



Questions and Answers: Digital Markets Act: Ensuring fair and open digital markets*

Brussels, 6 September 2023

What is the Digital Markets Act?

The Digital Markets Act introduces rules for platforms that act as “gatekeepers” in the digital sector. These are platforms that have a significant impact on the internal market, serve as an important gateway for business users to reach their end users, and which enjoy, or will foreseeably enjoy, an entrenched and durable position.

The Digital Markets Act aims at preventing gatekeepers from imposing unfair conditions on businesses and end users and at ensuring the openness of important digital services.

Examples of changes that gatekeepers will have to implement include ensuring end users can easily uninstall pre-installed applications or stop the installation of applications by default and provide for choice. On the other side, gatekeepers will need to ensure that business users can get access to performance data about advertising campaigns and ad pricing information, allow developers to use alternative in-app payment systems and provide for interoperability options for messenger systems.

Who is subject to the Digital Markets Act?

The Digital Markets Act is applicable to companies designated as “gatekeepers”.

Only those companies that are designated as gatekeepers by the Commission will be subject to the obligations of the DMA. The same company can be designated as gatekeeper for several core platform services.

Specifically, there are three main cumulative criteria that presumptively lead to a designation as a gatekeeper:

1. A size that impacts the internal market: this is presumed to be the case if the company achieves an annual turnover in the European Economic Area (EEA) equal to or above €7.5 billion in in each of the last three financial years, or where its average market capitalisation or equivalent fair market value amounted to at least €75 billion in the last financial year, and it provides a core platform service in at least three Member States;
2. The control of an important gateway for business users towards final consumers: this is presumed to be the case if the company operates a core platform service with more than 45 million monthly active end users established or located in the EU and more than 10,000 yearly active business users established in the EU in the last financial year;
3. An entrenched and durable position: this is presumed to be the case if the company met the second criterion in each of the last three financial years.

Companies that satisfy the above criteria are presumed to be gatekeepers but have the opportunity to rebut the presumption and submit substantiated arguments to demonstrate that due to exceptional circumstances they should not be designated as a gatekeeper despite meeting all the thresholds.

Moreover, the DMA empowers the Commission to launch a market investigation to assess in more detail the specific situation of a given company and decide to nonetheless designate the company as a gatekeeper on the basis of a qualitative assessment, even if it does not meet the quantitative thresholds.

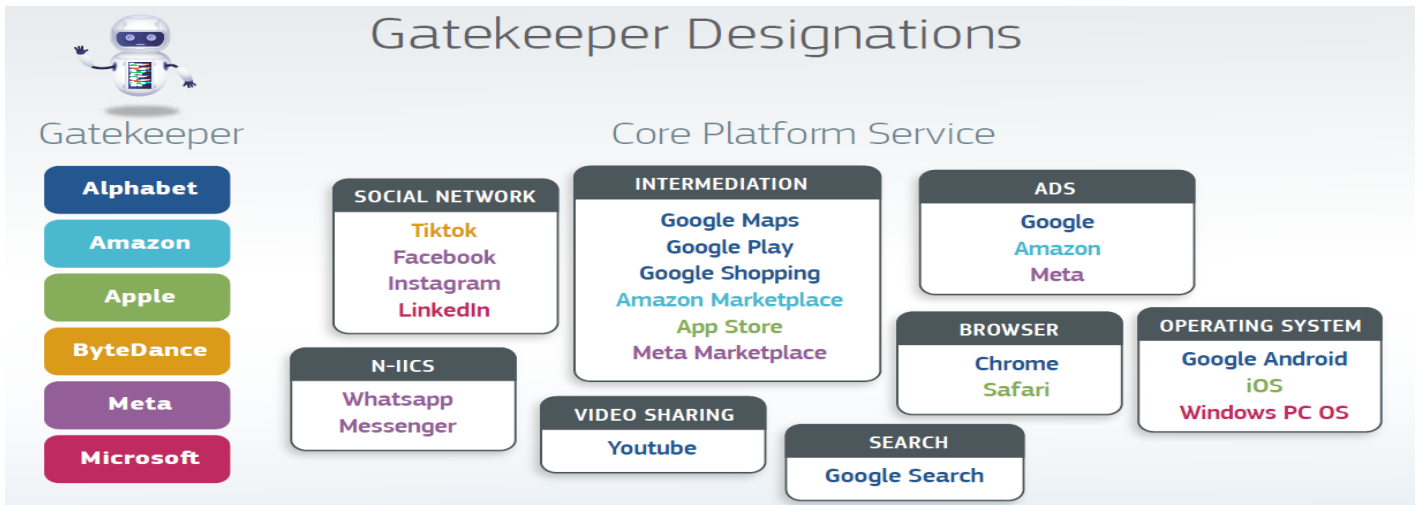
How many companies have been designated as gatekeepers:

