text-align: center;">Digital Privacy</p> <p>1. Where technically possible, a provider of an information society service shall enable the use of and payment for that service without collecting personal data of the recipient.</p> <p>2. A provider of an information society service shall process personal data concerning the use of the service by a recipient only to the extent strictly necessary to enable the recipient to use the service or to charge the recipient for the use of the service. An operator of an online platform shall be allowed to process personal data concerning the use of the service by a recipient for the sole purpose of operating a recommender system if the recipient has given his or her explicit consent, as defined in Article 4(11) of Regulation (EU) 2016/679. Member States shall not require a provider of information society services to retain personal data concerning the use of the service by all recipients.</p>	Patrick Breyer (rapporteur)	<a href="#">LIBE draft opinion on DSA</a>
<p style="text-align: center;">Article 24 - paragraph 1 - point c b (new)</p> <p>(c b) Recipients of the service shall have access to profiling data that online platforms hold about them. This data should be made available to recipients of the service in a comprehensible format and should also include inferences made about that recipient, pursuant to Regulation (EU) 2016/679. Recipients of the service shall also be able to rectify and delete their profile, including information inferred about them by the platform. Such profiles must not be used for advertising.</p>	Marisa Matias on behalf of the The Left Group	<a href="#">ITRE draft opinion on DSA, Amendment 497</a>

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<p>Article 24 a</p> <p>Restrictions on targeted advertisements Distributing advertisements on the basis of targeting recipients of the service on the basis of their behaviour data or using profiling techniques shall be prohibited. Personalised advertisements may be based on the content the recipient is viewing on the online platform only, with due information. Tracking the user beyond the platform itself, through other services or on the wider web, shall be prohibited. Online platforms shall not be allowed to resort to cross-device and cross-site combination of data processed inside or outside the platform.</p>	<p>Marisa Matias on behalf of the The Left Group</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 505</a></p>
<p>Article 24 - paragraph 1 b (new)</p> <p>Online platforms shall favour advertising that do not require any tracking of user interaction with content.</p>	<p>Lina Gálvez Muñoz, Alicia Homs Ginel, Robert Hajšel, Carlos Zorrinho, Andris Ameriks, Nicolás González Casares, Romana Jerković, Eva Kaili, Carlo Calenda, Maria-Manuel Leitão-Marques, Adriana Maldonado López</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 502</a></p>
<p>Article 27 - paragraph 3 a (new)</p> <p>3 a. The option of a phase-out leading to a prohibition of targeted advertising on the basis of pervasive tracking shall also be considered.</p>	<p>Eva Kaili</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 569</a></p>

## 2.2 Ban targeting based on certain categories

### 2.2.1 Special category data

Text proposed	By who?	In what context?
<p>Article 13d</p> <p>Recipients' consent for advertising practices</p> <p>(...)</p> <p>3. When processing data for targeted, micro-targeted and behavioural advertising, online intermediaries shall comply with relevant Union law and shall not engage in activities that can lead to pervasive tracking, such as disproportionate combination of data collected by platforms, or disproportionate processing of special categories of data that might be used to exploit vulnerabilities.</p>	<p>Christel Schaldemose (rapporteur)</p>	<p><a href="#">IMCO draft report on DSA</a></p>

### 2.2.2 Children's data

Text proposed	By who?	In what context?
<p>Article 12b</p> <p>Mitigation of risks to children</p> <p>Providers of intermediary services likely to impact children shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks</p>	<p>Caterina Chinnici, Hilde Vautmans, David Lega, Javier Moreno Sánchez, Antonio López-Istúriz White, Milan Brglez, Dragos Pîslaru, Fabienne Keller, Eva Kaili, Josianne Cutajar, Ioan-Rares Bogdan</p>	<p><a href="#">LIBE draft report on DSA, Amendment 414</a></p>

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identified pursuant to Article 13 (12 a new). Such measures shall include, where applicable:

- a) implementing mitigation measures identified in Article 27 with regard for children’s best interests;
- b) adapting or removing system design features that expose children to content, contact, conduct and contract risks, as identified in the process of conducting child impact assessments;
- c) implementing proportionate and privacy preserving age assurance, meeting the standard outlined in Article 34;
- d) adapting content moderation or recommender systems, their decision- making processes, the features or functioning of their services, or their terms and conditions to ensure they prioritise the best interests of the child;
- e) ensuring the highest levels of privacy, safety, and security by design and default for users under the age of 18;
- f) preventing profiling, including for commercial purposes like targeted advertising;
- g) ensuring published terms are age appropriate and uphold children’s rights;
- h) providing child-friendly mechanisms for remedy and redress, including easy access to expert advice and support;

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<p>Article 24 – paragraph 1 a (new)</p> <p>Behavioural and micro-targeted advertising should not be permitted towards children below 18</p>	Eva Kaili	<a href="#">ITRE draft opinion on DSA, Amendment 501</a>
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## 2.2.3 Any data not explicitly provided

