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The EU Digital Markets Act

Key Impacts on the Digital Ecosystem

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The Digital Markets Act

The Digital Markets Act ("**DMA**"), which was enacted alongside the Digital Services Act ("**DSA**"), aims to regulate the digital landscape in the European Union.

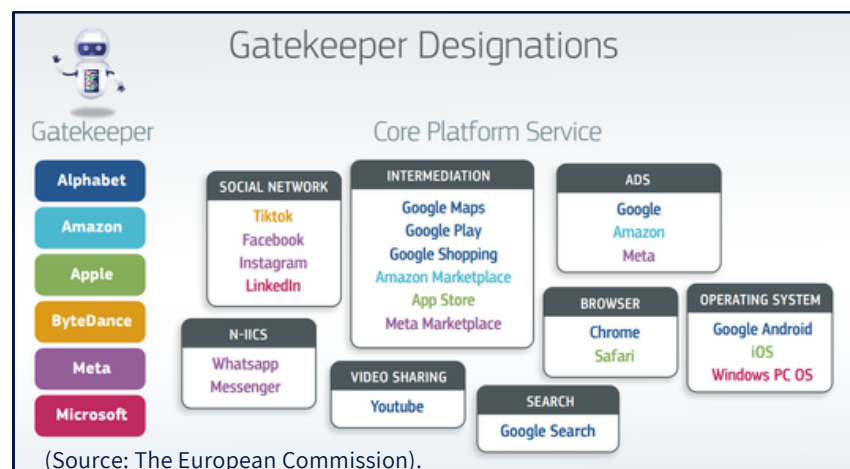
Its primary objectives include promoting competitiveness, fairness, and equality within digital markets. The DMA came into force on 1 November 2022, and most of its obligations will enter into effect in March 2024.

This legislation imposes specific obligations on "**gatekeepers**" of various core platform services, and it is **expected to revolutionize the entire digital ecosystem, delivering substantial benefits both to business customers and end-users of the services and fostering new business strategies**. Non-compliance with the DMA may result in fines of up to 10% of the gatekeeper's global turnover, with the potential for 20% penalties for repeated violations.

The purpose of this overview is to highlight **key impacts of the DMA on the digital ecosystem**.

Who are the gatekeepers?

Gatekeepers are companies that serve European businesses and end-users. They provide **core platform services** across **8 sectors**, significantly impacting the relevant market and holding an entrenched and durable position within such a market, in terms of **annual EU turnover** and minimum number of **active users**.



As of 6 September 2023, the European Commission has formally identified **6 gatekeeper companies**, offering a total of **22 core platform services**, as seen in the diagram above. As per the DMA, this list is expected to be reviewed and updated on an ongoing basis.



Anticipated Changes & Implications

It should be noted that the DMA has not yet been implemented, that it would be subject to interpretation and that portions of it are likely to be challenged in court. Therefore, it is challenging to anticipate the exact implications of the DSA and when they will occur.

With that in mind, we are highlighting below certain potential industry benefits and implications of the DMA, within the EU:



Mobile app & software distribution industry implications:

The DMA would have a substantial impact on the mobile app and software distribution industry:

- **Easier mobile app distribution:** under the DMA, gatekeepers such as Google and Apple would be required to allow end-users to install and use third-party software applications and application stores on their respective operating systems.

This broadens the available distribution channels for mobile apps.

Notably, this shift may have dramatic implications for Google Play and the App Store, platforms that have traditionally held a dominant position in the global mobile app marketplace. It may also reduce developers' reliance on these marketplaces.

- **Prohibition on bundling and promotion of interoperability:** the DMA prohibits gatekeepers from bundling together core platform services with ancillary offerings, such as identification services, web browser engines and payment services. Consequently, end-users would be able to customize default settings, uninstall pre-installed apps, and seamlessly switch between applications and services accessed through gatekeepers' core platform services.

This enhances the availability of diverse distribution channels and fosters accessibility for competing businesses, including software and mobile applications.

For instance, it may facilitate the use of alternative payment methods within apps distributed on Google Play and the App Store. It may also facilitate the distribution of alternative default or pre-installed apps on Android and iOS devices.

