

Digital platforms regulation

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NOT A PLATFORM



This is not
a working
platform

~~NETFLIX~~

Two European legislative initiatives

- The Digital Market Act
- The Digital Services Act

Short summary of Digital Markets Act

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2022/1925 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 14 September 2022****on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

The DMA

Regulation on contestable and fair
markets for the digital sector -
Digital Markets Act (DMA)

Objectives and key concepts

Gatekeepers

*“A few large platforms increasingly act as ...**gatekeepers** between business users and end users and enjoy an **entrenched and durable position**, often as a result of the creation of **conglomerate ecosystems** around their **core platform services**, which **reinforces existing entry barriers**.” (DMA)*

The gatekeepers



**Business
users**

Gatekeepers
=
large platforms
enjoying an
entrenched and
durable position

End users

Causes of the problem



*“The creation of **conglomerate ecosystems** around their core platform services, reinforces existing entry barriers”*

Consequences of platforms having *considerable market power*

Substantial control over access to digital markets:

- *significant dependencies of many business users on these gatekeepers*

NB. Leading to unfair behaviour vis-à-vis business users

- lack of contestability of the platforms' services concerned.

Unfair practices

A practice is unfair when there is an imbalance of rights and obligations on business users and the gatekeeper obtains a disproportionate advantage from those business users

Art. 10 - DMA

Insufficiency of existing framework































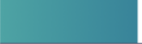

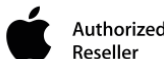






Hajjaj Cartoons

Competition law

Ex ante regulation

Antitrust rules alone are incapable or inefficient in dealing with all identified market inefficiencies (failures)

Top 10 European antitrust fines on Big Tech

		€4.3bn	2018
	Imposing restrictions relating to Android to reinforce Google's search dominance	 <i>Appeal pending</i>	
		€2.4bn	2017
	Favouring Google Shopping when displaying Google general web search results	 <i>Appeal pending</i>	
		€1.8bn	2024
	Imposing anti-steering obligations on music app developers on the App Store	 <i>Appeal expected</i>	
		€1.6bn €497m + €280m + €860m (reduced from €899m)	2004 + 2006 + 2008
	Tying Windows and Microsoft Media Player, and penalties for non-compliance	 <i>Third fine reduced on appeal</i>	
		€1.5bn	2019
	Preventing competitors from placing their search ads on the same third-party websites as Google	 <i>Appeal pending</i>	
		€1.1bn	2021
	Discriminating against third-party sellers that do not use Amazon's logistics services	 <i>Appeal pending</i>	
		€750m €500m + €250m	2021 + 2024
	Non-compliance with interim measures and with commitments related to press publishers' neighbouring rights		
		€561m	2013
	Non-compliance with browser choice commitments after tying Microsoft Explorer and Windows		
		€372m (reduced from €1.1bn)	2020
	Product distribution-related infringements, including abuse of resellers' economic dependence	 <i>Reduced on appeal</i>	
		€220m	2021
	Favouring Google's own ad tech in the field of display advertising		

Link to [Cullen](#)

Insufficiency of competition law

- Case-by-case investigations may take a long time (e.g. Google AdSense took 9 years)

Market tipping



- **Market tipping** refers to a situation where a firm has obtained a certain advantage over its rivals in terms of market share, its position may become **incontestable** and the market may gravitate towards a situation of dominance or (quasi)-monopoly.

Insufficiency of competition law



- Antitrust rules can only address suspected anticompetitive behaviour
- Market failures associated to **tipping** are often triggered by the market structure – extreme economies of scale, strong economies of scope, network effects – and not... by any specific conduct.

The promise of the DMA

1. *Increase the **contestability** of core platform services and foster the emergence of alternative platforms*
2. ***Help businesses** overcome the barriers stemming from gatekeepers' unfair business practices.*
3. ***Fairer and more equitable** conditions for all players in the digital sector*

What to regulate?

Scope

Common features

Network effects, scale economies, multisidedness, lock-in effects, etc.