Text proposed	By who?	In what context?
<p>Article 24a</p> <p>Online platforms shall present personalised advertising only on the basis of data explicitly provided to them or declared by recipients of services and provided that they have granted consent for the use of this data for the purposes of delivering personalised advertising.</p>	Beata Kempa, Patryk Jaki	<a href="#">LIBE draft opinion on DSA, Amendment 612</a>

## 2.3 Strengthen/enforce GDPR

### 2.3.1 Targeted ads ‘off by default’ + opt-in

Text proposed	By who?	In what context?
<p>Article 13d</p> <p>Recipients’ consent for advertising practices</p>	Christel Schaldemose (rapporteur)	<a href="#">IMCO draft report on DSA</a>

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1. Providers of intermediary services shall, by default, not make the recipients of their services subject to targeted, microtargeted and behavioural advertisement unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent. Providers of intermediary services shall ensure that recipients of services can easily make an informed choice when expressing their consent by providing them with meaningful information, including information about the value of giving access to and about the use of their data.

2. When asking for the consent of recipients of their services considered as vulnerable consumers, providers of intermediary services shall implement all the necessary measures to ensure that such consumers have received enough and relevant information before they give their consent.

3. When processing data for targeted, micro-targeted and behavioural advertising, online intermediaries shall comply with relevant Union law and shall not engage in activities that can lead to pervasive tracking, such as disproportionate combination of data collected by platforms, or disproportionate processing of special categories of data that might be used to exploit vulnerabilities.

4. Providers of intermediary services shall organise their online interface in such a way that recipients of services, in particular those considered as vulnerable consumers, can easily and efficiently access and modify advertising parameters. Providers of intermediary services shall monitor the use of advertising parameters by recipients of services on



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<p>a regular basis and make best efforts to improve their awareness about the possibility to modify those parameters.</p>		
<p>Article 24 – paragraph 1 d (new)</p> <p>Online platforms shall offer the possibility to opt-in for the use of behavioural data and political advertising.</p>	<p>Lina Gálvez Muñoz, Alicia Homs Ginel, Robert Hajšel, Carlos Zorrinho, Andris Ameriks, Nicolás González Casares, Romana Jerković, Eva Kaili, Patrizia Toia, Carlo Calenda, Maria-Manuel Leitão-Marques, Adriana Maldonado López</p>	<p><a href="#">ITRE draft opinion, Amendment 504</a></p>

## 2.3.2 ‘Off switch’ & exercise data subject rights

Text proposed	By who?	In what context?
<p>Article 24 – paragraph 1a &amp; 1b (new)</p> <p>2. The online platform shall design and organise its online interface in such a way that recipients of the service can easily and efficiently exercise their rights under applicable Union law in relation to the processing of their personal data for each specific advertisement displayed to the data subject on the platform, in particular:</p> <p>(a) To withdraw consent or to object to processing</p> <p>(b) To obtain access to the personal data concerning the data subject</p>	<p>Sophie in’t Veld</p>	<p><a href="#">LIBE draft opinion on DSA, Amendments 607, 609</a></p>

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<p>(c) To obtain rectification of inaccurate personal data concerning the data subject</p> <p>(d) To obtain erasure of personal data without undue delay</p> <p>Where a recipient exercises any of these rights, the online platform must inform any parties to whom the personal data concerned in points (a)-(d) have been enclosed in accordance with Article 19 of Regulation (EU) 2016/679.</p> <p>3. Where a recipient exercises any of the rights referred to points (a), (c) or (d) in paragraph 2, the online platform must immediately cease displaying advertisements using the personal data concerned or using parameters which were set using this data.</p>		
<p>Article 24 (...)</p> <p>(c) meaningful information about the parameters used to determine the recipient to whom the advertisement is displayed and how to change these parameters</p>	<p>Mikuláš Peksa on behalf of the Greens/EFA Group</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 493</a></p>
<p>Article 24 - paragraph 1 c (new)</p> <p>Online platforms shall offer the possibility to easily opt-out for micro-targeted tracking.</p>	<p>Lina Gálvez Muñoz, Alicia Homs Ginel, Robert Hajšel, Carlos Zorrinho, Andris Ameriks, Nicolás González Casares, Romana Jerković, Eva Kaili, Patrizia Toia, Carlo Calenda, Maria-Manuel Leitão-Marques, Adriana Maldonado López</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 503</a></p>

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## 2.3.3 Ban/restrict dark patterns

