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Consultation on the first review of the Digital Markets Act Posted by the European Commission Directorate-General for Competition, Directorate-General for Communications Networks, Content and Technology on July 3, 2025.

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Introduction

We thank the European Commission (EC) for the opportunity to comment on the Digital Markets Act (DMA).

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Comments

Inappropriateness of ex-ante rules for competition in digital markets

The EU's DMA imposes ex-ante regulation upon "gatekeeper" firms operating primarily in digital platform markets. Gatekeeper firms are banned from engaging in various types of vertical restraints by mandating interoperability,[3] data portability,[4] and non-discrimination,[5] within their platforms. It is noted that an ample body of economic evidence finds that these practices often have ambiguous or even pro-competitive effects for competition and consumer welfare.[6] Similarly, self-preferencing (which gatekeeper platforms are prohibited from engaging in by the DMA)[7] also has ambiguous or potentially pro-competitive effects,[8] even for third-party sellers.[9] Proscriptive regulation, rather than case-by-case adjudication that considers the net competitive effects of a given practice under antitrust law, is thus inappropriate for digital platform markets as it risks undermining competition and innovation rather than fostering it.[10] This is further highlighted by the nature of high-tech markets, which are characterized by "short life cycles, frequent innovation and noticeable dynamic competition."[11]

Fairness, Market Contestability and Consumer Welfare

We recognize that unlike US antitrust laws, the DMA's goals extend beyond consumer concerns to fairness and market contestability for competitors. However, the effects of prohibiting platforms from engaging in these restraints and other business practices on these objectives are also not clear cut.

Mandated interoperability and data portability can lower entry barriers on the platform for third-party services in the short run. However, they can also degrade the platform's user experience

[3] DMA Recital (55), (57), Art. 6(7).
[4] DMA Recital (59), (96), Art. 6(9).
[5] DMA Recital (61) (62), Art. 6(12).
[6] See Christopher S. Yoo, Technological Determinants and Its Discontents, 929-31 for a review and summary of this economic literature.
[7] DMA Recital (52), Art. 6(5), (11).
[8] Consumers often benefit from self-preferencing. For instance, where the incumbent's product is a more convenient option that is quickly highlighted, or where the ability to self-preference provides incentive for a firm to enter into the market for the product and boost competition, see Lazar Radic & GeoWrey A. Manne, Amazon Italy's EWiciency OWense, TRUTH ON THE MARKET (Jan. 11, 2022), https://truthonthemarket.com/2022/01/11/amazon-italys-eWiciency-oWense. Self-preferencing is also unlikely to be used as a business strategy on a platform unless the platform expects that its revenue from selling its own product under self-preferencing will exceed the expected commission from sales of third-party products that may be lost. This may explain why Amazon enters into competition with only 8% of the third- party seller products oWered on its platform, see G.S. Crawford, M. Courthoud, R. Seibel and S. Zuzek, 2022. Amazon entry on Amazon marketplace. *CEPR Discussion Papers*, (17531). Furthermore, platforms that give preference to inferior products would undermine the attractiveness of their platform to its users, thereby rendering themselves vulnerable to competition from rivals.
[9] For instance, Zhu (2019) notes that "if Amazon's entries attract more consumers, the expanded customer base could incentivize more third- party sellers to join the platform. As a result, the long-term eWects for consumers of Amazon's entry are not clear." See Feng Zhu, Friends or Foes? Examining Platform Owners' Entry Into Complementors' Spaces, 28 J. ECON. & MGMT. STRAT. 23, 26 (2019).
[10] See Christopher S. Yoo, "Conceptual Frameworks to Guide When to Replace Competition Law with Rules" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, 2024).
[11] International competition authorities have declined to police competition in digital markets through ex-ante rules for this reason. For instance, "Taiwan's Fair Trade Commission (TFTC) issued a white paper on "Competition Policy in the Digital Economy" in December 2022 that struck a more skeptical tone on ex ante regulation. The white paper cited the "controversy of whether it is appropriate for competition authorities to implement ex anti controls," and counseled that "as the digital economy features frequent innovation, short life cycles, and noticeable dynamic competition, the best enforcement principle at this stage is 'issue driven,'" with an eye toward ex post eWorts to "[resolve] problems based on each case." See W. Reinsch and K. Suominen, "Are US Digital Platforms Facing a Growing Wave of Ex Ante Competition Regulation." Center for Strategic & International Studies (2023) citing "White Paper on Competition Policy in the Digital Economy (Summary)" (Taiwan Fair Trade Commission, 2023).

