THE EU'S PROPOSAL FOR A DIGITAL MARKETS ACT – AN *EX ANTE* LANDMARK

BY
PRABHAT AGARWAL

Head of Unit F.2 (Digital Services and Platforms), DG CNECT, European Commission. All views expressed in this article are strictly personal and should not be seen as reflecting the opinion of the European Commission. The author would like to thank Menno Cox, Michael Koenig, Juliette Orologas, Alexandre Ruiz Feases and Denis Sparas for their valuable contributions to this article. The Digital Markets Act is a joint project between DG CNECT and DG COMP at the European Commission.

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The EU's Proposal for a Digital Markets Act – an *Ex Ante* Landmark

By Prabhat Agarwal

The Digital Markets Act proposal released by the European Commission on December 15, 2020 will likely become a landmark in the regulation of digital markets. Thus far, the public debate has mainly focused on two unique particularities of the DMA: the novelty of its structure and operation on the one hand, and the complementary role that it will play regarding other regulatory tools on the other. But are there any other characteristics that render the DMA a distinctive, novel type of instrument? This article elaborates on this question and provides a deep dive into the DMA and, in particular, it explores three elements: (i) the DMA's ambitious design vis-à-vis other regulatory tools, (ii) the way in which the DMA tackles structural issues typically found in digital markets, and (iii) the DMA's ability to regulate these markets by going beyond precedents.

01
INTRODUCTION

The release on December 15, 2020 of the European Commission's proposal for a Digital Markets Act ("DMA"),[1] forming the "Digital Services package" together with its sister the proposal for a Digital Services Act ("DSA"), has caused a great stir in the competition and regulatory community. Containing a targeted, clearly defined, and circumscribed list of prohibitions and obligations addressed to online platforms that hold gatekeeping positions, the DMA will constitute an *ex ante* landmark. Its objective is to tackle practices that are unfair and that undermine the contestability of digital markets.

The uniqueness of the DMA stems from several of its characteristics. One of them is the inherent novelty of its structure and operation: companies subject to the DMA ("gatekeepers") must comply with a number of self-executing obligations that already embed the principle of a remedy. A clear illustration is the ban on the combination of personal data by gatekeepers across different services under Article 5(a) of the DMA. Absent end user consent, this provision prevents gatekeepers from taking unfair advantage of the great amount of personal data that they accumulated at the expense of other market players across their different services. The fact that remedies are already incorporated in specific rules will make a swift and key change to the functioning of digital markets.

At the same time, the self-executing mechanism is coupled with a designation system that recognizes the vast extent at which online platforms operate. This allows the Commission to identify those platforms that play a crucial role in digital markets and designate them as gatekeepers. This is done according to quantitative criteria, including the value of market capitalization and the number of active business users and end users, but can also be done according to qualitative criteria, including network effects and user lock-in. Such designation, moreover, is linked to a list of core platform services, such as online intermediation services, operating systems, social networks, or cloud computing services,[2] that are of systemic relevance for the functioning of digital markets.

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Another important feature of the DMA that has sparked the interest of the public debate is the complementary role it will play in keeping digital markets in good health together with other legal tools that are currently at the disposal of the Commission and the Member States' national authorities. A common example is competition law, where the activity of the Commission concerning digital markets has been in media headlines for the past years.

Starting with the three cases against Google,[3] one of which was recently decided in favor of the Commission by the General Court,[4] through the opening of investigations against Apple[5] and Amazon,[6] the Commission has shown fierce determination to tackle anticompetitive behavior of online platforms that enjoy a dominant position and therefore have a special responsibility not to harm the competitive process.[7] With its upfront remedies, and with a focus and scope that is genuinely different from competition law, the DMA will mark a step-change to making digital markets a fairer, more open and more contestable environment for conducting business, and for consumers to benefit from a wider choice of innovative solutions in the single market.

To better understand the unique significance of the DMA, this paper aims to dive deeper and reply to the following question: is it just its architecture, or is there something else

1 European Commission, Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM(2020) 842 final.

2 DMA proposal, art. 2(2).

3 Case AT.39740 *Google Search (Shopping)*, Decision of June 27, 2017; Case AT.40099 *Google Android*, Decision July 18, 2018; Case AT.40411 *Google Search (AdSense)*, Decision of March 20, 2019.

