



The Digital Markets Act adopted by the European Parliament – the first step in regulating the digital sector

LEGAL ALERT

On 5 July 2022, the European Parliament adopted a regulation on contestable and fair markets in the digital sector (the Digital Markets Act) (the “DMA”). It will enter into force twenty days after publication in the Official Journal of the EU and become effective six months from that date. Obligations constructed under the DMA will significantly affect the operation of undertakings providing core platform services (e.g., online intermediation services, e-commerce platforms), which will be designated as gatekeepers. Correspondingly, these obligations will also have an impact on increasing the rights of entities using gatekeepers’ services.

Which undertakings will be designated as gatekeepers?

The DMA is intended as a tool to promote contestability and eliminate unfair practices in the digital sector. The providers of large online platforms have the greatest impact on these parameters, so most likely, Meta, Apple, Microsoft and Google will be designated as gatekeepers.

Under the DMA, an undertaking shall be designated as a gatekeeper, if cumulatively meets the following criteria:

- a. It has a significant impact on the internal market
 - **this requirement is presumed to be met if** the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR 7.5 billion in the last 3 financial years, or where the average market capitalization or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 75 billion in the last financial year, and it provides a core platform service in at least three member states;
- b. it provides a core platform service which is an important gateway
 - **this requirement is presumed to be met if** a core platform service that has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active business users established in the Union in the last financial year;
- c. it enjoys an entrenched and durable position in its operations, or it is foreseeable that it will enjoy such a position in the near future
 - **this requirement is presumed to be met if** the thresholds in point (b) were met in each of the last three financial years.

What obligations does the DMA impose upon gatekeepers?

Among other things, gatekeepers will be required to:

- a. provide a user with free access to the data the user generated during their use of the gatekeeper's core platform service;
- b. allow users to (i) change default settings, (ii) uninstall pre-installed applications, (iii) install third-party applications or application stores and (iv) easily unsubscribe from services provided by the gatekeeper;
- c. guarantee that the operating system, hardware and software functions are interoperable with other gatekeeper's core platform services;
- d. provide companies which advertising their goods or services with access to the gatekeeper's performance measurement tools.

Among other things, gatekeepers will be prohibited from:

- a. giving privileged treatment to its own platform services (self-preferencing), an obligation which is intertwined with transparent, non-discriminatory and fair placement;
- b. combining the data generated by a user with data from outside sources without the user's effective consent and using such data to compete with the user on the gatekeeper's own platform;
- c. imposing an MFN (most-favored-nation) clause – that is prohibiting users from offering their products or services on platforms other than gatekeeper's with more favorable conditions;

- d. profiling or tracking of users outside the gatekeeper's platform without the user's effective consent in order to use targeted advertising mechanisms.

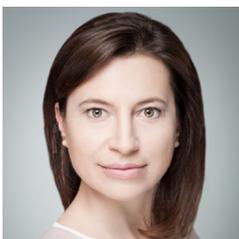
Obligation to inform about concentrations

Gatekeepers will be required to inform the European Commission (“EC”) about any planned concentrations within the digital sector or involving data collection regardless of whether such concentration is notifiable under the EU or national competition laws. This is aimed at increasing transparency in the digital sector and at giving the EC the power to thoroughly analyze in detail, and in specific cases prevent, transactions that may reduce the contestability.

The rights of entities harmed by the gatekeeper's actions

The DMA grants any entity the right to inform the national competition authority or to directly inform the EC of any practices of a gatekeeper which are unfair or reduce contestability. The purpose of this regulation is to increase the effectiveness of the enforcement of the obligations imposed upon the gatekeepers. On the basis of the information provided, the EC has the right to (i) initiate proceedings to impose a penalty on a gatekeeper for non-compliance, or for any systematic non-compliance with its obligations; (ii) conduct a market investigation to identify new core platform services or unfair practices; and (iii) conduct a market investigation for designating gatekeepers.

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