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The Digital Markets Act: What Have We Learned after the First Years of Its Application?

Abstract: The Digital Markets Act (DMA) became applicable in May 2023. It is completely new piece of legislation affecting a sector which has not been subject to any specific regulation before, and it introduced brand new concepts aimed at protecting the digital rights of consumers and business entities alike. What have we learned after the first years of its full application? Has the European Commission's practice clarified the concepts that were disputed? Did it have any measurable effects on the markets? Has it brought any specific improvement in consumers' digital rights? This paper re-interprets the DMA in the light of recent case law, evaluates its practical impact so far and tries to predict how its future application might affect the protection of digital rights.

Keywords: core platform services, Digital Markets Act, gatekeepers, regulatory dialogue

Introduction

The economic significance of digital markets is enormous, and it continues to grow. Even before the COVID-19 pandemic, which enabled an unprecedented expansion of some digital services, it was estimated that the digital economy stands for 15.5% of world GDP (OECD, 2021, p. 6). It is generally accepted that markets with undistorted competition are the most effective ones, but unfortunately, digital markets are prone to competition concerns. Thus the European Commission has argued that '[u]nfair practices and lack of contestability lead to inefficient outcomes in the digital sector in terms of higher prices, lower quality, as well as less choice and innovation to the detriment of European consumers' (European Commission, 2020a). As

a consequence, a large number of reports and policy papers in recent years have argued that the key features of digital platform markets present the hallmarks of market failure, warranting regulatory action, in addition to *ex post* antitrust enforcement, in view of their significant influence on markets and society at large (OECD, 2021, p. 6).

As a 'European' solution to this problem, the Digital Markets Act (DMA) was adopted in 2022 (European Parliament and Council of the EU, 2022a). In the last two years, its provisions have been gradually entering into force, and it is today possible to evaluate the first experiences with its application in practice. The DMA is not simply a new piece of regulation, but also, as I will argue in this paper, a new regulatory approach to market power, based, among other characteristics, on the 'regulatory dialogue' between the 'gatekeepers' and the Commission. Interpretation of the DMA is therefore challenging and cannot be definitive without a review of actual cases. It has not been universally endorsed, and even its basic principles have been subject to criticism (Akaman, 2022 Gönenç et al., 2022; Monti, 2021). Without revisiting this robust debate, this article is focused on the actual application of the DMA.

The DMA is basically applied in two steps: identification ('designation') of its addressees (the 'gatekeepers'), followed by monitoring and enforcing their compliance with the DMA-imposed obligations. As of today, the designation process has been significantly clarified by the Commission and the General Court of the European Union. The process of compliance has already started, but the number of decisions is limited, and none has reached the level of court review; notwithstanding this, some trends may already be identified.

The aim of this paper is to analyse the experience of the application of the DMA so far and to answer the following questions: (1) To what extent has the notion of the gatekeeper been clarified? (2) Does the 'regulatory dialogue' help with effective compliance and enforcement? (3) Do the gatekeepers comply with the DMA-imposed obligations? (4) Does the DMA live up to expectations? In order to answer these questions, I will first reiterate the reasons why the DMA was adopted as a specific piece of legislation, its objectives and the expectations it has raised (section 1). Thereafter, I will briefly introduce the process of the application of the DMA, as it was foreseen by the text of the regulation itself, as well as by the commentaries published before it actually entered into force (section 2); this will be followed by two sections dedicated to the practice so far on the designation of gatekeepers (section 3) and their compliance with the DMA (section 4). In so doing, I will conduct a review of the academic literature discussing these issues and will perform a qualitative analysis of the Commission's decisions based on the DMA, as well as the General Court's judgments reviewing them. All decisions taken before 31 March 2025 will be taken into account.

1. Reasons for adopting the DMA and its goals

In this section, I will summarise the particular characteristics of digital markets, argue why a distinctive regulation is needed with regard to them and outline the DMA's goals and means to achieve them.

1.1. Specific features of digital competition

Competition-related issues in digital markets are typically associated with 'platforms' (Evans, 2003), which may be characterised as undertakings providing services to different groups of interconnected consumers (OECD, 2022, p. 10); platforms are frequently multi-sided, meaning that a platform is active in a market where it sells different products to different groups of consumers, while the demand from one group of consumers depends on the demand from other groups. For example, a digital content platform may feature content creators on one side, viewers of content on the other and advertisers on another.

From the point of view of competition, several characteristics of platforms stand out. First, they are characterised by an extreme return to scale, network externalities and the role of data (Montjoye et al., 2019, p. 2). They are typically disruptive, creating new markets and replacing traditional ones (Cohen, 2018, p. 19). Second, they tend to be multi-sided, and the services of the platforms are frequently not paid for by the final consumers. Without having a price, platforms generally compete on quality and innovation (Jenny, 2021, p. 3) and for the attention of consumers rather than directly for their money (Newman, 2021). At the same time, consumer choice is limited by network effects: the quality of a platform is frequently defined by the number of people using it, which may dissuade consumers from switching. And third, platforms tend to form 'ecosystems' (Montjoye et al., 2019, p. 33), which transform the competition from being at a platform level to an ecosystem one. As a consequence of these characteristics, the platforms typically wield significant market power, and from the competition point of view, the markets in which they operate tend not to be sufficiently competitive.