4 Case T-612/17, *Google and Alphabet v. Commission (Google Shopping)*, EU:T:2021:763.

5 Case AT.40452 *Apple (Mobile payments – Apple Pay)*; Case AT. 40437 *Apple—App Store Practices (music streaming)*; and Case AT.40652 *Apple-App Store Practices (e-books/audiobooks).*

6 Case AT.40703 *Amazon—Buy Box*.

7 In this sense, see European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A Competition Policy Fit for New Challenges"(November 18, 2021) available at https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=COM:2021:713:FIN, page 15.

that makes the DMA a distinctive regulatory instrument? This article goes beyond commonplace considerations and explores three distinct elements of the DMA by putting the proposal into a wider regulatory context. It builds on a number of academic papers and other research that have already discussed the DMA and its novelty and aims to add to this literature by providing the perspective of some of those involved in its design.[8] The remainder of the article will explore the design of the DMA *vis-à-vis* some other regulatory regimes (without trying to be exhaustive), the distinct features of digital markets and how the DMA approaches these, and how the DMA is much more than a mere codification of (antitrust) precedents.

02

THE DMA'S DESIGN vs. OTHER REGULATORY REGIMES

One of the first elements to highlight about the DMA is its ambitious design: it does not merely set general fairness principles or identify "problematic" behavior for a concrete subset of online platforms that enjoy gatekeeper power, but it tackles up-front problems that typically arise in digital markets. While this system benefits from enforcement experience, it is by no means static: the DMA allows for addressing practices by newly emerging gatekeepers and it sets up a mechanism via market investigations to update the DMA with new practices or new core platform services (see section IV. below).

It is for this reason that the DMA, by design, identifies eight core platform services that represent important cornerstones for the functioning of digital markets: a) online intermediation services; b) online search engines; c) online social networking services; d) video-sharing platform services; e) number-independent interpersonal communication services; f) operating systems; g) cloud computing services; and h) advertising services. By tackling the digital sector from all these sides, the DMA adopts a holistic approach and seeks to bring fairness and market contestability where this is crucial for EU business users and consumers in their daily activities. This ranges from using marketplaces to sell or buy goods, running a search on an online search engine of their choice, communicating through a social network or a messenger service, to displaying and benefiting from online ads.

Obviously, the DMA is not the first EU proposal aiming at regulating the digital world and making it fairer. Therefore, the DMA should be seen as another unique piece in a range of regulatory tools that aim to ensure well-functioning digital markets.

To illustrate this point, one should place the DMA in a wider context by looking at some preceding regulations. An important tool for digital markets is the Open Internet Regulation.[9] The need for this regulation dates to the public debate that arose with the exponential growth of the domestic use of the Internet since the mid-1990s, where some voices raised concerns about the gateway position of providers of Internet services. Imagine, for instance, that an Internet service provider impedes users from accessing the services offered by a content application provider (e.g. a video or music streaming app) to promote its own competing service or to favor a third content application provider.

Disabling access to a particular service, or engaging in other traffic management practices, such as access tiering or throttling,[10] can be particularly harmful for innovation. The Open Internet Regulation, thus, came in to ensure that the connection to all the end-points of the Internet (i.e. for business users at one end and consumers at the other end) is provided by Internet service providers fairly and without discrimination.[11]

Another related piece of legislation that precedes the DMA is the Geo-blocking Regulation.[12] Enshrined in Article 20(2) of the Services Directive[13] which bans discriminatory treatment when accessing services, the Geo-blocking Regulation seeks to remove barriers to cross-border transactions (i.e. geo-blocking practices), which are par-

8 Without aiming to be exhaustive, such academic papers and research include for example (i) *the Proposed Digital Markets Act (DMA): A Legal and Policy Review* by Nicolas Petit (https://doi.org/10.1093/jeclap/lpab062), (ii) *the European Digital Markets Act: A Revolution Grounded on Traditions* by Pierre Larouche & Alexandre de Streel (https://doi.org/10.1093/jeclap/lpab066), (iii) *the Draft Digital Markets Act: A Legal and Institutional Analysis* by Pablo Ibáñez Colomo (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3790276) and (iv) *the European proposal for a Digital Markets Act: A first assessment by CERRE* (https://cerre.eu/publications/the-european-proposal-for-a-digital-markets-act-a-first-assessment/).