The Commission on 6 September 2023 designated the following companies as gatekeepers:

- **Alphabet**
- **Amazon**

- Apple
- ByteDance
- Meta
- Microsoft

The below overview shows which core platform services offered by these six companies have been listed in the designation decision, on the basis of meeting the quantitative thresholds:



Some of the companies have submitted arguments with a view to rebutting the presumption and in four cases the Commission has opened a market investigation to further analyse those arguments.

What are the next steps?

- Following their designation, gatekeepers have six months to comply (i.e. in March 2024), with the full set of obligations under the DMA, as well as to provide a compliance report in which they detail what solutions they have put into place.
- Two obligations are effective from day 1 of the designation: the obligation on gatekeepers to put in place a compliance function as well as reporting on intended concentrations within the meaning of the EU Merger Regulation.
- The Commission will monitor the effective implementation and compliance with all these obligations.
- In case a gatekeeper does not comply with the obligations laid out in the DMA, the Commission can impose **fines** up to 10% of the company's total worldwide turnover, which can go up to 20% in case of repeated infringement. In case of systematic infringements, the Commission is also empowered to adopt **additional remedies** such as obliging a gatekeeper to sell a business or parts of it, or banning the gatekeeper from acquiring additional services related to the systemic non-compliance.

What are the consequences of being designated as a gatekeeper under the Digital Markets Act?

Gatekeepers will carry an extra responsibility to conduct themselves in a way that ensures an open online environment that is fair for businesses and consumers, and open to innovation by all, by complying with specific obligations laid down in the legislation.

Under the DMA, companies identified as gatekeepers will be subject to a number of clearly specified obligations. They will therefore have to proactively implement certain behaviours that make the markets more open and contestable and at the same time refrain from engaging in unfair behaviour, as identified in the legislation.

When a company does not yet enjoy an entrenched and durable position, but it is foreseeable that it will in the near future, a proportionate subset of obligations may apply, to ensure that the services in question remain contestable and to avoid the risk of unfair conditions and practices.

Which types of core platform services are covered by the Digital Markets Act?

Core platform services are those services in the digital economy that exhibit certain features and where absent regulatory intervention the identified failures would effectively remain un-addressed. Such features entail highly concentrated services, where usually one or very few large digital platforms set the commercial conditions with considerable autonomy and where few large digital

platforms act as gateways for business users to reach their customers.

The DMA covers ten core platform services:

- Online intermediation services;
- Online search engines;
- Online social networking services;
- Video-sharing platform services;
- Number-independent interpersonal communication services;
- Operating systems;
- Cloud computing services;
- Advertising services;
- Web browsers;
- Virtual assistants.

What are the "dos and don'ts" for gatekeepers?

The Digital Markets Act establishes a series of obligations that gatekeepers will need to implement in their daily operations to ensure fair and open digital markets. This will open up possibilities for companies to contest markets based on the merits of their products and services and innovate.