1.2. The need for specific regulation

Can these specifics of digital markets be effectively addressed by traditional competition law, in particular Article 102 TFEU? It has been argued that the enforcement of this article is faced with two principal challenges in digital markets (Morbel, 2023, p. 208): first, the intervention threshold is relatively high. In the case of abuse of dominance, it is necessary to define the relative market and assess the market power of the undertaking concerned in order to decide whether it is in a dominant position, which is in itself very demanding (Solek, 2021, p. 595). In addition to this, it is necessary to substantiate the negative effects on competition of the conduct in question. This amounts to very long proceedings, meaning that any eventual intervention may

not be sufficiently timely. Second, it may be difficult to devise appropriate remedies for market failure in proceedings that are concluded by prohibition of the anticompetitive conduct.

Such problems are not only specific to digital markets. Indeed, the Commission launched an initiative in 2020 to adopt the 'New Competition Tool', enabling it to impose remedies without finding an infringement of competition law (Vesterdorf & Fountoukalos, 2021, p. 284). This project has nonetheless been abandoned; instead, a consensus began to form in the EU that a new regulatory approach specifically for digital markets might be necessary.¹ In 2019, the Commission published the study *Competition Policy for the Digital Era*, concluding that it is necessary to promote competition both for the market (i.e. enabling other platforms to acquire a critical mass of users) and in the market (i.e. preventing abusive behaviour by the dominant platform) (Montjoye et al., 2019, p. 6). At the same time, it conceded that a vigorous enforcement of competition law in digital markets may not be enough, as '[i]n some areas, [...] a regulatory regime may be needed in the longer run' (Montjoye et al., 2019, p. 126). This thinking was translated into the adoption of the DMA in 2022. The DMA's aim is to pragmatically recalibrate the relationship between the enforcer and undertakings in the relevant markets (Tyagi et al., 2024, p. 43). It is meant not only to enable 'turbocharged application of Article 102 TFEU' (Monti, 2021, p. 90), but is a new instrument, rather than an element of competition law (Morbel, 2023, p. 208).

It is not the goal of this paper to discuss whether the DMA is part of competition law *stricto sensu* or a specific regulation of digital markets. This issue has been thoroughly discussed elsewhere (Tyagi et al., 2024, p. 47) and is ultimately not decisive for our further thoughts. In my opinion, the regulatory, *ex ante* character of the DMA prevails nonetheless (Petr, 2024, p. 158), putting it outside of competition law *stricto sensu*. This places it among a number of recently adopted legislative initiatives targeting different aspects of digital markets. The Digital Services Act (European Parliament and Council of the EU, 2022b), adopted in parallel with the DMA, in particular protects consumers by striving to achieve a safe, predictable and trusted online environment for platforms. Given the crucial importance of data for digital markets, the original General Data Protection Regulation (European Parliament and Council of the EU, 2016), protecting personal data, was complemented by the Data Act (European Parliament and Council of the EU, 2023), which focuses among other things on switching, interoperability and data transfers, and by the Data Governance Act (European Parliament and Council of the EU, 2022c).

Conversely, the DMA brings a general regulation to the operation of platforms, and strives to secure contestable and fair markets in the digital sector (as will be discussed in detail below). In this regard, it is in line with general competition law, which

1 For a summary of the debate, see e.g. OECD, 2021. For an overview of relevant literature, see e.g. Botta, 2021, p. 501.

also provides a basic regulatory framework for the protection (or even existence) of competition, not specific regulation on the individual business activities of the undertakings concerned. In the following section, I will concentrate on the DMA's objectives and the regulatory means employed to achieve them.

1.3. Objectives and tools of the DMA

The DMA's purpose 'is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users' (DMA, Art. 1(1)). It thus seems to be pursuing two objectives: first, that the markets become and remain contestable, and second, that the functioning of these markets is fair (DMA, Recitals 4–8; for detail, see e.g. Ibáñez-Colomo, 2021, p. 563). The approach of the DMA to these two goals resembles the regulation of unfair business practices rather than traditional competition law. It is based on a premise that the economic power of the gatekeepers may lead 'to serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users, as well as for end users of core platform services provided by gatekeepers, to the detriment of prices, quality, fair competition, choice and innovation in the digital sector' (DMA, Recital 4).

The DMA imposes specific obligations on the gatekeepers, aimed at restraining them in a systematic manner. It focuses on three broad categories of activities by providers of platform services (Ibáñez-Colomo, 2021, p. 563): the entrenching and strengthening of the position of a gatekeeper on a specific platform, the leveraging of market power from the platform to adjacent activities, and the exploitation of the position of the gatekeeper within the platform.

The DMA imposes *ex ante* obligations on the gatekeepers, while not requiring the enforcers to substantiate the significant market power of the gatekeepers or the negative effects of their conduct on competition. There is no need for any specific assessment of the actual or potential effects on competition of the conduct in question, and the defence of efficiency is not permissible (Bania & Geradin, 2025, p. 246). This regulatory approach aims at facilitating fast and effective enforcement of these obligations (Morbel, 2023, p. 209). Whereas the application of traditional competition law in digital markets takes years,² the gatekeepers need to comply with the DMA immediately. In this sense, it is indeed a 'genuine regulatory law' (Schmidt & Hübener, 2023, p. 42).

The DMA may be regarded as an example of a new approach to problems with competition in dynamic markets, characterised in particular by its asymmetric scope, its being proactive, and regulation based on dialogue rather than strict rules (Tyagi

2 For example, the investigation in the *Google Shopping* case was formally initiated in 2010, the decision was issued in 2017, the General Court decided in 2021 and the Court of Justice decided in 2024, after almost 15 years since the opening of the case.

et al., 2024, p. 47). By asymmetric scope, I mean that unlike ‘traditional’ competition law, which is universally applicable to all businesses in all the relevant markets, the DMA is only applied to a few specific undertakings – gatekeepers, active in several specific digital markets – the platform services (these concepts will be discussed in detail in section 2.1). By proactive, I mean that the DMA is based on *ex ante* rather than *ex post* regulation. Whereas ‘traditional’ competition law remedies market distortions caused by specific infringements of that law, the DMA imposes obligations on undertakings that have not infringed any specific legal duty. The nature of these obligations is dialogue-based: the specific obligations of the gatekeeper are not prescribed by the DMA itself, which defines them only in rather general terms, but on the basis of the ‘regulatory dialogue’ (discussed below in section 4.1). This feature of the DMA is sometimes referred to as ‘opacity by design’ (Tyagi et al., 2024, p. 51).

