



The Digital Markets Act

27 April 2022

Presentation for the Visegrad 4 Competition
Conference in Budapest
dr. Zsuzsa Cserhalmi – DG Competition

* Views are my own and do not necessarily represent the official position of the
European Commission

Background

- 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**

Special
Advisers'
Report

Reports by
NCAs

Calls for
action by EP

Member
States

Consumers

Other stake-
holders

- 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**

Political agreement 24 March 2022



Objectives

- Ensure **contestable and fair markets** in the digital sector by imposing **directly applicable obligations** on a small number of digital gatekeepers
- Problems identified:
 - **Weak contestability** of platform markets
 - **Unfair gatekeeper practices** vis-à-vis business users
- Core platform services (“CPS”):
 - Where **problems identified are more frequent and pronounced** (e.g. online intermediation services, search engines, operating systems)
 - **Main features**: high concentration, with few large platforms acting as gateways between business users and consumers, fueled by certain market characteristics (e.g. strong network effects, extreme scale economies and data advantages)
- **Complements competition law enforcement** by regulating systemic issues caused by digital gatekeepers and unfair practices that cannot be tackled by EU competition law
- It also **does not replace consumer or data protection legislation**

Gatekeeper designation process (Article 3)

A provider of a core platform service can be designated as a gatekeeper when:

Requirements

- a) it has a **significant impact on the internal market**;
- b) it operates a core platform service which serves as an **important gateway** for business users to reach end users;
- c) 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 (“**emerging gatekeeper**”)

Qualitative designation following market investigation

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

Rebuttable presumption

- a) Annual **EEA turnover** of 7.5 bn (last 3 FYs) OR average **market capitalisation/equivalent fair market value** of 75 bn (last FY) **AND one CPS in at least 3 Member States**
- b) 45 million **monthly active end users** and 10,000 **yearly active business users** established in the Union in last FY
- c) Where (b) is satisfied in each of the **last 3 FY**

- **Notification obligation** within 2 months after meeting the quantitative thresholds
- **Designation** within 45 working days after receiving complete information, **unless rebuttal** based on substantiated arguments in relation to operation of CPS
- **Market investigation** (target: 12 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
- **web browsers**
- **Virtual assistants**

Obligations

- Philosophy - precise obligations, that are necessary and appropriate for contestability and fairness
- Directly applicable obligations in Articles 5, 6, 12 and 13
- Applied to core platform services that meet the designation criteria
- Compliance to be ensured **within 6 months** following a designation ([Article 3\(8\)](#))

**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)**

Gatekeepers expected to enjoy a durable and entrenched position

Only obligations that are necessary and appropriate for contestability

DMA obligations by category

- **Data related practices**, such as
 - *Data silos*. Ban on the use by the GK of non-publicly available commercially sensitive data of business users
 - *Portability*. Obligations to provide effective access to and portability of data, for business users and end users
- **“Neutrality” provisions**, such as
 - *App un-installing/default setting*. Possibility for consumers to uninstall preinstalled applications and change default settings of OSs
 - *Side loading*. Consumers may upload alternative app stores and applications
 - *Self-preferencing*. No preferential treatment in ranking on search engine, social network or online intermediary
- Provisions to promote **multi-homing**, such as
 - *Anti-steering*. Possibility for business users to reach end users and offer them services outside the CPS
 - *Prohibition of parity clauses*. Possibility for business users to reach end users and offer them services on other platforms
 - *Interoperability* of third party ancillary services with gatekeeper’s OS
- **Advertising** related practices, such as
 - *Transparency* obligations on pricing and performance measuring

Investigative and enforcement measures and future proofing

Investigative measures

- Requests for information (Art. 18)
- Interviews and statements (Art. 20)
- On-site inspection (Art. 21)
- Right to be heard and access to file (Art. 30)
 - Before decisions with adverse effects on gatekeepers

Enforcement measures

- Interim measures (Art. 22)
- Commitments (Art. 23)
- Non-compliance (Art. 25)
- Fines (Art. 26), periodic penalty payments (Art. 27)
- Systematic non-compliance (Art. 16)
 - Additional remedies (behavioural or structural remedies)

Future proofing

- Market investigations relating other services or other practices need to be included (Art. 17)

Governance structure

European Commission

Commission is competent to ensure effective implementation and enforcement of the DMA

- ✓ Designation of gatekeepers (quantitative thresholds or market investigation)
- ✓ “Implementation dialogue” on Art. 6 obligations
- ✓ Suspension and exemption requests by gatekeeper
- ✓ Monitoring of compliance (fines, interim measures, additional remedies)
- ✓ Market investigations - systemic non-compliance and new services/practices

Member States (Digital Markets Advisory Committee)

Advice of the Advisory Committee on number of decisions - advisory procedure under Regulation (EU) No 182/2011

- ✓ Suspension of obligations (Art. 8)
- ✓ Exemption from obligations due to overriding reasons of public interest (Art. 9)
- ✓ Designation of gatekeepers following market investigation (Art. 15)
- ✓ Decision on systematic non-compliance (Art. 16)
- ✓ Decision on interim or voluntary measures (Art. 22 and 23)
- ✓ Non-compliance decision (Art. 25)
- ✓ Adoption of implementing acts (Art. 36)
- ✓ The cooperation with national authorities shall be subject to examination procedure

Request for a market investigation to designate (Art. 33)

Involvement of National Authorities

- Obligation of close cooperation and coordination with National Authorities
- Obligation of close cooperation and coordination with competent authorities enforcing competition rules
 - The forum is the European Competition Network
 - Power to share confidential information
 - Obligation to inform the Commission about new investigations under competition rules
 - Obligation to communicate measures imposing obligations
 - The Commission may ask the authorities to support its market investigation
 - Authorities empowered to do so may conduct investigations on possible non-compliance
- European High-Level Group

The role of antitrust

- Detect new forms of anticompetitive behavior not covered by the DMA (see Article 10)
- To enforce competition rules concerning conducts not covered by the DMA
- To enforce competition rules for digital players (for instance local and national ones) not covered by the DMA

Thank you!