9 European Parliament and the Council, Regulation (EU) 2015/2120 (Open Internet Regulation) O.J. (L 310) 1.

10 Open Internet Regulation, art. 3.

11 For completeness, the Open Internet Regulation also eliminates retail roaming surcharges. See Article 7 of the regulation.

12 European Parliament and the Council, Regulation (EU) 2018/302 (Geo-blocking Regulation) O.J. (L 60) I/1.

13 European Parliament and the Council, Directive 2006/123/EC (Services Directive) O.J. (L 376) 36.

ticularly "observable" in an online environment where products and services are easily accessible and visible. Such practices, implemented by traders, have a clear impact on the internal market by hindering cross-border online transactions. A textbook case of a geo-blocking practice is a marketplace designing its online interfaces in such a way that impedes customers located in other Member States from conducting any operation; for example, by rerouting techniques or by blocking access. In sum, the Geo-blocking Regulation prohibits discriminatory treatment against customers across the EU by requiring traders to treat them equally regardless of their nationality or place of residence.

A more recent regulatory instrument is the Platform-to-Business ("P2B") Regulation,[14] which counterbalances the bargaining power that online intermediation services have *vis-à-vis* business users, and particularly SMEs. Online market places, application stores, or online social media services, are platforms that have become essential actors in the relationship between businesses and consumers by facilitating transactions between these two distinct user groups.[15] However, evidence showed that almost half of business users had had problems with online platforms due to the practices of the latter, including changes in terms and conditions without prior notice, delisting of products or suspension of accounts without clear reasons, or lack of transparency in rankings of offers and products.[16]

To address these issues, the P2B Regulation requires providers of online intermediation services to comply with a number of obligations involving clarity and availability of terms and conditions, the communication regarding suspension or restriction of the intermediation services provided by the platform, or transparency about the ranking parameters, among others.[17] In addition, it is worth referring to the redress mechanism that this regulation creates with requirements for online platforms such as the handling of complaints of business users.[18] The P2B Regulation, thus, was conceived as a first step to establish a fair and transparent business environment around online platforms by imposing horizontal standards for all providers of online intermediation services, of which the Commission estimates there are well over 10 000 in the EU alone.

Having said that, the recent experience also showed that the existing regulatory framework at EU level does not yet comprehensively address particular issues deriving from the concentration of economic power and unfair business practices of a limited number of online platforms enjoying gatekeeper power. Coming back to the Open Internet Regulation, for example, the focus is placed more on national operators and physical Internet infrastructures, and it specifically addresses management practices by Internet service providers that affect Internet traffic.

The Geo-blocking Regulation as a sector-specific tool scales up the degree of intervention – it does not apply to areas that are already excluded from the Services Directive,[19] such as financial services or banking, audiovisual services, or healthcare – by looking at concrete discriminatory practices that cannot be justified.[20] The P2B Regulation is the most horizontal tool of the three examples used, as it captures the width of the business model of all online platforms to tackle all those unfair practices that harm the way in which business users conduct transactions through them[21] – that is to say, from contractual terms and conditions, to ranking and data access.

However, while the regulatory environment described above provides for a very solid regulatory baseline, it does not effectively address the specific market failures prevalent in digital markets (further described in the next section). This regulatory context allows us to see that the DMA takes a step further than other legal tools in covering issues and services that business users and consumers encounter in digital markets when engaging specifically with the online platforms that hold gatekeeper power.

14 European Parliament and the Council, Regulation (EU) 2019/1150 (P2B Regulation) O.J. (L 186) 57.

15 It is worth emphasizing the fact that the importance of online platforms as intermediaries in online transactions has increased due to the COVID-19 pandemic. See Lucie Lechardoy, Alena Sokolyanskaya & Francisco Lupiañez-Villanueva, *Analytical Paper on the structure of the online platform economy post COVID-19 outbreak* (Study on Support to the Observatory for the Online Platform Economy, Analytical Paper no 6, January 2021).

16 For more detail, see European Commission, Staff Working Document Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, SWD(2018) 138 final, Part 1/2, 9-21.

17 P2B Regulation, arts. 3 to 5.

18 On redress possibilities, see P2B Regulation, arts. 11 to 14.

19 Geo-blocking Regulation, art. 1(2) in conjunction with Services Directive, art. 2(2).

20 Geo-blocking Regulation, art. 1(1).

21 For this argument, see Menno Cox, *Activating EU Private Law in the Online Platform Economy*, in New Directions In European Private Law 147 (Mateja Durovic and Takis Tridimas, Hart Publishing 2021).