2. Application of the DMA

The DMA is applied in several consecutive steps. The first is the identification (designation) of the gatekeepers; the second is securing compliance with obligations, imposed on the gatekeepers by the Act. Both these procedures will be outlined in this section, followed by discussion of their actual application in sections 3 and 4. Finally, if the obligations are not fulfilled, a sanction procedure may follow. As there had been no practical experience with this when this article was finalised, the sanction procedure will be described only briefly.

2.1. Designation of gatekeepers

The gatekeepers are the providers of core platform services (DMA, Art. 2(1)). These services are defined by an exhaustive list of activities, in which the market position of the providers is clearly visible (Morbel, 2023, p. 210).³ It is unfortunate that the DMA does not provide a general definition of core platform services; this may complicate its interpretation, as well as the possible future expansion of the list (Schmidt & Hübener, 2023, p. 25). The general characteristics are nonetheless discernible from the DMA’s recitals: they include ‘extreme’ economies of scale, ‘very strong’ network effects, the ‘multisidedness’ of the platform, a ‘significant degree’ of user dependence, lock-in effects, vertical integration of the providers and data-driven advantages (DMA, Recital 2). Indeed, these are the characteristics of a platform economy, as discussed in the pre-

3 According to Article 2(2), DMA, the core platform services consist of: online intermediation services; online search engines; online social networking services; video-sharing platform services; number-independent interpersonal communications services; operating systems; web browsers; virtual assistants; cloud computing services; and online advertising services, by an undertaking that provides any of these core platform services.

vious section. The current list of core platform services is mostly based on experience with the application of competition law (European Commission, 2020b, p. 37).

The list is exhaustive, so as long as a particular service is not on it, its provider cannot be a gatekeeper. The list may nonetheless be expanded by a regular legislative procedure, initiated by a Commission proposal based on a market investigation (DMA, Art. 19). Artificial intelligence systems, such as OpenAI's ChatGPT, are currently being discussed as potential candidates (Martínez, 2025, p. 4).

Not every provider of a core platform service is a gatekeeper. In order to qualify, three conditions need to be met: the undertaking concerned must (1) have a significant impact on the internal market; (2) provide a core platform service which is an important gateway for business users to reach end users; and (3) enjoy in its operations an entrenched and durable position; alternatively, it must be foreseeable that it will enjoy such a position in the near future (DMA, Art. 3(1)). These conditions are presumed to be satisfied if the following quantitative criteria are cumulatively met: (1) the undertaking provides the same core platform service in at least three Member States and achieves an annual EU turnover equal to or above EUR 7.5 billion in each of the last three financial years (or its average market capitalisation amounted to at least EUR 75 billion in the last financial year); (2) the core platform service had at least 45 million monthly active end users in the EU and at least 10,000 yearly active business users in the last financial year; and (3) these minimum numbers of users were met in each of the last three financial years (DMA, Art. 3(2)).

An undertaking does not become a gatekeeper per se; it needs to be 'designated' as such by the Commission. First, if it meets the quantitative criteria described above, it needs to make a notification to the Commission (DMA, Art. 3(3)). The details are set in the DMA Implementing Regulation (European Commission, 2023, Annex I). The deadline for the first notifications after the DMA entered into force was July 2023 (DMA, Art. 54). Second, following the notification, the Commission is obliged to issue a designation decision within 45 working days; as a matter of principle, it designates as a gatekeeper an undertaking fulfilling the quantitative criteria (DMA, Art. 3(4)). The businesses concerned may nonetheless rebut the presumption. Sufficiently substantiated arguments need to be presented with the notification (DMA, Art. 3(5)). If the Commission considers that the undertaking's arguments are sufficiently substantiated to manifestly call into question the qualitative presumptions, it will open a market investigation according to Article 17(3) DMA (DMA, Art. 3(5)), which needs to be finished within five months (DMA, Art. 17(3)). Finally, even when the quantitative criteria are not fulfilled, an undertaking may be designated a gatekeeper if, following a market investigation not exceeding 12 months (DMA, Art. 17(1)), the Commission can demonstrate that the qualitative criteria are met (DMA, Art. 3(8)). The Commission shall regularly, and at least every three years, review whether the gatekeepers continue to satisfy the qualitative requirements laid down in Article 3(1) DMA. Understandably, such a review has not yet taken place.

2.2. Obligations of the gatekeepers

Once designated, a number of obligations apply to the gatekeepers. Unlike in the case of abuse of dominance, where the prohibition according to Article 102 TFEU is very broad ('any abuse of a dominant position shall be prohibited'), the DMA provides an exhaustive list of specific duties and obligations. Unfortunately, these are not structured in any way, and there is no reference to their objective (fairness or contestability), theme or a theory of harm (Bania & Geradin, 2025, p. 127). Attempts to create a 'taxonomy' (e.g. Ibáñez-Colomo, 2021; Morbel, 2023) have not been conclusive (Bania & Geradin, 2025, p. 127). The only distinction, contained in the DMA itself, is the different regulatory approach to the obligations under Article 5 DMA, commonly referred to as 'self-executing' (Morbel, 2023, p. 211),⁴ and under Articles 6 and 7 DMA, which are 'susceptible of being further specified' within a 'regulatory dialogue procedure' (DMA, Art. 8(3)).⁵

It is not the goal of this paper to go into details on the specific obligations contained in the DMA. I have discussed their general regulatory characteristics above in section 1.3. At this point, I would only like to recall the concept of 'opacity by design', which indicates that the specific content of these obligations is in itself rather unpredictable. Therefore even the self-executing obligations, which were supposed to be clear-cut and not requiring any further clarification, seem to be 'not sufficiently clear and precise to qualify as self-executing' (Bania & Geradin, 2025, p. 170). I will discuss this in section 4, in connection with the experience with compliance.