and limit the ability of platforms to differentiate themselves from each other, thus limiting inter-platform competition in the long run. Furthermore, both consumer welfare and market contestability may be undermined rather than enhanced where mandated interoperability or data portability degrade user privacy, lead to a decline in user trust of services (such as apps) available on a device or platform, or otherwise interfere with the curated user experience. Smaller, lesser-known sellers of goods and services who lack an established brand or reputation among consumers may be especially harmed as they rely on consumer confidence in the security and entry standards of the platform so they can reach users who may otherwise decline to try their product in favor of an incumbent, established competitor's. Similarly, at the inter-platform level, a digital platform may maintain a large and durable market share over many years. But this dominant position will be less vulnerable to challenge from competitors if mandates and restrictions reduce the degree to which different platforms can provide different user experiences (or differentiate their platforms on margins such as security or privacy). This would thus reduce competition between platforms and service ecosystems by reducing market contestability and undermining fairness since the ability to provide a differentiated substitute product is a factor that upstart firms can rely upon to challenge dominant incumbents. If the unique features of an ecosystem or digital platform that make it appealing to users are degraded, then the value of the platform to service or good sellers within it will also decline. This would reduce rather than enhance market contestability even at the intra-platform level.

Costs, Delay & Uncertainty Chill Innovation

Besides "fairness" and "market contestability," another reason touted for the DMA was that ex-ante regulation would lower the costs and uncertainty imposed upon competition enforcement agencies and private parties alike, relative to enforcing antitrust law on a case-by-case basis. The EC asserts that the DMA provides ″legal certainty″, with ″clearly defined obligations″ and ″reduced compliance costs″ for parties relative to existing European competition law.[12] However, early evidence from the DMA contradicts this. It instead indicates significant costs associated with investigations into "gatekeeper" firms, and uncertainty around the standards that would meet DMA compliance on the part of both gatekeeper platforms as well as EC competition enforcers themselves. The EC must expend substantial labor resources in investigating gatekeeper firms for DMA compliance, including the costs entailed in document review. Limited EC resources are also expended in conducting studies and investigations necessary to classify firms as gatekeepers, and to determine whether they are violating the DMA. Since the DMA punishes conduct that is also already captured by European competition law, DMA enforcement also results in an inefficient duplication of resources.

Rather than providing commercial certainty to parties, the DMA has also created substantial uncertainty as to what constitutes compliance among both "gatekeeper" platforms as well as enforcement officials themselves. For instance,[13] In April 2025, the EC applied a 500 million euro fine to Apple for violating the DMA due to non-compliant terms in their agreements controlling communications between app developers and users. Under penalty of daily fines, the EC required Apple to propose modifications to comply with the DMA. In June 2025, Apple proposed changes to the DMA to ensure its compliance and reportedly received an understanding that these would be accepted.

[12] See https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital- markets-act-ensuring-fair-and-open-digital-markets_en

[13] See Jacob Parry, "EU tests if Apple has done enough to avoid daily fines" Politico, 17 September 2025. https://www.politico.eu/article/european-commission-apple-app-store-verdict-competition-digital-markets- act/

Despite this, as of September 2025, the EC continues to solicit feedback and consult with third parties as to whether the changes would bring Apple into DMA compliance. Conversely, "[t]here is no set timeframe by which the EU needs to decide on Apple's compliance, but the Commission has threatened that law-breaching firms could be fined retroactively for unsatisfactory compliance proposals." These costs, delays and uncertainty threaten to chill innovation and deny European consumers and business access to cutting-edge technologies and product features that could set them back relative to their foreign competitors. Even if a product feature or business practice is likely to be DMA-complaint, the threat of fines and the associated costs of prosecution and any delays due to "consultations" with third parties on remedies or further investigations (ironically, on a case-by-case basis), may deter firms from rolling these out in Europe whilst they become accessible to the rest of the world.

For these reasons, the ex-ante regulatory approach and prohibitions under the DMA may be reducing rather than enhancing competition and innovation in digital platform markets. This approach should thus be eschewed in favor of ex post enforcement of antitrust laws that allow the competitive effects and relevant market for these practices to be assessed on a case-by-case basis.