Anticipated Changes & Implications



Online advertising industry implications:

The DMA would have a substantial impact on the online advertising industry by subjecting advertising gatekeepers (including Google, Amazon and Meta) to provide their business customers (namely, advertisers and publishers) with substantial commercial insights, such as ads' costs and metrics, and they are to be provided free of charge.

More specifically, advertisers and publishers may be entitled to receive:

- Independently access to their marketing and advertising performance data, thereby reducing their reliance on gatekeepers' evaluations.
- Independently access to critical elements such as ad costs, pricing models, performance measurement tools, and monetization criteria.

Additionally, the DMA imposes strict rules regarding the **handling of personal data** by gatekeepers. It expressly prohibits cross-use of data without user consent, targeting of minors, and profiling based on sensitive data. The DMA is therefore expected to result with **substantial restrictions on data usage and targeting options** within the gatekeepers' platforms.



Communications and messaging industry implications:

The DMA mandates that gatekeepers offering "number-independent interpersonal communication services" (N-IICS) including WhatsApp and Messenger, ensure that **basic communication functionalities are interoperable with services from other companies**.

Moreover, these gatekeepers would be obligated to provide the necessary technical interfaces, such as APIs or other open interfaces, at no cost and under equitable conditions and quality.

This would likely to result with fostering interoperability and opening access in the communication sector, possibly allowing for cross-platform messaging and chat interoperability.

Anticipated Changes & Implications



E-Commerce industry implications:

In the e-commerce sector, gatekeepers functioning as intermediation providers (such as Amazon and Meta's marketplaces, Google Maps, Google Play and the App Store), would be subject to various obligations, promoting a fairer environment.

For example, they are required to refrain from favoring their own products on their platforms, a practice often referred to as "self-preferencing" and must **maintain impartiality in their rankings**. Specifically, gatekeepers must not grant their services and products preferential treatment over those of third parties. They are mandated to apply fair, transparent, equitable, and **nondiscriminatory conditions** to ranking practices.

This would likely produce benefits to companies that promote or advertise their services or products on these platforms.

The DMA's mandate for gatekeepers to remove barriers and create new opportunities for competition represents a **significant** advancement and **complete overhaul of the digital ecosystem**.

In the near future, we anticipate that both businesses and end-users will benefit from **expanded choices** and **increased flexibility**. We also expect potential modifications in the current gatekeepers' terms and conditions, usage and developers policies, as well as in the contracts with business customers and end-users, that could become more lenient.

Feel free to contact us if you have any questions regarding the effect of the DMA on your company's practices.

HERZOG'S TECHNOLOGY REGULATION DEPARTMENT

Herzog's Technology Regulation Department is a recognized market leader in its field.

The team is led by domain experts who possess a unique set of vital, **interdisciplinary** and **global** regulatory advisory skills, and are uniquely positioned to advise a range of clients, including leading multinational technology companies as well as start-ups and disruptive technologies vendors, on applicable regulatory and compliance considerations in numerous technological areas.

We understand that the **regulatory exposure** and scope of required **attention** of almost any company operating in the **digital and technological sphere** are much wider than one specific jurisdiction or legal discipline. As our clients are often on the forefront of this ever-evolving landscape, we further understand the impact of industry trends and compliance demands on our clients' businesses. eCommerce, digital advertising, content and marketing have all become integral to almost every company's business model these days. Advising on these matters requires a high degree of know-how and expertise in order to navigate interdisciplinary and often conflicting requirements of the law, platforms' rules and guidelines, along with technological considerations and our clients' commercial needs.

Our team possesses in-depth knowledge of the increasing volume of regulations, enforcement actions, legislative and industry trends in a **myriad of jurisdictions, digital platforms** and leading **self-regulatory** guidelines. This enables our team to offer **practical, holistic** and **comprehensive** solutions for complex situations often presented by innovative technologies and disruptive business solutions, providing "hands-on" support to our clients on the strategic, corporate and operational aspects of their business, with the aim of mitigating our clients' legal and business risks.

This document does not constitute an exhaustive legal opinion or regulatory overview of all applicable regulatory requirements regarding the topics addressed by it, but rather, only outlines the key issues arising from the regulatory requirements. Since we are not licensed to practice law outside of Israel, this document is intended to provide only a general background regarding this matter. This document should not be regarded as setting out binding legal advice, but rather a general overview which is based on our understanding of the practical interpretation of the applicable laws, regulations and industry guidelines.



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