The gatekeepers are obliged to comply with both the 'self-executing' and 'to-be-specified' obligations with respect to each of its core platform services listed in the designation decision (DMA, Art. 8(1)), within six months of the designation (DMA, Art. 3(10)). Within this timeframe, the gatekeepers need to provide the Commission with a report describing in a detailed and transparent manner the measures that have been implemented to ensure compliance (the compliance report) (DMA, Art. 11(1)). Compliance reports need to be updated at least annually (DMA, Art. 11(2)), and non-confidential versions of them are available online.⁶

The gatekeepers also need to introduce a 'compliance function', i.e. one or more compliance officers, including the head of the compliance function (DMA, Art. 28(1)). The compliance function needs to be endowed with sufficient authority, stat-

4 Even though it may be argued that all the obligations contained in the DMA are self-executing (Schmidt & Hübener, 2023, p. 43), as they are all immediately binding on the gatekeepers, the existence of the regulatory dialogue procedure (see below) clearly distinguishes the two categories of obligations.

5 The DMA only uses the characteristic of 'susceptible of being further specified' in the case of Article 6. The regulatory dialogue procedure according to Article 8(3) DMA nonetheless refers to both Articles 6 and 7 DMA.

6 A dedicated webpage is accessible at <https://digital-markets-act-cases.ec.europa.eu/reports/compliance-reports>.

ure and resources, as well as access to the management body of the gatekeeper (DMA, Art. 28(2)). The head of the compliance function shall report directly to the management body and may raise concerns or warn that body where risks of non-compliance arise (DMA, Art. 28(4)). The Commission conformed in its first annual report that all the gatekeepers established the compliance function in line with the DMA (European Commission, 2024, para. 39).

In order to achieve compliance with the ‘to-be-specified’ obligations, a ‘regulatory dialogue’ procedure may be initiated. A gatekeeper may thus request the Commission to engage in a process to determine whether the measures that the gatekeeper intends to implement ensure compliance with Articles 6 and 7 and are effective in achieving their objective in the gatekeeper’s specific circumstances.⁷ The Commission shall have discretion in deciding whether to engage in such a process, respecting the principles of equal treatment, proportionality and good administration (DMA, Art. 11(3)). The Commission may also open such a procedure on its own initiative (DMA, Art. 11(2)). Within six months of opening the specification procedure, the Commission needs to adopt a decision, detailing the measures that the gatekeeper is to implement in order to effectively comply with its obligations (DMA, Art. 11(2)). Surprisingly, the procedure of regulatory dialogue has not yet been used (see below, section 4.1).

Compliance with the obligations prescribed by the DMA needs to be full and effective. In order to achieve this goal, the DMA provides for ‘anti-circumvention rules’, according to which the gatekeeper shall not engage in any behaviour that undermines effective compliance with the DMA obligations, regardless of whether that behaviour is of a contractual, commercial, technical or any other nature, or consists in the use of behavioural techniques or interface design (DMA, Art. 13(4)). If the gatekeeper circumvents or attempts to circumvent its obligations, the Commission may open proceedings and ultimately impose specific obligations in accordance with Article 8(2) DMA (DMA, Art. 13(7)). Such procedures have already been initiated, as will be discussed in section 4 below.

If non-compliance with the DMA is suspected, the Commission may open an official investigation (DMA, Art. 29(1)); a decision is to be adopted within 12 months (DMA, Art. 29(2)). In a decision finding non-compliance, the Commission may impose a fine of up to 10% of the annual global turnover of the gatekeeper concerned (DMA, Art. 30). The first non-compliance proceedings will be discussed in section 4.2 below. The Commission may even open a market investigation into systematic non-compliance (DMA, Art. 19); however, this provision has not yet been used.

In addition to the obligations outlined above, the gatekeepers must also inform the Commission of any intended concentrations, as defined by the Merger Regula-

7 The fact that this provision does not apply to the ‘self-executing’ obligations under Article 5 DMA has been criticised. See e.g Bania & Geradin, 2025, p. 243.

tion (Council of the EU, 2004, Art. 3), where the merging entities or the target of concentration provide core platform services or any other services in the digital sector or enable the collection of data, irrespective of whether it is notifiable to the Commission under that regulation or to a competent national competition authority under national merger rules (DMA, Art. 14). By the end of March 2025, 17 concentrations were notified by the gatekeepers.⁸ A gatekeeper shall also submit to the Commission an independently audited description of any techniques for the profiling of consumers that the gatekeeper applies to or across its core platform services listed in the designation decision within six months after its designation (DMA, Art. 15).

These specific obligations will not be discussed further in this paper. Instead, the next two sections will be devoted to the first experiences the application of the DMA has brought so far, concerning both the designation of the gatekeepers (section 3) and the monitoring of their compliance (section 4).