Discrimination against US Platforms, "gatekeeper" definition is arbitrary without defining relevant markets

Another concern is that the DMA primarily singles out large American firms as regulated "gatekeepers" while exempting European firms. The DMA is neutral in the sense that any firm regardless of national origin that meets its definitions for size or global turnover can theoretically be classified as a "gatekeeper." However, the DMA's failure to apply tests for geographic or product market definition in classifying firms as "gatekeepers" effectively exempts European platforms that compete vigorously with (and that often have comparable or greater market shares to) the "gatekeeper" platform from regulatory burdens imposed on their main American competitor. For instance, American e-commerce giant Amazon is classified as a "gatekeeper" in the EU under the DMA. However, its market share for e-commerce in Poland and the Czech Republic is less than that of European digital marketplace Allegro.[14] Similarly, European digital marketplace Zalando is the #1 marketplace for fashion products in Germany, Poland, Italy and the Netherlands.[15] To this end, the DMA's "gatekeeper" definition is a protectionist discriminatory non-tariff barrier to international competition that serves to discourage European firms from innovating and providing internationally-competitive platform experiences to challenge their rivals that originate overseas. Simultaneously, even if a European-origin digital platform reached sufficient size and global turnover to qualify as a "gatekeeper" under the DMA, the DMA would only serve to inhibit its ability to compete internationally. This is because the DMA would impose disproportionate costs upon it in its primary geographic market that are not borne by foreign competitor platforms that fall under the "gatekeeper" threshold, or that meet the threshold but have a relatively smaller presence in the European market.

Platform fragmentation harms consumers and competitors alike

Access to a large volume of consumers on a single platform due to network effects and scale economies improves the value of the platform ecosystem for businesses advertising their services there.[16] It also

[14] See https://www.channelengine.com/en/blog/top-european-online-marketplaces

[15] Ibid.

[16] This is why research finds that larger, integrated platforms in two-sided (consumer and service provider) markets often deliver eWiciencies that fragmented competitors are unable to, see: J.-C. Rotchet & J. Tirole (2003). Platform competition in two-sided markets. Journal of the European Economic Association, 1(4), 990– 1029; J.-C. Rochet, & J. Tirole (2006). Two-sided markets: A

boosts consumer welfare and a higher quality user experience by reducing the need for consumers to switch between many different websites or other platforms to find services they want or deem best. When users are forced to transition between multiple platforms or services in order to obtain the same or an equivalent result, they waste more time and resources ("search costs"), and the original platform's user base becomes spread out of 'fragmented' between different services.[17] Simultaneously, some consumers will choose to lower their search costs by keeping to one or a few platforms rather than perusing multiple platforms for their optimal result. This fragmentation causes disproportionate harm to smaller businesses as they may need to expend far more of their resources than they previously did in launching new goods and services since they'll need to undertake the application and approval process for their product to enter more platforms to reach the same user base that they previously did. They may also need to have multiple marketing strategies (for each new platform) to manage the same. By contrast, large or established incumbents that already possess brand awareness and trust among their consumer base are relatively less affected. They also generally have more resources for navigating multiple approval and marketing processes necessary to enter and contest markets across different platforms that their users are segmented between.

Early Evidence

It is noted that the DMA obligations being in effect for just over a year means that the full scale of its effects and potential consequences have not yet had the chance to manifest. However, there are a number of preliminary indicators. For instance,

1. **Delayed rollout of new AI features to European businesses and consumers:** Potential security risks related to complying with the DMA's interoperability mandate resulted in delayed rollout of Google and Apple's AI features to EU consumers. For instance, when Apple's iOS 26 becomes available, European consumers will not be able to auto-translate audio through their air pods due to delays tied to ensuring or attempting to ensure DMA compliance.[18] Three other AI-related features on Apple products, Phone Mirroring, SharePlay Screen Sharing enhancements, and Apple Intelligence, were previously delayed to EU consumers until March-April 2025 despite being rolled out elsewhere in 2024.[19] Similarly, Google attributed uncertainty around regulations, including compliance with the DMA, to the delayed rollout of AI overviews for Google search in Europe.[20] This feature was launched in other countries in

progress report. RAND Journal of Economics, 37(3), 645–667; R. Schmalensee & D. Evans (2007). Industrial organization of markets in two-sided platforms. Competition Policy International, 3(1), 151–179.

[17] For a detailed overview of the economic literature on user friction and search costs, see M.R. Baye., J. Morgan & P. Scholten, Information, search and price dispersion. In: T. Hendershott, editor. Handbook on Economics and Information Systems. Elsevier Press; Amsterdam: 2006.

