DIGITAL MARKETS ACT

11 January 2021
Exchange of views
Internal Market Committee
European Parliament
Over past years, **worldwide reflection process** about need for changes to current legal framework to allow for **enforcement action preserving the competitiveness of markets**

Factors triggering this debate include **digitalisation & market concentration**

Two related **impact assessments launched in June 2020**: (i) **ex ante** rules for large gatekeeper platforms and (ii) New Competition Tool

Public consultations and other evidence gathered pointed to **most pressing issues in digital markets** and **need for holistic approach** avoiding possible overlaps

Both **initiatives merged to feed into Digital Markets Act**

**Digital Markets Act** does not replace consumer protection legislation and complements existing competition law
## Gatekeeper designation

### Requirements

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Description</th>
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<tbody>
<tr>
<td>a)</td>
<td>it has a significant impact on the internal market;</td>
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<tr>
<td>b)</td>
<td>it operates a core platform service which serves as an important gateway for business users to reach end users;</td>
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<td>c)</td>
<td>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 (&quot;emerging gatekeeper&quot;)</td>
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### Rebuttable presumption

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<td>a)</td>
<td>Annual EEA turnover (last 3 FYs) OR average market capitalisation/equivalent fair market value (last FY) AND one CPS in at least 3 Member States</td>
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<td>b)</td>
<td>Number of monthly active end users and yearly active business users established in the Union in last FY</td>
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<td>c)</td>
<td>Where (b) is satisfied in each of the last 3 FY</td>
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### Qualitative designation following market investigation

- Target: 12 months as of opening
- Emerging gatekeepers: subset of obligations aimed at fostering contestability
- Investigation powers & due process

- Notification obligation within 3 months after meeting the quantitative thresholds
- Designation within 60 days after receiving complete information, unless rebuttal based on substantiated arguments in relation to operation of CPS
- Market investigation (target: 5 months as of opening)
Core platform services

Criteria considered:

• highly concentrated platform services;
• one or very few large digital platforms set the commercial conditions irrespective of their competitors, customers or consumers;
• few large digital platforms act as gateways for business users to reach their consumers and vice-versa;
• gatekeeper power often misused by means of unfair behaviour

• online intermediation services (incl. esp. marketplaces, app stores),
• online search engines,
• operating systems,
• cloud computing services;
• video sharing platform services,
• number-independent interpersonal electronic communication services,
• social networking services and
• advertising services, including advertising networks, advertising exchanges and any other advertising intermediation services, related to one or more of the above services
Obligations

• Directly applicable (Articles 5 and 6)

• Compliance to be ensured within 6 months following a designation (Article 3(8))

• Obligations apply to core platform services that meet the conditions (Article 3(7))

• Gatekeepers expected to enjoy a durable and entrenched position

Directly implementable obligations (Article 5)

If need for further specification → Commission Decision (Article 6 → Article 7)

Information obligation of acquisitions of core platform service providers (Article 12)

Independent audit of techniques for profiling consumers across core platform services (Article 13)

Only obligations that are necessary and appropriate for contestability
Examples of obligations by type of unfair practices

• Data related unfair practices
  • Ban on the use non-publicly available commercially sensitive data of business users
  • Obligation to provide effective portability of data

• Unfair favourable treatment
  • Obligation to allow business users from promoting offers to their customers, and from concluding contracts with these customers outside of the gatekeeper’s platform or service

• Unfair access conditions
  • Obligation to ensure fair and non-discriminatory conditions of access to business users to app stores

• Unfair advertising related practices
  • Provide advertisers and publishers with information concerning the price paid by the advertiser and the price paid to the publisher for the impression of the given ad
Enforcement and governance

**Investigation powers**
- Requests for information
- On-site inspection
- Ability to take interview

**Enforcement powers**
- Voluntary measures
- Non-compliance decisions (e.g. interim measures; fines)
- Periodic penalty payments
- Systematic infringements (=additional measures)

**Governance**
- Digital Markets Advisory Committee