3. The gatekeepers

By the end of 2024, the Commission had designated seven gatekeepers in relation to 24 core platform services.⁹ On 3 July 2023, the Commission received the first notifications from seven undertakings: Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft and Samsung (European Commission, July 2023). Following the notifications, the Commission designated six gatekeepers on 6 September 2023 (Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft) with respect to 22 core platform services. Samsung, despite meeting the quantitative criteria, was not among them (European Commission, 6 September 2023).

Three of the designated gatekeepers (Apple, ByteDance and Meta) filed an action for annulment against the designation decisions. While two of these cases are still pending, ByteDance's action has already been dismissed; this judgment has been appealed to the Court of Justice, which had not decided by the end of March 2025.¹⁰ I will discuss the General Court's judgment in more detail below.

The gatekeepers were not designated with respect to all the core platform services they notified; indeed, some of them filed a submission rebutting the quantitative criteria. The Commission approached the rebuttal proposals in two ways: in some cases, it accepted the rebuttals immediately, without the market investigation foreseen by the

8 The list of notified transactions is accessible at <https://digital-markets-act-cases.ec.europa.eu/acquisitions>.

9 The list of gatekeepers is accessible at https://digital-markets-act.ec.europa.eu/gatekeepers_en.

10 Meta's and Apple's cases are registered by the General Court as *Meta Platforms v. Commission* T-1078/23 and *Apple v. Commission* T-1080/23. The ByteDance judgment is Judgment of the General Court of 17 July 2024 on the case *ByteDance v. Commission*, T-1077/23; the appeal case is registered by the CJEU as C-627/24 P.

DMA. This was the case of Samsung, who only notified Samsung's Internet Browser and thus was not designated as a gatekeeper at all. Alphabet and Amazon are gatekeepers in relation to their other core platform services but were not designated with respect to Alphabet's Gmail and Microsoft's Outlook.com (European Commission, 6 September 2023). Such a procedure is not explicitly supported by the text of the DMA (Martínez, 2024a, p. 286); the Commission was however satisfied that the rebuttals not only 'manifestly called into question' the presumptions, as required by the DMA, but also 'clearly demonstrated that the services do not constitute an important gateway' for business users to reach end users (European Commission, 5 September 2023, Alphabet).

In parallel, as a second and, from the text of the DMA's point of view, 'standard' procedure to rebut the quantitative presumptions, the Commission opened four market investigations, concerning Apple's iMessage and Microsoft's Bing, Edge and Microsoft Advertising. The Commission ultimately decided that these do not qualify as gatekeeper services (European Commission, 13 February 2024). Conversely, the Commission opened an investigation concerning Apple's iPadOS and ultimately designated it on the basis of qualitative criteria, as the quantitative thresholds were not met (European Commission, April 2024). Finally, the Commission received a new wave of notifications on 1 March 2024 (European Commission, 1 March 2024). The Commission designated Booking.com on 13 May 2024 (European Commission, May 2024). Conversely, it decided immediately not to designate X's X Ads and ByteDance's TikTok Ads. After a market investigation, it decided on 16 October 2024 that X's online social networking service X does not qualify either (European Commission, October 2024).

Concerning the designation procedure, even though we are still waiting for the General Court's judgments on Apple and Meta and the CJEU's judgment on ByteDance, we may already formulate several observations concerning the practice hitherto. It has been claimed that 'the designation process did not strictly follow the letter of law', as the designations 'demonstrate a broad use of discretion on the European Commission's side' (Martínez, 2024a, p. 268). As a result, the designation process was not 'entirely consistent' in all the cases (Martínez, 2024a, p. 290). Indeed, the designation process is flexible (Bania & Geradin, 2025, p. 109), and the General Court leaves the Commission with a wide margin of discretion (Martínez, 2024b, p. 539). At the same time, the DMA's purpose was specifically to allow for a fast designation, unlike the cumbersome process of establishing dominant position. The DMA seems to be successful in this regard, while the Commission still manages to thoroughly review the arguments of the parties (Bania & Geradin, 2025, p. 126). In the text below, we will concentrate on two features that stand out in practice so far.

3.1. The characteristics of core platform services

Two issues concerning the notion of core platform services that have been discussed in the case law to date merit attention. The first is the business-to-consumer characteristic of core platform services; the second is the 'delineation' of individual

services. Concerning the former, an undertaking may be designated a gatekeeper if it provides a core platform service which is an important gateway for businesses to reach consumers (DMA, Art. 3(1)(b)). The designation decisions issued so far ‘demonstrate that this element is key to performing gatekeeper designation’ (Martínez, 2025, p. 2). It was the crucial element of the first and only designation, based on qualitative criteria, of iPadOS (Martínez, 2025, p. 3). Thus Apple’s iMessage was not designated, as the Commission found out in a market investigation that iMessage should not be listed as an important gateway for business users to reach end users (European Commission, 12 February 2024, para. 38). More attention was dedicated to Meta’s Facebook Marketplace. Meta claimed that it is now a purely consumer-to-consumer service, which the Commission denied (European Commission, 5 September 2023, Meta, para. 256). The Commission first stressed that it needs to take into account the last three financial years; Meta introduced its changes to Facebook Marketplace only in 2023. More importantly, the Commission suggested that the data provided by Meta show that a majority of the Marketplace’s users actually act in a professional or commercial capacity (European Commission, 5 September 2023, Meta, para. 258). According to the Commission, the fact that Meta does not explicitly ‘allow’ business users to use the Marketplace in order to reach consumers is irrelevant, as their practice suggests they still do so (European Commission, 5 September 2023, Meta, para. 266). These arguments are still pending before the General Court.

