Digital Services Act
Mirakl Position on VLOP category and methodology to calculate Active recipient of a Digital Service

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Mirakl is thrilled to have seen the DSA adopted last week by the EU Parliament. Congratulations for this very important milestone.

Before the start of the trilogues, we would like to raise a more technical question around the **Very Large Online Platform (VLOP) definition and the count of Active Recipients of the Service.** Mirakl strongly support the aim to mitigate systemic risk from very Very Large Platforms.

It is relevant to raise the level of diligence of the largest platforms and to create the VLOP category. However, as far as transaction-based platforms are concerned, it seems unfair to qualify mere visitors as "active users". Unlike social networks, platforms whose only purpose is to publish and share digital content, the purpose of a marketplace is to create the conditions for a purchase. Without any purchase, there is no creation of value.

It makes sense to consider scrolling on a social media app an active use of the platform but this logic cannot be applied for a transaction-based platform. The user only really engages, and is submitted to risks, once he or she buys a good or service offered on the platform. For an e-commerce platform traffic is not an end, it is just a mean.

Defining an active user as any person accessing the platform's interface, regardless of the purpose or the service offered by the platform, denies **the very notion of "being active" and will create an ill-grounded presumption of systemic risk on every mid-sized platform.** Indeed, considering that the conversion rate in eCommerce is around 3%, it is roughly 97% of traffic that would wrongly be deemed "active".

Moreover, many retailers are today's leveraging the hybrid marketplace model by onboarding third party sellers (3P) on their very own eCommerce website (FNAC-DARTY, Carrefour, Nature & Découvertes, Obelink, Mediamarkt, El Corte Ingles, The Phone House, H&M Home, La Redoute, Urban Outfitters, Worten are some example of Mirakl-powered marketplaces). These hybrid models are mixing direct sales from the retailers (1P) and sales provided by third party sellers (3P) on the same website. The direct retail (1P) activity is not covered by the DSA and should not be taken into consideration when calculating the number of active users of the platform.

Practically speaking the only way to attribute a unique visitor to either 1P (direct-sale) or 3P (Platform modem) category is to consider the purchase on the website. With the current definition od active user and by only operating a marketplace on their website, they may fall in the VLOP category if their traffic rises above 45 millions and even if their visitors are not buying anything or only buying their own products sold from their own inventory.

Based on amendment 98 adopted by the EU Parliament, we call the commission / the council to open the debate in trilogues in order to define more precisely the definition of the user's "active role"; so this notion takes into account the type of services offered by the platform economy and/or eCommerce.

If not, the smallest platforms would be obliged to comply with the VLOPs' obligations without having either their financial resources or their technical expertise. This would, at the end, benefit the largest platform and reinforce their dominant position.