High concentration

Unfair behaviour

Core platform services (CPS)

Online intermediation services

Online search engines

Online social networking services

Video-sharing platform services

Number-independent interpersonal communication services

Operating systems

Cloud computing services

Web browsers

Virtual assistants

Advertising services

Who to regulate?

Gatekeeper designation

Cumulative criteria

Significant impact on EU internal market

Important gateway for business users to reach end users

Entrenched and durable position (or foreseeable)




















Quantitative thresholds
(rebuttable presumptions)

- Annual turnover in EEA \geq €7.5bn in last 3 years (or average market cap \geq €75bn in last year)
- CPS in \geq 3 EU countries

- >45m monthly end users in EU
- >10,000 yearly active business users in EU

- Important gateway thresholds met in each of last 3 years

Current list of gatekeepers & CPS

	Alphabet	Amazon	Apple	Booking	ByteDance	Meta	Microsoft
Online intermediation services							
Online search engines							
Online social networking services							
Video-sharing platform services							
Number-independent interpersonal communications services							
Operating systems							
Web browsers							
Virtual assistants							
Cloud computing services							
Online advertising services							

Emerging gatekeepers



CPS providers “*foreseen to enjoy an entrenched and durable position in the near future*”

Early intervention to avoid tipping

Limited set of obligations (e.g. those facilitating switching/multi-homing)

Status to be reviewed

Obligations and prohibitions



Obligations

- All directly applicable, but blacklisted (art. 5) and greylisted (arts. 6 and 7) obligations
- Some obligations inspired by competition law enforcement
- Some obligations are horizontal, others designed for specific CPS
- Compliance within 6 months since gatekeeper designation
- List of obligations can be updated following a market investigation



Obligations

Prevention of switching/multi-homing

- **Ban on parity clauses** (OIS)
- **Ban on anti-steering**
- Device neutrality obligation
- Device interoperability obligation (OS, VA)
- Interoperability obligation OTT communications app (NI-ICS)
- Data portability obligation
- Allow unsubscription



Leveraging of gatekeeper position

- **Ban on tying CPS to CPS**
- **Ban on tying ancillary services to CPS**
- Allow app uninstallation & choice screen (OS)
- Allow sideloading (OS)
- Ban on self-preferencing (RS)



Blacklisted practices

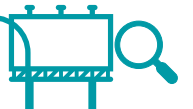
Unfair data access/use

- Data access obligation
- Search data access obligation (SE)
- **Ban on personal data lakes**
- Data silo requirement



Opaque terms & conditions in advertising

- **Transparency of adtech pricing** (A)
- Transparency of adtech performance (A)



Other unfair practices

- **Ban on preventing complaints**
- FRAND access obligation (AS, SN, SE)

Device neutrality



To not restrict end users' ability to switch apps using the gatekeeper's OS



Allow third party providers to interoperate with the OS or hardware of the gatekeeper



Allow end users to uninstall preinstalled apps on the gatekeeper's OS and choice screen



Allow installation of third party apps using the gatekeeper's OS

Data silo requirement

- Data silo requirement means that platforms cannot use their competitors' data to compete with them.
- Vertically integrated firms such as Amazon provide a marketplace but also acts as a seller (offering its own products), in competition with third-party sellers.

Data silo requirement

- ongoing case against Amazon
- European Commission found that Amazon's use of seller data enables the company to “avoid the normal risks of retail competition”, such as the risks normally associated with investing in a new product or choosing a specific price level. For example, if Amazon sees that a third-party product is very successful, it could replicate that product.
- Data silo requirements would mean that Amazon would refrain from using third-party seller data when making business decisions in competition with the sellers.