Similar arguments were raised by ByteDance with respect to TikTok and were dismissed by the Commission. In addition, the Commission criticised ByteDance’s methodology for identifying business users (Bania & Geradin, 2025, p. 120). Without going into technical details on this issue, I will discuss ByteDance’s arguments in more detail in the section below, in connection with the General Court’s judgment on its action for annulment.

The second issue that ought to be discussed is the process of ‘delineation’, not foreseen by the DMA (Martínez, 2024a). As a ‘preliminary step’, the Commission starts with ‘delineation of services’, i.e. distinguishing individual core platform services provided by the potential gatekeeper and defining their boundaries (European Commission, 5 September 2023, Alphabet, para. 15). It is not a market definition as known in competition law; indeed, the delineation of core platform services has no bearing on the definition of the relevant market for the purpose of applying EU competition rules (and vice versa), and those two types of analyses may thus lead to different results (European Commission, 5 September 2023, Alphabet, para. 19). Gatekeepers are obliged to ‘delineate’ their services in their notification, and they even have to suggest possible alternative delineations (European Commission, 2023, Annex I, Section 2.1).

The DMA lists ten categories of core platform services (DMA, Art. 2(2)). According to the Commission, the core platform services may be considered distinct even if they fall within the same category; in such cases, a relevant criterion for iden-

tifying distinct services within the same category is the purpose for which it is used by either end users or business users, or both. Different services may constitute a single core platform service if they are used for the same purpose by both an end user and a business, unless they fall within different categories (European Commission, 5 September 2023, Alphabet, para. 17). Though clear in the abstract, such delineation gets very complex in specific cases. Unfortunately, the Commission has used a different depth of argumentation in different cases, based on its dialogue with the gatekeepers concerned (Martínez, 2024a, p. 271). At the same time, even though the purpose of the services should have been the key factor in delineating them (e.g. European Commission, 5 September 2023, Alphabet, para. 16), the Commission sometimes relies on other criteria (Martínez, 2025, p. 3).

Interestingly, in some seemingly identical cases the Commission arrives at different conclusions. Hardware technology may be used as an example. Google's Android is regarded as a single core platform service, whereas in the case of Apple, iOS and iPadOS are differentiated. The difference lies in the fact that whereas Apple produces both the hardware and the software which is designed specifically for the individual hardware's purposes, the Android operating system is used on a wide range of different products (European Commission, 12 February 2024, Apple, paras. 84–90; Martínez, 2024a, p. 276). Conversely, Microsoft's Windows PC operating system was designated as a single platform service, despite the differences in its design for x86 and x64 processors (European Commission, 5 September 2023, Microsoft, paras. 30–31; Martínez, 2024a, p. 276). Similarly, the AppStore was designated a single intermediation service across the different iOS systems (European Commission, 12 February 2024, Apple, para. 39). This is contested in Apple's action for annulment (Bania & Geradin, 2025, p. 122), but the General Court has not yet decided.

The second question concerning delineation is the qualification of individual core platform services. For example, Meta's Facebook is a 'social network' and Messenger a 'number-independent interpersonal communications service', and these two thus constitute distinct core services, even though Messenger was originally only a chat functionality of Facebook (European Commission, 5 September 2023, Meta, para. 177). This finding is challenged by the action for annulment (Bania & Geradin, 2025, p. 123); the General Court has, however, not yet decided. Conversely, both Meta's Facebook and Instagram were delineated as 'social networks'. Even though Meta argued that Facebook and Instagram constitute the same core platform service, the Commission decided they are different (European Commission, 5 September 2023, Meta, para. 44), based predominantly on the lack of integration of these services, not their distinctive purpose (Martínez, 2025, p. 3). The delineation may sometimes be controversial. For example, ByteDance's TikTok was qualified as a 'social network', not a 'video-sharing platform', as it argued (European Commission, 5 September 2023, ByteDance, para. 66). The General Court confirmed the Commission's arguments.

3.2. Rebutting the quantitative presumption

Undertakings have a limited space to rebut a presumption based on the quantitative criteria, contained in Article 3(2) of the DMA. The required legal standard is very high (Martínez, 2024a, p. 286), and successful rebuttal is presented as an exception (Schmidt & Hübener, 2023, p. 31). The submission is physically limited to 30 pages (European Commission, 2023, Annex II). Most interesting, however, is the limitation of arguments that can be raised. When the Commission designates an undertaking not meeting the quantitative criteria, it builds its decision on a number of qualitative arguments, outlined in Article 3(8) of the DMA. One would expect that similar arguments would be used in reverse order, i.e. to rebut the quantitative presumption. Rather surprisingly, and in contradiction to the Commission's original proposal, the DMA only allows quantitative criteria during the rebuttal procedure (Bania & Geradin, 2025, p. 102). According to Recital 23 of the DMA, 'the Commission should take into account only those elements which directly relate to the quantitative criteria'. This has been criticised by some commentators (Bania & Geradin, 2025, p. 105).

Interestingly, all the rebuttal submissions have contained not only quantitative but also qualitative arguments (Martínez, 2024a, p. 284), and even more importantly, the Commission took them into account (Bania & Geradin, 2025, p. 112), sometimes even giving more weight to them than to the quantitative ones (Bania & Geradin, 2025, p. 114). For example, with regard to Microsoft's Outlook.com, the Commission took into account the (quantitative) very high number of users of this service, but balanced it against the (qualitative) absence of lock-in effects and switching restrictions (European Commission, 5 September 2023, Microsoft, para. 130).