Some examples of the obligations imposed on gatekeepers include the following:

- Allow end users to easily un-install pre-installed apps or change default settings on operating systems, virtual assistants or web browsers that steer them to the products and services of the gatekeeper, and provide choice screens for key services;
- Allow end users to install third party apps or app stores that use or interoperate with the operating system of the gatekeeper;
- Allow end users to unsubscribe from core platform services of the gatekeeper as easily as they subscribe to them;
- Allow third parties to inter-operate with the gatekeeper's own services;
- Provide the companies advertising on their platform with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper;
- Allow business users to promote their offers and conclude contracts with their customers outside the gatekeeper's platform;
- Provide business users with access to the data generated by their activities on the gatekeeper's platform;
- Ban on using the data of business users when gatekeepers compete with them on their own platform;
- Ban on ranking the gatekeeper's own products or services in a more favourable manner compared to those of third parties;
- Ban on requiring app developers to use certain of the gatekeeper's services (such as payment systems or identity providers) in order to appear in app stores of the gatekeeper;
- Ban on tracking end users outside of the gatekeepers' core platform service for the purpose of targeted advertising, without effective consent having been granted by the end user.

What changes will it make for interoperability of messenger services?

The DMA includes an interoperability obligation for gatekeepers providing messenger services concerning basic functionalities.

This obligation will apply upon request by third party providers. Gatekeepers will have to respond in a fixed timeline. Some basic functionalities have to be made available for interoperability within six months from the designation of the gatekeeper, (e.g. text messages between two individual users), more complex ones will be introduced gradually and have to be made available after two years (e.g. group text messages) or four years (e.g. audio and video calls between two individual users or groups of end users) from the moment of designation.

It is important to stress that non-gatekeeper service providers of messenger services are not obliged to implement interoperability, meaning they are free to choose either to benefit from such

interoperability obligation that falls upon the gatekeeper, or to keep their service separate from the gatekeeper.

In addition, end users will equally have the choice to use or refuse such an option, where their provider has decided to interoperate with a gatekeeper.

The DMA provisions on the interoperability obligation also ensure that the levels of service integrity, security and encryption offered by the gatekeeper shall and will not be reduced.

What is the final decision on fair, reasonable and non-discriminatory access conditions? Is the Digital Markets Act changing the copyright rules?

The DMA contains an obligation for gatekeepers to ensure fair, reasonable and non-discriminatory general conditions of access to app stores, online search engines and online social networking services.

The Digital Markets Act is without prejudice to the Copyright Directive and its transposition in the Member States. The Digital Markets Act will impose an obligation on gatekeepers to design their general access conditions in a fair, reasonable and non-discriminatory manner and to publish them.

Finally, gatekeepers will have to offer an alternative dispute settlement mechanism in case of a disagreement between the gatekeeper and a business user as regards the application of such general conditions of access.

Why did the Commission open market investigations?

- On 6 September, the Commission informed Microsoft and Apple that it opened the following market investigations.
- First, it opened four so called "rebuttal" market investigations. The DMA allows that a company providing core platform services may submit, together with its notification, sufficiently substantiated arguments to demonstrate that, although meeting all the relevant thresholds, the given service(s) provided does (do) not satisfy the gatekeeper requirements due to the circumstances in which such service(s) operates.
- A number of companies that on 3 July 2022 notified the Commission that they meet the relevant thresholds, also presented such "rebuttal" arguments.
- In those cases where the Commission found that these arguments are (i) sufficiently substantiated and (ii) manifestly put into question the presumption of gatekeeper status, it decided to open market investigations.
- Overview of rebuttal market investigations:

Company	Core platform service
Microsoft	Bing; Edge; Microsoft Advertising
Apple	iMessage

- Second, the Commission opened a qualitative market investigation pursuant to article 3(8) DMA into iPadOS to determine whether iPadOS, despite not meeting the quantitative thresholds, constitutes a gateway for business users to reach end users.

Are the DSA and the DMA overlapping?

- No. Whilst some platforms may be subject to both the DSA and the DMA, the aims of the DSA and DMA as well as the issues addressed by each of them are, however, very different.
- The definition of 'gatekeepers' in the DMA is different in nature and scope from the definition of 'very large platforms' or 'very large online search engines' falling within the scope of the obligations under the DSA and is based on a specific set of criteria.
- However, it can be that a service would fall under the scope of both DSA and DMA and in fact a number of 'gatekeepers' designated under the DMA have also been designated as very large online platforms/ search engines under the DSA for certain specific services. Conversely, a number of companies have been designated only as very large online platform, as they did not meet the specific criteria mandated in the DMA for the gatekeeper designation.
- The purpose of the two regulatory frameworks is different:
 - The DMA addresses risks to the openness and fairness in digital markets where gatekeepers are present.