Text proposed	By who?	In what context?
<p>No specific text proposed yet in the context of DSA, but California Consumer Privacy Act (CCPA) includes some wording on dark patterns:</p> <p>Agreement obtained through use of dark patterns does not constitute consent.</p> <p>“Dark pattern” means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making, or choice, as further defined by regulation.</p> <p>A business’s methods for submitting requests to opt-out shall be easy for consumers to execute and shall require minimal steps to allow the consumer to opt-out. A business shall not use a method that is designed with the purpose or has the substantial effect of subverting or impairing a consumer’s choice to opt-out.</p> <p>Illustrative examples follow:</p> <p>(1) The business’s process for submitting a request to opt-out shall not require more steps than that business’s process for a consumer to opt-in to the sale of personal information after having previously opted out. The number of steps for submitting a request to opt out is measured from when the consumer clicks on the “Do Not Sell My Personal Information” link to completion of the request. The number of steps for submitting a request to opt-in to the sale of personal information is measured from the first indication by</p>	<p>California Privacy Rights Act (CPRA), California Consumer Privacy Act (CCPA)</p>	<p><a href="#">CPRA Section 1798.140 (h), (l) (effective Jan 2023)</a></p> <p><a href="#">Additional amendments to CCPA regulations (March 2021)</a></p>

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<p>the consumer to the business of their interest to opt-in to completion of the request.</p> <p>(2) A business shall not use confusing language, such as double-negatives (e.g., “Don’t Not Sell My Personal Information”), when providing consumers the choice to opt-out.</p> <p>(3) Except as permitted by these regulations, a business shall not require consumers to click through or listen to reasons why they should not submit a request to opt-out before confirming their request.</p> <p>(4) The business’s process for submitting a request to opt-out shall not require the consumer to provide personal information that is not necessary to implement the request.</p> <p>(5) Upon clicking the “Do Not Sell My Personal Information” link, the business shall not require the consumer to search or scroll through the text of a privacy policy or similar document or webpage to locate the mechanism for submitting a request to opt-out.</p>		
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## 2.4 Transparency

Text proposed	By who?	In what context?
<p style="text-align: center;">Article 24</p> <p style="text-align: center;">Online advertising transparency</p> <p>Online platforms that display advertising on their online interfaces shall ensure that the recipients of the service can identify, for each specific advertisement displayed to each</p>	<p>Christel Schaldemose &amp; various amendments to IMCO, ITRE and LIBE DSA reports</p> <p>+ EDPS recommendations on DSA</p>	

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<p>individual recipient, in a clear and unambiguous manner and in real time:</p> <p>(c) meaningful information about the <del>main</del> parameters used to determine the recipient to whom the advertisement is displayed.</p>		
<p>24(c) <b>clear</b>, meaningful and <b>uniform</b> information about the parameters used to determine the recipient to whom the advertisement is displayed;</p>	<p>Christel Schaldemose (rapporteur)</p> <p>Supported by amendements by Sophie in't Veld, Anna Julia Donath, Fabienne Keller</p>	<p><a href="#">IMCO draft report</a></p>
<p>24(c) meaningful information about <b>all</b> parameters used to determine the recipient to whom the advertisement is displayed.</p>	<p>Beata Kempa, Patryk Jaki</p>	<p><a href="#">LIBE draft opinion on DSA, Amendment 604</a></p>
<p>24(c) meaningful, granular and specific information about the parameters used to <b>target and display the advertisement, which allows the consumer to determine why and how the advertisement in question was shown to him or her. This information shall include categories of data that targeted forms of advertising would use to address and categorise consumers and the data platforms share with advertisers for advertising targeting purposes.</b></p>	<p>Paul Tang</p>	<p><a href="#">LIBE draft opinion on DSA Amendment 601</a></p>
<p>24(e) if the advertisement was displayed using an automated tool and the identity of the person responsible for that tool.</p>	<p>Christel Schaldemose (rapporteur)</p>	<p><a href="#">IMCO draft report</a></p>
<p>24(a) that the information displayed is an advertisement and whether the advertisement has been optimised by an algorithm, including disclosure of all proxies that were used for optimization of an advertisement;</p>	<p>Marisa Matias on behalf of the The Left Group</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 486</a></p>

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<p>24(c) meaningful information about the parameters used to determine the recipient to whom the advertisement is displayed with the same level of detail as specified by the advertiser, and including the optimisation objectives for the delivery of the advertisement as specified by the advertiser or applied by the online platform.</p>	<p>Eva Kaili</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 491</a></p>
<p>24(ca - new) meaningful information about algorithms to optimise the advertisement, if any, including meaningful explanation of optimisation goal, proxy attributes used for its optimisation as well as meaningful explanation of reasons why online platform optimised and displayed the advertisement to this recipient in order to achieve its optimisation goal;</p>	<p>Marisa Matias on behalf of the The Left Group</p>	<p><a href="#">ITRE draft opinion on DSA, Amendment 495</a></p>

