Digital Markets Act – Parliament and Council reach a political agreement

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On 24 March 2022, a little over a year after the Commission published its proposal, the European legislators reached a provisional political agreement on the Digital Markets Act (DMA).

The DMA aims at making the online sector a fairer and more competitive one by redistributing the cards between the actors. The past few years have seen online intermediaries massively develop and several platforms now largely dominate the digital market, both economically and socially. The DMA, which applies to the largest and most powerful ones, will make the so-called “gatekeepers” abide by new obligations and prohibitions, and therefore greater accountability. As is usually the case, definitions are at center of the debate. The co-legislators have therefore agreed that companies shall qualify as gatekeepers if they have an annual turnover of at least EUR 7.5 billion within the European Union in the past three years or a market valuation of at least EUR 75 billion, and if they have at least 45 million monthly end users and at least 10 000 business users established in the EU. The said platform must also control one or more core platform services in at least three member states. And while “emerging gatekeepers” are also addressed, SMEs are, for their part, generally left aside. This exemption seeks to ensure adequate proportionality of the rules. In case a platform does not agree with its designation as a “gatekeeper”; it may challenge the designation through a specific procedure, allowing the Commission to check the validity of the arguments put forward. Gatekeepers who are correctly designed as such will therefore be bound by a set of measures, which impose a number of obligations. For instance, the interoperability between services, giving users the right to un-install applications, shall be promoted.

The new rules shall also allow business users to promote their offer and conclude contracts with their customers outside the gatekeeper’s platform to access the data they generate in their use of the platform. With regards to advertising, gatekeepers will have to provide companies advertising on their platform with the tools and information necessary for advertisers and publishers to carry out their own independent verification of the advertisements hosted by the gatekeeper. On the other side, gatekeepers will no longer be allowed to resort to self-preferencing - by ranking services and products they offer more favourably than other ones - or to tying and bundling practices. It is also important to stress that giant tech companies shall no longer track end users outside of the gatekeeper’s core

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platform service for the purpose of targeted advertising without effective consent. The use of data that is not available and the aggregation of personal data from different sources shall therefore no longer be permitted. The European Commission, together with a dedicated advisory committee and high-level group, will act as an oversight and enforcement body. It will indeed be tasked with market investigations, allowing it to qualify companies as gatekeepers, to update their obligations when necessary and to design remedies to tackle systematic infringements. It should be noted that the DMA also enforces anti-circumvention provisions to make sure gatekeepers do not undermine the rules. Where the gatekeepers do not comply with the measures provided by the DMA, they shall be fined up to 10% of their total worldwide annual turnover, or up to 20% if infringements are repeated. A periodic penalty payment of up to 5% of the average daily turnover may also be imposed. Finally, in case a gatekeeper systematically fails to comply with its obligations, additional behavioural or structural remedies may be issued.

Digital Markets Act: Commission welcomes political agreement on rules to ensure fair and open digital markets

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