03

THE DISTINCT FEATURES OF DIGITAL MARKETS

The above leads us to discuss a second element of the DMA that is closely linked to its goals and overall design: it aims to address some of the most important issues of the structure of digital markets, such as network effects and economies of scale.

In this sense, several reports and studies released in the past years[22] have shown that digital markets present several economic features that, albeit not novel, tend to favor the emergence of winner-takes-all ecosystems. This phenomenon, in turn, has allowed digital platforms to become gatekeepers in relation to the core platform services that they offer, leading to a lock-in of business users and end users in the short term and to a reduction of contestability of digital markets in the long term.

More concretely, these features are the following: a) strong network effects, which refer to the idea that the more people use a product or service, the more appealing it becomes for other users; b) large economies of scale and scope, so that the cost of producing more or of expanding in or to other digital markets decreases with the company's size; c) high infrastructure costs, combined with very low or even zero marginal costs, which means that the cost of servicing another consumer is very affordable for incumbents and therefore leads to large economies of scale; d) high and increasing returns to the use of data that allows online platforms to improve their products as they control a growing amount of data; and e) low distribution costs, allowing for global reach.[23]

It is important to highlight that the combination of these features of digital markets raises two issues in particular: The first issue is that these markets become prone to tipping. That is to say, markets will naturally lean towards a single or a very limited number of market operators, giving rise to the so-called winner-takes-all phenomenon. The second issue is that, as shown by the recent Commission's antitrust enforcement experience in digital markets, these features serve as high barriers for newcomers that seek to enter the market and to challenge the position of incumbent online platforms.[24] This, in turn, has led to a high level of concentration in many digital markets.

There is evidence for a trend of growing market concentration at the industry level,[25] which seems particularly acute in digital markets where the level of concentration of economic power is unprecedented. Suffice it to mention that the top seven of the largest online platforms account for 69 percent of the total EUR 6 trillion valuation of the platform economy because of vertical and horizontal integration.[26] Growing market concentration, in addition to the inherent negative impact that this causes on innovation in the long run, also implies less choice for business-users to reach end-users and *vice-versa*.[27]

In summary, the above features that characterize digital markets have mutually reinforcing effects, which constitutes, in the specific dynamics of the winner takes it all, significant entry barriers that weaken market contestability and further entrench the gatekeeper position of a selected number of online platforms. Such scenario necessarily allows gatekeepers to engage in unfair behavior and, in the long run, leads to societal losses in terms of prices of products and services, consumer choice and suboptimal innovation opportunities and deliverables.

Having said that, the question that follows is how the DMA addresses such structural issues of digital markets. In this sense, it is worth referring to some of the obligations that the DMA puts forward, which in particular ensure a higher degree of inter-platform competition.

The prohibition of wide parity clauses under Article 5(b) of the DMA is one of them. This legal provision refrains gatekeepers from imposing the so-called wide parity clauses on

22 *Inter alia*, Jacques Crémer, Yves'Alexandre de Montjoye & Heike Schweitzer, *Competition policy for the digital era* (Special Advisers Report to Commission Vice President Vestager, 2019), Furman et al. *Unlocking digital competition* (Report of the Digital Competition Expert Panel, March 2019); and Stigler Committee on Digital Platforms, *Stigler Center Final Report* (2019).

23 See in particular Stigler Committee on Digital Platforms, *id.* at 7.

24 E.g. *Google Search (Shopping)*, *supra* note 4, para 272.

25 See, generally, Matej Bajgar et al, industry concentration in Europe and North America (OECD Productivity Working Paper, No. 18, 2019); Gustavo Grullon, Yelena Larkin & Rony Michaely, *Are US Industries Becoming More Concentrated?*, 23(4) REVIEW OF FINANCE 697 (2019); Jason Furman, *Market Concentration* (OECD Hearing on Market Concentration, June 2018); Germán Gutiérrez & Thomas Philippon, *Declining Competition and investment in the U.S.* (NBER Working Paper Series, July 2017); Germán Gutiérrez & Thomas Philippon, *How European markets became free: A study of institutional drift* (NBER Working Paper Series, June 2018).