The General Court more or less closed this dispute in its recent ByteDance judgment. It decided that the separation of 'qualitative' and 'quantitative' arguments is merely 'artificial' (Judgment of the General Court of the European Union, 2024, para. 40). The General Court therefore concluded that the undertakings concerned may 'submit, in order to rebut the presumptions laid down in Article 3(2) of the DMA, arguments and evidence, whether or not they are expressed in figures, provided that they relate directly to one or more of those presumptions' (Judgment of the General Court of the European Union, 2024, para. 51). On the merits, however, this did not help ByteDance to win its case against the designation of TikTok.¹¹ The General Court also recalled that the designation process is based on a 'specific regulatory framework' aimed at enabling fast decision-making. Therefore the rebuttal arguments must be contained in the notification submission and cannot be raised later, not even in front of the court (Judgment of the General Court of the European Union, 2024, para. 233).

11 For detailed discussion of the judgment, see e.g. Martínez, 2024b.

4. Compliance with the DMA

What has the DMA achieved so far? One company that was supposed to benefit from it described it as an ‘utter failure’ (John, 2025). Some rules for the core platform services have changed, but do they ‘fully and effectively’ comply with the DMA?

4.1. Regulatory dialogue

Rather surprisingly, the ‘regulatory dialogue’ procedure has not yet been initiated upon a gatekeeper’s request (DMA, Art. 8(3)). Conversely, the Commission has opened two proceedings with Apple in September 2024, on the basis of Article 8(2) DMA, in relation to Apple’s interoperability obligations (European Commission, September 2024). The first concerns the iOS connectivity features for other digital devices, the second the procedure for developers interested in obtaining interoperability with iPhone and iPad features.

In December 2024, the Commission made its ‘Overview of proposed measures’ public and opened a public consultation, asking third parties to comment on the proposal (European Commission, December 2024). In March 2025, it adopted two detailed decisions specifying the interoperability obligations (European Commission, 2025a), which Apple will have to comply with. Overall, the whole procedure seems more like a ‘regulatory imposition’ of obligations than a ‘regulatory dialogue’ (Martínez, 2025, p. 9). From all the information made public, it seems that the Commission’s role was decisive in framing the specific obligations Apple needs to comply with. This was already evident from the ‘Overview of proposed measures’ of December 2024, which is in fact a very detailed list of technological features meriting regulatory transformation. The fact that the procedure is in fact significantly more unilateral than the name ‘dialogue’ would suggest is already obvious from the introductory phrases the Commission employs: the Commission ‘is assisting Apple in its compliance by detailing the measures needed for enabling interoperability with iOS for third-party connected devices and by streamlining the process put in place by Apple to handle future requests for interoperability with iPhone and iPad devices’ (European Commission, 2025a).

It remains to be seen how the Commission’s practice will develop in the future. As mentioned earlier, the platforms may be reluctant to change their practices; a proper dialogue might therefore be insufficient to make them do so. Indeed, business users and other stakeholders have expressed ‘concerns about the lack of effective engagement of the designated DMA gatekeepers’ (European Businesses, 2024). At the same time, the idea of obligations determined in concert by the regulator and the regulated is one of the methodological cornerstones of the DMA. The Commission is an extraordinarily experienced enforcer; under the DMA, it will need to learn to be more attentive to what the platforms have to say.

4.2. Non-compliance proceedings

For the core platform services designated in the first wave of decisions in September 2023, the deadline for compliance was March 2024. All the gatekeepers submitted their compliance reports on time. The published versions varied greatly in detail, with, on the one side, very detailed reports provided by Alphabet, ByteDance and Meta, and on the other, very brief ones provided by Amazon and Apple (Martínez, 2025, p. 6). The Commission was reportedly ‘not super happy’ with the lack of detail in some reports and confirmed that third parties are ‘very justified’ in demanding that the reports provide more meaningful details explaining compliance measures (Baxter, 2024).

Two weeks later, the Commission formally opened four non-compliance investigations in accordance with Article 29 DMA for possible breach of several DMA obligations, in conjunction with a possible breach of the ‘anti-circumvention’ Article 13 DMA. The first putatively breached obligation is Article 5(2) DMA. The Commission has opened proceedings against Meta to investigate whether the recently introduced ‘pay or consent’ model for users in the EU complies with Article 5(2), which requires gatekeepers to obtain consent from users when they intend to combine or cross-use their personal data across different core platform services. The Commission is concerned that the binary choice imposed by Meta’s ‘pay or consent’ model may not provide a real alternative if users do not consent, thereby not achieving the objective of preventing the accumulation of personal data by gatekeepers (European Commission, 25 March 2024). In July 2024, the Commission informed Meta of its preliminary findings that its ‘pay or consent’ advertising model fails to comply with the DMA (European Commission, July 2024).

The second is the obligation under Article 5(4) DMA. The Commission has opened proceedings to assess whether the measures implemented by Alphabet and Apple in relation to their obligations pertaining to app stores are in breach of the DMA. Article 5(4) requires gatekeepers to allow app developers to ‘steer’ consumers to offers outside the gatekeepers’ app stores, free of charge. The Commission is concerned that Alphabet’s and Apple’s measures may not be fully compliant, as they impose various restrictions and limitations. These constrain, among other things, developers’ ability to freely communicate and promote offers and directly conclude contracts, including by imposing various charges (European Commission, 25 March 2024). In June 2024, the Commission informed Apple about its preliminary findings on a breach of this provision (European Commission, June 2024). Alphabet was addressed with preliminary findings of non-compliance in March 2025 (European Commission, 2025b).

Third, an obligation under Article 6(3) DMA might have been breached. The Commission has opened proceedings against Apple regarding its measures to comply with obligations to (1) enable end users to easily uninstall any software applications on iOS, (2) enable end users to easily change default settings on iOS, and (3)

prompt users with choice screens which must effectively and easily allow them to select an alternative default service, such as a browser or search engine, on their iPhones. The Commission is concerned that Apple's measures, including the design of the web browser choice screen, may be preventing users from truly exercising their choice of services within the Apple ecosystem, in contravention of Article 6(3) (European Commission, 25 March 2024).