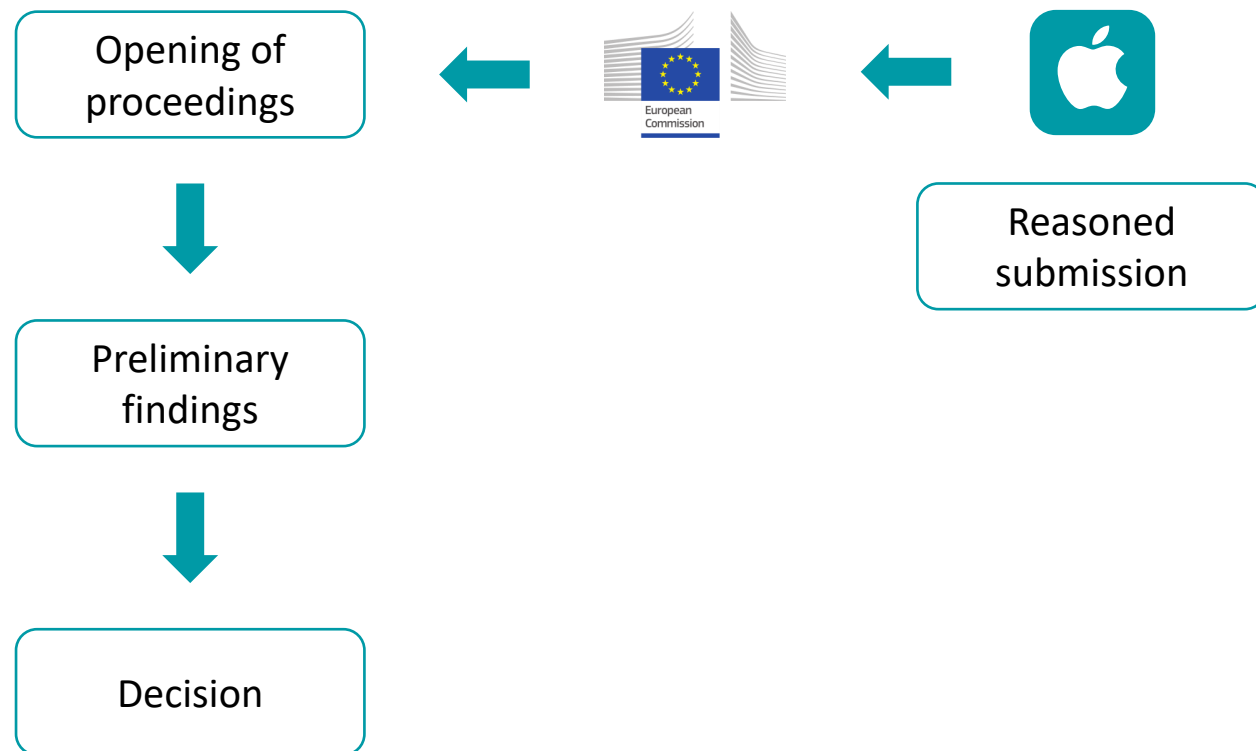
NI-ICS interoperability



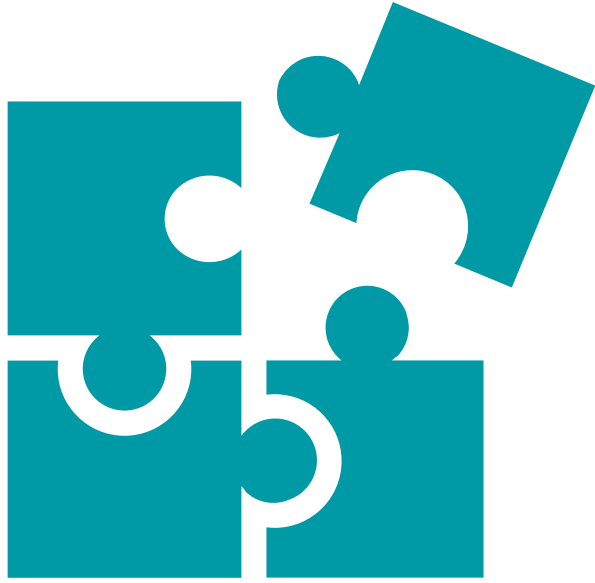
'Grey list's' Obligations and prohibitions – Regulatory dialogue



Regulatory dialogue for further specifying greylisted obligations/prohibitions



Obligations and prohibitions



Inform about concentrations



Audit of profiling techniques

Enforcement and governance

- Centralised system at EU level
- Sweeping powers for European Commission
- Secondary role for EU member states
- Fines up to 10% of global annual turnover
- Market investigations into systematic non-compliance → any behavioural or structural remedies



Thank you!

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