[18] Ivan Mehta, "Apple's new live translation feature for AirPods won't be available in the EU at launch" TechCrunch, 11 September 2025. https://techcrunch.com/2025/09/11/apples-new-live-translation-feature- for-airpods-wont-be-available-in-the-eu-at-launch/

[19] Foo Yun Chee, "Apple to delay launch of AI-powered features in Europe, blames EU tech rules" Reuters, 21 June 2024. https://www.reuters.com/technology/artificial-intelligence/apple-delay-launch-ai-powered- features-europe-blames-eu-tech-rules-2024-06-21/; Roman Dillet, "Apple Intelligence is coming to the EU in April 2025" TechCrunch, 28 October 2024. https://techcrunch.com/2024/10/28/apple-intelligence-is- coming-to-the-eu-in-april-2025/

[20] Oona Lagercrantz, "Europe's AI Blues: US Companies Slow Deployment" Center for European Policy Analysis, 1 November 2024. https://cepa.org/article/europes-ai-blues-us-companies-slow-deployment/

May 2024,[21] but did not become available in European regions until March 2025.[22] The rapid evolution and dynamic nature of new technologies and their features, including AI, which is increasingly being applied in new ways and to address new issues, means that DMA compliance and uncertainty-related delays are likely to continue rather than reduce over time. Delayed rollout of features and products in dynamic and innovative digital sectors risk putting European businesses at a competitive disadvantage to foreign competitors who can access them sooner. It thus harms European firms' ability to innovate and keep up with innovative competitors overseas, making these lucrative global markets less contestable for them.

2. **Costs, uncertainty and arbitrariness:** Early evidence within the first year of DMA enforcement already indicates that costs upon enforcement agencies and costs and uncertainty imposed upon parties may even exceed that which is seen in ex post antitrust law enforcement. In 2024, the EC opened DMA compliance investigations against Google, Meta and Apple.[23] Since then, Apple has been fined 500 million euros ($570 million) and Meta has been fined €200 million ($230 million) despite working with and making proposals to the EC to ensure compliance.[24] Despite the DMA's retrospective application of fines for non-compliance, the EC has not provided either party with clarity about what would ensure compliance. It has instead refused to confirm whether the remedies proposed by Meta and Apple will be sufficient,[25] says that it is waiting to observe how the market responds to the proposed changes, and/or has solicited or asked parties to solicit feedback from competitors and other external stakeholders on the proposals.[26] All the while, the EC continues to maintain that compliance remains the defendant parties' "sole responsibility." This ongoing uncertainty, even after a year of the DMA remaining in force, stands in stark contrast to both the verdicts and settlements typically seen in antitrust litigation cases under ex-post enforcement regimes. For instance, the recent *Google Search* case resulted in the judge imposing clear remedies tailored to remedy the specific competitive harms that US antitrust enforcers alleged in their complaint about Google's practices.[27] And settlements of such litigation between enforcement agencies and defendant firms similarly arrive at specific remedies proposed and accepted by the parties to settle matters. The arbitrary nature of rules that produce retrospectively applied punitive penalties such as fines, without any clarity from enforcement officials about what compliance means, and with such clarity supposedly being contingent upon future input from competitor firms with their own interests, contravenes the rule of law.

[21] Ibid.
[22] Barry Schwartz, "Google rolls out AI Overviews In EU regions" Search Engine Land, 26 March 2025. https://searchengineland.com/google-rolls-out-ai-overviews-in-eu-regions-453595
[23] European Commission, PRESS RELEASE: Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act, 25 March 2024. https://digital-markets- act.ec.europa.eu/commission-opens-non-compliance-investigations-against-alphabet-apple-and-meta- under-digital-markets-2024-03-25_en
[24] Adam Satariano, "Apple and Meta Are First to Be Hit by E.U. Digital Competition Law" New York Times, 23 April 2025. https://www.nytimes.com/2025/04/23/technology/apple-meta-eu-fines-competition-law.html
[25] Jacob Parry, "Apple to appeal €500M digital fine over EU's silence in compliance talks" Politico, 8 May 2025. https://www.politico.eu/article/apple-to-appeal-e500m-digital-fine-over-eus-silence-in-compliance-talks/; Fiona Jackson, "Meta Could Be Fined Every Day If It Does Not Change Ad Model, EU Says" TechRepublic, 27 June 2025. https://www.techrepublic.com/article/news-eu-meta-ad-model-daily-fines/
[26] Ibid.
[27] Max Gulker, "Consumer welfare was pivotal in the Google antitrust remedies decision" Reason.org 23 September 2025. https://reason.org/commentary/consumer-welfare-was-pivotal-in-the-google-antitrust- remedies-decision/