Fourth, the Commission's concerns also focus on Article 6(5) DMA. It has opened proceedings against Alphabet to determine whether its display of Google search results may lead to self-preferencing in relation to Google's vertical search services (e.g. Google Shopping, Google Flights, Google Hotels) over similar rival services. The Commission is concerned that the measures Alphabet implemented to comply with the DMA may not ensure that third-party services featuring on Google's search results pages are treated in a fair and non-discriminatory manner, in comparison to Alphabet's own services, as required by Article 6(5) DMA (European Commission, 25 March 2024). A preliminary finding of non-compliance was published in March 2025 (European Commission, 2025b). The Commission is also gathering evidence in connection with possible self-preferencing by Amazon (European Commission, 25 March 2024); however, a formal investigation has not yet been opened.

Finally, the Commission started to investigate Apple's new fee structure and other terms and conditions for alternative app stores and the distribution of apps from the web (sideloading) which may be defeating the purpose of its obligations under Article 6(4) DMA (European Commission, 25 March 2024). In this regard, a formal investigation was opened in June 2024 (European Commission, June 2024).

Notwithstanding the 12-month deadline for closing non-compliance procedures, and the fact that the Commission has published its preliminary non-compliance findings relatively quickly, no final decisions had been adopted by the end of March 2025.¹² The space to comment on the Commission's approach to securing compliance with the DMA is therefore limited. Several features of the Commission's approach may nonetheless be observed.

4.3. The Commission's approach so far

Four observations may be made concerning the Commission's practice hitherto. First, it is clearly willing to take advice from other market players affected by the gatekeepers' conduct (Ingemarsson & Bichet, 2024, p. 337). Even though it is not required by the DMA itself, the Commission has been organising workshops with stakehold-

12 By the date of publication of this article, these decisions have been issued: European Commission, 22 April 2025, Apple; European Commission, 23 April 2025, Apple; European Commission, 23 April 2025, Meta; European Commission, 12 November 2025, Alphabet

ers, discussing the compliance of individual gatekeepers.¹³ Similarly, there were public consultations before adopting the regulatory dialogue decisions, as discussed in section 4.1 above.

Second, the Commission is not satisfied with only ‘technical’ compliance, proposed by the gatekeepers, but rather seeks a complete transformation of the platforms’ models (Martínez, 2025, p. 7). This is confirmed by the fact that the anti-circumvention Article 13 DMA was employed in all the non-compliance cases. It has been claimed that ‘significant resistance to full compliance with the DMA is to be expected’ (Bania & Geradin, 2025, p. 237). The preliminary findings published by the Commission so far suggest that it is trying honestly to change the way in which markets operate in favour of more openness and interoperability.

Third, the procedure is significantly different from the investigations under Articles 101 and 102 TFEU. Even though there is a possibility of carrying out on-site inspections (DMA, Art. 23) in a way corresponding with Regulation 1/2003 (Council of the EU, 2002), this power has not yet been used in a case of non-compliance, thus confirming the dialogue-based nature of the DMA. Similarly, the deadline for issuing preliminary findings, an instrument akin to the statement of objections under Regulation 1/2003, is three months (DMA, Art. 8(5)); the Commission was actually able to issue its preliminary findings even earlier. Conversely, three times as long (nine months) is reserved for the rest of the proceedings. This contrasts with the proceedings under Regulation 1/2003, where the statement of objections tends to be issued by the end of the proceedings and the remaining part of the proceedings is relatively short. This again leaves a possibility for the Commission to enter into dialogue with the gatekeeper under the DMA.

Finally, all the regulatory efforts should ultimately benefit the final consumers; the effectiveness of the DMA therefore ultimately depends on the behaviour of end users (Bania & Geradin, 2025, p. 234). If consumers do not actually exploit the possibilities opened by the new regulation, the DMA could be regarded as a failure. The compliance requirements therefore need to be devised in a way rooted in behavioural economics; it should be the gatekeepers’ duty to show that they have taken the findings of this science into account (Fletcher & Vasas, 2024, p. 462).

Conclusions

The aim of this paper was to evaluate the practice to date concerning the application of the DMA. In conclusion, several trends can be identified. First, the Commission has clarified the concept of the gatekeeper and has developed a procedure for their designation, which, though stretching beyond the text of the DMA, seems to be

13 A dedicated webpage is accessible at https://digital-markets-act.ec.europa.eu/events/workshops_en.

effective. Most importantly, the Commission's interpretation was approved in the first proceedings before the General Court. Similarly, the notion of a core platform service and the rebuttal procedure have been clarified.

Second, the gatekeepers are clearly technically fulfilling all their obligations, but are nonetheless avoiding a significant transformation of their business models. Because of that, the Commission has had to open a number of non-compliance proceedings. The gatekeepers' lack of willingness to undergo significant transformation of their business models may also be derived from the fact that they have not initiated regulatory dialogues with the Commission; the specification procedure has been used only once. It seems to be the case that these businesses are only willing to make as few changes as possible.

Third, even though some positive changes in the digital markets may arguably already be observed (Ingemarsson & Bichet, 2024, p. 337), these changes affect only the EU markets. The 'Brussels effect', the hope that EU regulation would have a worldwide effect on the practices of global undertakings, has not materialised (Martínez, 2025, p. 7). This does not need to be viewed as the DMA's failure: the regulatory differences in different markets will work as a 'natural experiment', enabling the actual effects of the DMA in practice to be measured by future research.

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