

DIGITAL MARKETS ACT

*Enforcing a
new regulatory tool*

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

Overview

- I. Key features of DMA and their impact on compliance and enforcement
- II. Guidance tools under the DMA
- III. Interaction with antitrust enforcement
- IV. The interaction with national authorities

I. Key features of the DMA (1)

- Designation of gatekeepers upfront, **decoupled** from the enforcement of the obligations
- **No COM discretion** in relation to quantitative designations (notification, legal presumption)
- **Deadline** driven procedures
- **Direct applicability** of the obligations (self-execution, see Art 8(1)) with specific guidance tool (dialogue) under discretion of the Commission

I. Key features of the DMA (2)

- Very limited horizontal **exceptions**, some caveats within individual provisions, but no objective justifications/efficiencies
- **No commitments** in non-compliance proceedings (only in case of structural non-compliance)
- No formal **complaints**, but **transparency** ensured by publishing compliance reports, measures to be taken and all decisions
- Regular **review** of designations and remedies

What does it mean for compliance?

- **Responsibility** for compliance and burden to demonstrate effective compliance rests on the companies
- Plausibility of such demonstration increases when **third party reactions** have been considered upstream by the GK
- **Timeliness** is a key element of effective compliance
- Article 8: regulatory dialogue to issue specification decisions
- Compliance reports, compliance officers

What does it mean for enforcement?

- Shift from case-centric approach to **ongoing regulatory oversight** and dialogue
- Enforcement **priorities**
- **Transparency and constructiveness** determine the quality of the dialogue, **anticipation** is key
- Effective implementation will be measured against results in terms of creating **real opportunities**
- In case of **non-compliance** 10% fine
- In case of **systemic non-compliance** 20% fine and potentially structural remedies

II. Guidance tools under the DMA – legal certainty vs. flexibility

- DMA offers a **variety** of tools
- Informal (pre-discussions) vs. formal (implementing acts)
- Individual (Art. 8 specification decision) vs. horizontal guidelines
- The matter determines the right instrument, tools may best be used **in sequence**
- Meaningful horizontal guidance on substance requires implementation **experience**
- Implementing Acts: focus on **procedural essentials** and forms triggering legal obligations (notification form), other forms may be recommended via more informal tools
- **Guidance on cooperation** with national authorities, legal form of guidance still under consideration

III. The interaction with antitrust enforcement

- Antitrust enforcement and DMA are **complementary**, where antitrust will play a crucial role to
 - 1) detect new forms of anticompetitive behavior not covered by the DMA (see Article 10);
 - 2) enforce competition rules for digital services not covered by Core Platform Service; and
 - 3) to enforce competition rules for digital players (for instance local and national ones) not covered by the DMA
 - 4) ensure future proofing of the DMA.
- Legal relation is governed by Art 1(6)

IV. The 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

Thank you!