26 Rob Fijneman, Karina Kuperus & Jochem Pasman, *Unlocking the value of the platform economy* (KMPG report for the Dutch Transformation Forum, 2018).

27 See European Commission, Staff Working Document Impact Assessment Report accompanying the DMA proposal, SWD(2020) 363 final, paras 58 and 59.

their business users. Such clauses oblige business users to provide the gatekeeper with the best price and conditions in relation to other sales or distribution channels that they may be using as well. As a result, business users may be faced with higher commission rates payable to online platforms, less choice and less innovative platform services for end-users. The aim of this prohibition, thus, is to tackle this type of unfair behavior that undermine competition between platforms significantly.

Another type of behavior by gatekeepers that has the potential of causing an appreciable effect on inter-platform competition are anti-steering clauses, which prevent business users to promote their offers outside the core platform services provided by the gatekeepers. Article 5(c) of the DMA addresses such behavior by banning anti-steering clauses, accompanied with the additional obligation that allows end users that purchase content outside the gatekeeper's platform to use such content also in the core platform service of that same gatekeeper.

> *The Geo-blocking Regulation as a sector-specific tool scales up the degree of intervention – it does not apply to areas that are already excluded from the Services Directive*

Furthermore, other legal provisions of the DMA, instead of imposing a particular prohibition, open up the digital ecosystems that gatekeepers have created by allowing business users and end users to do some actions that so far were not possible. For instance, Article 6(1)(c) of the DMA allows for side loading. This implies that end users will be able to install and use third party software applications by means other than the app store imposed by the gatekeeper. This legal provision does not only benefit end users that are no longer locked-in within the walls of the gatekeeper's ecosystem, but also business users because they will not depend exclusively on the gatekeeper's app store to distribute their products. Another example can be seen in Article 6(1)(h) that requires gatekeepers to facilitate end users to exercise their data portability rights. This, again, promotes switching between online platforms and boosts inter-platform competition.

04

GOING BEYOND PRECEDENTS

The final element that this article explores are the obligations of the DMA in relation to existing case law. In its Articles 5 and 6, the DMA proposal lists eighteen[28] very precise obligations that range from data combination to self-preferencing, to interoperability and data portability. Certainly, several of these provisions may be reminiscent of past or ongoing antitrust cases at EU or at national level. Perhaps the clearest illustrations of this are the ban of self-preferencing practices by gatekeepers laid down in Article 6(1)(d) of the DMA, or the prohibition of (wide) parity clauses in Article 5(b). However, the DMA is in fact much more than a mere codification of precedents.[29]

First, the DMA also covers practices that have not been yet the subject of antitrust investigations in the EU or any of its Member States. See, for example, the obligation that the DMA imposes on online search engines, which grants competitors access to ranking, query, click and view data on fair, reasonable and non-discriminatory terms (Article 6(1)(j)). Alternatively, consider the transparency obligations in the advertising sector under Articles 5(g) and 6(1)(g), which require gatekeepers to provide advertisers and publishers with price transparency and with access to the performance measuring tools used by gatekeepers.

These obligations are the result of a reflection process that has been going on since the preparatory work on the P2B Regulation, further corroborated by a plethora of third party reports, including specific studies prepared in the context of the Commission's Impact Assessment as well as the findings of the EU Observatory on the Online Platform Economy.[30] Moreover, it is worth noting that, in the context of the Commission's Open Public Consultation, the tech community itself has provided the Commission with real-life examples of unfair practices happening every day – reflecting the lack of contestability that exists in digital markets today.

Second, the obligations and prohibitions laid down in the DMA that were indeed inspired by antitrust precedents are much broader than any case law could ever be. This is so because the practices listed in the DMA have been considered as *per se* harmful. This, in turn, justifies their automatic application to online platforms across the specific business models identified once these have been designated as gatekeepers. The obligations are self-executing which

28 For completeness, the DMA proposal also includes the obligation to inform about concentrations (art. 12) and the obligation to submit an audited description of any techniques for profiling consumers (art. 13).

29 For a similar argument, see Filomena Chirico, *Digital Markets Act: A Regulatory Perspective*, 12(7) Journal Of European Competition Law & Practice 493 (2021).