## 2.5 Tackle market power (competition/antitrust)

### 2.5.1 Restrict internal data sharing

Text proposed	By who?	In what context?
<p style="text-align: center;">Article 5</p> <p style="text-align: center;">Obligations for gatekeepers</p> <p>In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:</p> <p>(a) refrain from combining personal data sourced from these core platform services with personal data from any</p>	<p>European Commission</p>	<p><a href="#">EC DMA Proposal</a></p>

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<p>other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Regulation (EU) 2016/679. ;</p>		
<p>5(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Article 6(1), point (a), of Regulation (EU) 2016/679; alternatively, the gatekeeper may rely on the legal basis included under Article 6(1) of that Regulation with the exception of points (b) and (f) thereof;</p>	<p>Andreas Schwab (rapporteur)</p>	<p><a href="#">IMCO draft report on DMA</a></p>
<p>5(a) refrain from combining <b>and, or, cross-using</b> personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with <del>the</del> specific choice <b>in the case of each processing purpose and provided consent</b> in the sense of Regulation (EU) 2016/679. ;</p>	<p>Johnny Ryan</p>	<p>Amendments to DMA</p>
<p>5(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in <b>business</b></p>	<p>Tiemo Wolken (rapporteur)</p>	<p><a href="#">Draft JURI opinion on DMA report</a></p>

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<p><b>users or</b> end users to other services of the gatekeeper in order to combine personal data;</p>		
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## 2.5.2 Prohibit dominant platforms from making access conditional on consent

Text proposed	By who?	In what context?
<p style="text-align: center;">§ 19a</p> <p>Abusive behavior by companies with paramount cross-market importance for competition</p> <p>(2) In the event of a determination under paragraph 1, the Federal Cartel Office may prohibit the company from (...)</p> <p>4. To set up or noticeably increase barriers to market entry by processing competition-relevant data that the company has collected, or to hinder other companies in any other way, or to demand terms and conditions that allow such processing, in particular</p> <p>a) to make the use of services dependent on users consenting to the processing of data from other services of the company or a third-party provider, without giving the users sufficient options with regard to the circumstances, the purpose and the manner of processing;</p> <p>b) to process competition-relevant data received from other companies for purposes other than those necessary for the provision of their own services to these companies, without</p>	<p>Germany</p> <p><i>(non-official translation - Google Translate)</i></p>	<p><a href="#">Gesetz gegen Wettbewerbsbeschränkungen (GWB)</a> (in force since Jan 2021)</p>



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giving these companies sufficient options with regard to the circumstances, the purpose and the manner of processing;		
<p style="text-align: center;">Article 5</p> <p style="text-align: center;">Obligations for gatekeepers</p> <p>In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:</p> <p>(f) refrain from requiring business users or end users to subscribe to or register with any other core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;</p>	European Commission	<a href="#">EC DMA proposal</a>
5(f) refrain from requiring business users or end users to use, subscribe to, or register with, any other core platform services <b>and ancillary services</b> as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;	Tiemo Wolken (rapporteur)	<a href="#">Draft JURI opinion on DMA report</a>

## 2.5.3 Limit acquisitions & mergers

Text proposed	By who?	In what context?
<p><b>SEC. 2. UNLAWFUL ACQUISITIONS.</b></p> <p>(a) VIOLATION.—It shall be unlawful for a covered platform operator to acquire directly or indirectly—</p>	Rep. Hakeem Jeffries (D-N.Y.)	<a href="#">H. R. 3826</a>

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<p>(1) the whole or any part of the stock or other share capital of another person engaged in commerce or in any activity or affecting commerce; or</p> <p>(2) the whole or any part of the assets of another person engaged in commerce or in any activity affecting commerce.</p> <p>(b) EXCLUSION.—An acquisition shall not be unlawful under subsection (a) if the acquiring covered platform operator demonstrates by clear and convincing evidence that—</p> <p>(1) the acquisition is a transaction that is described in section 7A(c) of the Clayton Act; or</p> <p>(2) the acquired assets or the issuer of the acquired stock do not—</p> <p>(A) compete with the covered platform or with the covered platform operator for the sale or provision of any product or service;</p> <p>(B) constitute nascent or potential competition to the covered platform or the covered platform operator for the sale or provision of any product or service;</p> <p>(C) enhance or increase the covered platform’s or the covered platform operator’s market position with respect to the sale or provision of any product or service offered on or directly related to the covered platform; or</p> <p>(D) enhance or increase the covered platform’s or covered platform operator’s ability to maintain its market position with respect to the sale or provision of any product or service offered on or directly related to the covered platform.</p>		
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<p>(c) <b>USER ATTENTION.</b>—For purposes of this Act, competition, nascent competition, or potential competition for “the sale or provision of any product or service” includes competition for a user’s attention.</p> <p>(d) <b>ROLE OF DATA.</b>—For purposes of this Act, an acquisition that results in access to additional data may, without more, enhance, increase, or maintain a covered platform's market position.</p>		
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