

Final adoption of the Digital Markets Act - What does it mean for businesses?

19 July 2022

I/ Context

On 18 July, the **Council of the European Union** formally [adopted](#) the [Digital Markets Act](#) (DMA), aimed at ensuring a digital playing field in digital markets, by regulating what very large online platforms, so-called gatekeepers, can or cannot do. The adoption marks the end of the legislative process and opens the way to a new saga on the application and concrete enforcement of the text, which is expected to fully apply in **early 2024**. The DMA is expected to substantially change the digital ecosystem in the EU and abroad. Lighthouse Europe can help businesses engage with European institutions and prepare for the application of the DMA.

II/ Content of the Digital Markets Act

Scope of the DMA

The scope of the text will apply to so-called "gatekeepers", e.g. companies having a significant impact on the internal market and providing a core platform service which is an important gateway for business users to reach end users. The companies must also enjoy an entrenched and durable position in their operation. Companies meeting the cumulative criteria below are presumed to be gatekeepers:

- Platforms that, in the last three years, either had an **annual turnover of at least €7.5 billion within the European Union (EU)** or a **market valuation of at least €75 billion**.
- Platforms with at least **45 million monthly end users** and at least **10,000 yearly business users based in the EU**.
- Platforms that control **one or more core platform services in at least three Member States**. These core platform services include marketplaces and app stores, search engines, social networks, cloud services, advertising services, voice assistants, connected TVs and web browsers.
- An "emerging gatekeeper" category is also included: it will allow the Commission to impose certain obligations on companies with a demonstrated but not yet sustainable competitive position.

Obligations and Prohibitions of Gatekeepers

The DMA establishes a **list of do's and don'ts** (*ex-ante* obligations) applicable to gatekeepers. The obligations and prohibitions of gatekeepers are summarized below.

With respect to their **obligations**, gatekeepers shall:

- Ensure the right of users to unsubscribe from the core platform services under conditions similar to subscription.
- For the most important software (e.g. web browser): not to impose this software by default when installing the operating system.
- Ensure interoperability of the basic functionality of their instant messaging services.
- Allow fair access to ancillary smartphone functionality (e.g., NFC chip).
- Provide vendors with access to their marketing or advertising performance data on the platform.
- Inform the European Commission of acquisitions and mergers they carry out.

Regarding **prohibitions**, gatekeepers will not be able to:

- Rank their own products or services more favorably than those of other market participants (self-preference).
- Reuse personal data collected during one service for the purposes of another service.
- Establish unfair terms for business users.
- Pre-install certain software applications.
- Requiring application developers to use certain services (e.g., payment system or identification provider) to be listed in application stores.

Sanctions

As for penalties, gatekeepers risk a **fine of up to 10% of total worldwide turnover**. For repeat offenders, a **fine of up to 20% of worldwide turnover** may be imposed. In the event that a gatekeeper engages in **systematic non-compliance** with the DMA, i.e. violates the rules at least 3 times in 8 years, the European Commission may open a market investigation and, if necessary, impose **behavioral or structural remedies**.

Governance and enforcement

In terms of governance, the **European Commission is the only body empowered to enforce the DMA**. Member States may empower national competition authorities to initiate investigations into possible infringements and to transmit their findings to the European Commission.

The Commission may decide to engage in a dialogue on regulatory measures to ensure that gatekeepers have a clear understanding of the rules they must follow, and to clarify their application if necessary.

An Advisory Committee and a High Level Group will be set up to assist the European Commission and facilitate its work.

- The **Advisory Committee** will be composed of **experts from the Member States** and will be chaired by the European Commission.
- The **High Level Group** will be composed of the **Body of European Regulators for Electronic Communications** (BEREC), the **European Data Protection Supervisor** (EDPS), the **European Data Protection Board** (EDPB), the **European Competition Network** (ECN), the **Consumer Protection Cooperation Network** (CPC) and the **European Regulators Group for Audiovisual Media Services** (ERGA).

III/ Next Steps

In terms of next steps, the DMA is expected to be officially published in the *Official Journal of the European Union* in **September or October 2022**. Following its entry into force, 20 days after its publication, the DMA will start to apply in **April 2023**. The first gatekeepers are expected to be officially designated by the Commission in **August 2023**, and will be obliged to be in full compliance with the DMA in **early 2024**.

The DMA is expected to substantially change the functioning of the digital ecosystem, but also to lead to an important amount of litigation. It is therefore crucial for all businesses in the digital sector to carefully monitor and prepare for the implementation, application and enforcement of this text. With a team of digital and competition policy experts, Lighthouse Europe can help companies to make their voice heard in this process.