3. **Degradation of user experiences and "gatekeeper" platform quality:** As noted above, degradation or limitation of services on digital platforms harms businesses reliant on the platform to reach consumers, thereby advantaging established incumbents over smaller or newer competitors. This is because these firms are less reliant on the platforms themselves to establish brand awareness and build trust, and because incumbents are more likely to have and make the most of access to alternative channels. Since the DMA took effect, Google has been unable to integrate its search and service aggregator tools due to mandates around linking to third-party booking sites for flights, hotels and other services. This may have made the market more contestable in the short run for those specific booking sites that have experienced an increase in traffic. However, this means that hotel and flight bookings also take far more clicks than they previously did. One study quantifies the time wasted by consumers at over 3.3 million euros annually.[28] Degraded experiences in booking hotels due to the absence of direct booking options integrated into Google search has also helped drive a 36% reduction in direct bookings on Google Hotel Ads, with the service's European web traffic dropping by 30%.[29] Smaller businesses who rely more on Google search to drive traffic to their services face disproportionate harm from the degraded user experience and resulting decline in platform patronage, losing rather than improving their ability to contest for market share, and indicating an unfair competitive outcome in addition to harm to consumers. Similarly, mandates around allowing third-party app stores and "sideloading" of apps on mobile systems like Apple's iOS may have made the market more contestable for some developers and app store operators. However, it also represents a degradation in user experience for many amidst heightened security and privacy risks that drive a loss in user trust in the platform. For instance, some alternative app stores, by reason of deliberate business models or lower ability or desire to police content on their stores, are distribution hubs for pirated[30] and adult[31] content. Increased proliferation of pirated content due to Apple's reduced ability to control their devices' service ecosystem undermines fairness and market contestability for European IP owners, as well as increased costs for them to enforce their IP rights. And a perceived loss in security features and increased ability to access adult content makes it more difficult for parents to shield their teenagers from inappropriate and harmful material on their phones, driving a loss of confidence that would reduce their willingness to allow their children to use the devices in the first place. This would also be loss in fairness and market contestability for European app developers who produce age-appropriate content aimed at younger audiences, including educational content.

[28] Louis-Daniel Pape & Rossi, Michelangelo, Is Competition Only One Click Away? The Digital Markets Act Impact on Google Maps (2024). CESifo Working Paper No. 11226, Available at SSRN: https://ssrn.com/abstract=4922400 or http://dx.doi.org/10.2139/ssrn.4922400

[29] Javier Delgado, "DMA implementation sinks 30% of clicks and bookings on Google Hotel Ads" Mirai, 7 May 2025. https://www.mirai.com/blog/dma-implementation-sinks-30-of-clicks-and-bookings-on-google-hotel- ads/

[30] Konstancija Gasaitytė, "Apple is expecting a piracy frenzy in Europe" Cybernews, 18 April 2025. https://cybernews.com/tech/apple-anticipating-piracy-frenzy-europe/

[31] "Apple blasts EU laws after first porn app comes to iPhones" Bloomberg News, 2 March 2025. https://www.bloomberg.com/news/articles/2025-02-03/apple-blasts-eu-app-laws-after-first-porn-app- comes-to-iphones

Conclusion

Even early evidence over a single year of the DMA's implementation indicates that although its mandates and restrictions on vertical restraints and other business practices by "gatekeeper" platforms may have made digital markets more contestable for some competitors, it is also causing significant competitive and consumer harm and undermining market contestability and fairness for others. These effects are especially borne by the smallest or newest firms. User fragmentation between platforms, degraded user experience, increased search costs faced by users, and reduced platform security and privacy features and associated user trust in platforms, all harm not just consumers. They also make markets less fair and more expensive to contest for European firms that rely on and benefit from "gatekeeper" platforms. This is likely to entrench the market share of incumbent firms. Exorbitant costs and uncertainty around the application of the DMA's "rules," even after extensive consultations between enforcers and stakeholders, and the associated threat of fines or breakups, have also harmed innovation while delaying European firms and individuals access to cutting-edge product features such as AI- adjacent ones. The DMA's failure to define relevant geographic and/or product markets in favor of singling out firms (none of which are European and almost all of which are American) for "gatekeeper" status based on global turnover also means that it serves as a protectionist and discriminatory non-tariff trade barrier. Its role as an arbitrary trade barrier is also highlighted by EC enforcers' apparent inability to provide the American firms and platforms affected with clarity about how they can remain compliant despite the threat of punitive fines for non-compliance.

For these reasons, and due to the dynamic nature of competition in digital markets, the EC is urged to eschew ex-ante rules in regulating competition in digital markets. We instead advise a more flexible and tailored ex-post antitrust law enforcement that is based on an analysis of competition in a specific market and that articulates anticompetitive harms that can be remedied. This would not just boost competition and consumer welfare while ensuring that wrongdoers are held accountable. It would also promote fairness and market contestability at both the inter-platform level, as well as within the platforms that European firms rely upon to reach domestic and global markets.