



FACTSHEET

Proposal for an EU Digital Markets Act

Why the proposed Digital Markets Act is important for consumers

The European Commission's December 2020 proposal for a Digital Markets Act (DMA) represents a very welcome step change in the EU's approach to improving the way Europe's digital economy works for consumers.

Until now, the European Union relied primarily on competition policy to try to tackle problems arising from the overwhelmingly powerful position of a small handful of companies on digital markets, once those problems were already there.

The proposed DMA would instead establish a series of pre-emptive rules on powerful digital companies wishing to operate on the EU's Single Market. The rules would require these companies to fundamentally change some of their current, hugely profitable business practices that have harmed consumers' interests.

Once adopted, the DMA would make it easier for newcomers to enter digital markets so as to offer consumers more choice of innovative services on attractive terms. The DMA therefore stands to give consumers a fairer share of the benefits of digital services.

What would the proposed Digital Markets Act do for consumers?

It would designate as "gatekeepers" very large companies that provide core platform services, such as search engines, social networks or marketplaces. Gatekeepers would be defined by qualitative and quantitative thresholds such as a strong market presence in multiple EU countries for a prolonged period and a large user base. The Commission would also be able to designate companies as gatekeepers following a market investigation.

The DMA would prohibit gatekeepers from using a number of unfair practices that harm consumers, such as:

- **blocking users from un-installing** pre-installed software or apps
- **mixing user's personal data** collected on one of their core platform services with personal data collected on another of their services or personal data from third parties
- **prohibiting services using a gatekeeper's app store from selling discounted subscriptions** bought directly from the service provider's own website rather than the app store
- **discriminating against other providers' apps** on their app stores or prohibiting competing app stores on devices
- **forcing customers to sign up for other core platform services** in order to access the specific service they wanted to use (e.g. consumers wishing to use Instagram could not be obliged to have a Facebook account)
- **gathering data on their business customers to ascertain how best to compete with them** and whether to themselves market their customers' most successful products
- **ranking their own products or services more favourably** than third party services e.g. in search results
- **locking in customers by "technically restricting" users from switching away** from default apps and services.



Gatekeepers would also have to ensure data portability and continuous real-time access for business customers and end-users. Moreover, gatekeepers operating search engines would have to provide their ranking, query and click data to competitors on fair, reasonable and non-discriminatory terms. This would, for example, make it easier for consumers to choose an alternative service without losing their data and give consumers a more effective choice of search engines. In addition, gatekeepers would have to enable “ancillary service providers” (e.g. payment processors) to plug into gatekeepers’ core services.

The DMA would empower the Commission to impose sanctions on gatekeepers for non-compliance, including fines of up to 10% of their worldwide turnover. For repeat offenders, the Commission could oblige the gatekeepers to take structural measures, potentially including divestiture of certain businesses.

To ensure that DMA rules kept pace with the fast development of digital markets, the Commission could carry out targeted market investigations to assess whether new gatekeeper practices and services needed to be added to these rules.

What needs to be improved?

Overall, the DMA does not focus sufficiently on consumers’ interests compared with those of business users. In particular, the DMA must ensure consumer choice of social network and instant messaging services by obliging big platforms to allow competitors’ services to work seamlessly with the platforms’ services, just as e-mail and telephone services work perfectly regardless of the operator.

The DMA must explicitly prohibit gatekeepers from circumventing their obligations through the use of ‘dark patterns’ (behavioural techniques and interface design) to manipulate consumers’ choices.

Moreover, consumers must have the right to submit formal complaints about gatekeepers violating their DMA obligations and the right to be heard in decision-making processes and market investigations under the DMA.

The DMA must foresee effective redress measures from the first infringement by a gatekeeper rather than only after the third infringement in a five year period.

The Commission must be adequately resourced to carry out its enforcement functions under the DMA, as regards both the number of staff and the types of expertise required. In addition, the DMA must be enforceable in Member States’ courts, including through representative actions by consumers.

What happens next?

The DMA proposal must now be adopted by European Parliament and the EU’s Council of Ministers. Their discussions are likely to last into 2022. Once adopted, the DMA will apply without the need to be implemented by EU Member States (as a Regulation, it will be directly applicable).