- The DSA seeks to rebalance the responsibilities of users, platforms, and public authorities according to European values.
- The different issues that both initiatives seek to tackle therefore translate into different obligations, the content and applicability of which are clearly distinguishable. This being said, in a number of areas such as online advertising the two legislative acts contain complementary obligations which on the one hand create transparency for business users and on the other hand more control for consumers.

Who will enforce the Digital Markets Act?

- The Commission is the sole enforcer of the rules laid down in the Digital Markets Act. This centralised enforcement matches the cross-border activities of the gatekeepers and the objective of the DMA to establish a harmonised framework with maximum legal certainty for businesses across the entirety of the European Union.
- At the same time, as a part of the supervisory architecture of the Digital Markets Act, the Commission cooperates and coordinates closely with competition authorities, other competent authorities and courts in the EU Member States. The DMA also envisages that where such competence is provided under the national law, the relevant national authorities may conduct investigatory steps in view of determining non-compliance of the gatekeeper with the Digital Markets Act and report about their findings to the Commission. This leverages the strength and expertise of the relevant authorities across the European Union and will ensure a maximum level of compliance.

Will private damages be available to those harmed by gatekeeper conduct?

The DMA is a Regulation, containing precise obligations and prohibitions for the gatekeepers in scope, which can be enforced directly in national courts. This will facilitate direct actions for damages by those harmed by the conduct of non-complying gatekeepers.

Can the enforcement of existing competition law not tackle these issues?

The DMA complements the enforcement of competition law at EU and national level. The new rules are without prejudice to the implementation of EU competition rules (Articles 101 and 102) and to national competition rules regarding unilateral behaviour.

Regulation and competition enforcement already coexist in other sectors, such as energy, telecoms or financial services. The DMA addresses unfair practices by gatekeepers that either (i) fall outside the existing EU competition control rules, or, (ii) cannot always be tackled in the most effective way by these rules because of the systemic nature of some behaviours, as well as the ex-post and case-by-case nature of competition law. The DMA will thus minimise the harmful structural effects of these unfair practices ex-ante, without limiting the EU's ability to intervene ex-post via the enforcement of existing EU competition rules.

What is the legal basis for the DMA?

Article 114 ensures the functioning of the single market and is the relevant legal basis for this initiative.

Digital services are by essence of cross-border nature. The new rules will limit regulatory fragmentation for digital services, in particular in relation to gatekeeper platforms, and reduce compliance costs for companies operating in the internal market.

How to ensure that the new rules are future proof in view of the fast-evolving digital sector?

Ensuring that the Digital Markets Act is and remains future proof has been a key objective of the Commission from the start, and it was strongly retained in the final agreement.

To this end, the Commission is empowered under the Digital Markets Act to supplement the existing obligations applicable to gatekeepers based on a market investigation, which may translate into a supplementary act (delegated act), or a review of the DMA. This should ensure that the same issues of fairness and contestability are tackled also where the practices of gatekeepers and digital markets evolve.

In addition to supplementing the obligations, the Commission will be able to designate so-called 'emerging' gatekeepers that are on a clear path to making services tip to their advantage. This way the instrument is both very precise and therefore easily implementable and effective, as well as flexible enough to keep pace with developments in the fast-evolving digital sector.

For More Information

[Text published in the Official Journal of the European Union](#)

[More on the Digital Markets Act](#)

[Press release – Commission welcomes political agreement on Digital Markets Act](#)

[Digital Markets Act proposal fact page](#)

**Updated on 06/09//2023*

QANDA/20/2349

Press contacts:

[Johannes BÄHRKE](#) (+32 2 295 86 15)

[Arianna PODESTA](#) (+32 2 298 70 24)

[Thomas Regnier](#) (+32 2 29 9 1099)

[Sara SIMONINI](#) (+32 2 298 33 67)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)