30 The EU Observatory on the Online Platform Economy is a group of Commission officials and prominent independent experts that monitors the online platform economy. The studies of the Observatory are available here: https://platformobservatory.eu/.

means that there will be no case-by-case analysis of actual effects of the prohibited (or mandated) behavior.

An important practical implication of this automaticity is that gatekeepers will not be heard on any efficiency defense or on claims that their particular case is different. Every gatekeeper will have to implement the necessary remedies to comply within the relevant obligations within six months following its designation. This is the essential difference between the DMA as an *ex ante* regulatory tool on the one hand and the *ex post* application of antitrust law on the other. Hence, although some obligations find their inspiration in antitrust precedents, many concepts used in antitrust analysis, such as relevant markets or dominance, will not apply in the context of the DMA.

Third, it should be mentioned that the DMA is forward-looking and future-proof in that obligations can be updated if harmful conduct evolves. Such updates will be possible via delegated acts.[31] To ensure a solid evidentiary basis, a thorough market investigation will be required before any such update.[32] It is not required that the new type of behavior has previously been dealt with in any way by competition agencies, so a preceding antitrust decision would by no means be required before adjusting the list of practices. The future-proofing mechanism is an important feature of the DMA; without it, the DMA would simply reflect the lawmakers' knowledge at the time of adoption. A static instrument, however, would not be appropriate given the highly dynamic and fast-evolving nature of digital markets.

05

CONCLUSION

The adoption of the Digital Services package at the end of 2020 has marked two landmark deliverables of the European strategy on shaping Europe's digital future, the DMA and the DSA. Focusing on the DMA, this article looked at a number of elements with a view of establishing whether this regulation, as one of the two building blocks of this legislative package, can be considered a distinctive regulation in comparison to the existing regulatory framework in place and if so, on which grounds.

A short answer to this question is yes: the DMA represents a landmark, unique, and distinct regulation compared to other regulatory tools. This article shows that there are at least three distinct reasons to reach such a conclusion.

First, while the existing regulatory framework effectively deals with several issues in the platform economy environment, the DMA takes a step further than other legal tools in covering issues and services that business users and consumers encounter in digital markets when engaging specifically with the online platforms that hold gatekeeper power. It does so by going beyond general fairness principles or identified problematic behavior by a subset of online platforms that enjoy gatekeeper power and tackles up-front negative impact(s) that could arise from specific behavior by such market operators, in particular when combined with unique features of digital markets.

Second, the DMA does not only aim to address identified forms of "problematic" behavior, but also some of the most important structural issues prevalent in digital markets. In particular, the DMA tackles some of the inherent barriers to entry in the digital markets, which due to confluence of several (already known) economic features tend to favor the emergence of winner-takes-all ecosystems and thereby result in highly concentrated digital markets. This phenomenon, in turn, has allowed digital platforms to become gatekeepers in relation to the core platform services that they offer, leading to a lock-in of business users and end-users in the short term and to a reduction of contestability of digital markets in the long term.

Last, but not least, when looking at the configuration of the obligations under the DMA, it has been noted in the public debate that the DMA is nothing more than a codification of existing precedents, coming in particular from competition law enforcement. Yet, as shown in this article, while some of the provisions may be reminiscent of past or ongoing antitrust cases at the EU or national level, there are a number of obligations where such precedents do not exist. In addition, due to their egregious nature and negative impact on digital markets, several practices by online platforms with gatekeeper power point to *per se* negative effects on fairness, openness, and the contestability of digital markets. Finally, the DMA provides for several tools, such as market investigations into new practices or possible new core platform services that ensure that the DMA is a forward-looking, dynamic, and future proof *ex ante* regulatory tool.

To conclude, the DMA represents a novel and bold attempt to ensure fair, open, and contestable digital markets in the Union. The Commission is confident and determined to effectively implement and enforce the DMA to ensure that it achieves its objectives, whilst also carefully monitoring its

31 DMA proposal, art. 10.

32 DMA proposal, art. 17. Note that apart from new harmful practices, a market investigation can also reveal the emergence of new gatekeepers or new core platform services (with the latter requiring a revision of the Regulation through the ordinary legislative procedure instead of through delegated act).

effects on digital markets in order to adjust where this turns out necessary.

> *An important practical implication of this automaticity is that gatekeepers will not be heard on any efficiency defense or on claims that their particular case is different. Every gatekeeper will have to implement the necessary remedies to comply within the relevant obligations within six months following its designation*

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