



Platis - Anastassiadis & Associates

The associate law firm of EY Greece



Greece: Digital Markets Act. New Rules on Contestable and Fair Markets in the Digital Sector

The Digital Markets Act prohibits unfair practices and lays down obligations on entities that act as gatekeepers in the online platform economy to the benefit of business users and end users.

On 14 November 2022, Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector ("Digital Markets Act", "DMA" or "Act") entered into force.

The Digital Markets Act sets out the basis for fairer and contestable markets in the digital sector, by laying down the following sets of obligations for "gatekeepers" in the online platform economy:

- ▶ Prohibitions of specific unfair practices against business users;

- ▶ Obligations related to fair business practices vis-à-vis business and end users;
- ▶ Interoperability and access to data requirements;
- ▶ Restrictions on unfair data processing activities.

By introducing ex ante rules for the conduct of gatekeepers, the DMA complements the ex post enforcement of competition law at EU and national level.

1. Purpose & Subject Matter

The purpose of the Act is to contribute to the proper functioning of the internal market of the EU by laying down rules to ensure contestability and fairness for the markets in the digital sector to the benefit of business users and end users of core platform services provided by gatekeepers.

The DMA applies to core platform services. These are defined in the Act as online intermediation services (e.g. app stores), online search engines, social networking services, number-independent instant messaging services, video sharing platform services, virtual assistants, web browsers, cloud computing services, operating systems, online marketplaces and online advertising services.

2. Designation of Gatekeepers

Undertakings that provide core platform services and meet all of the following thresholds shall be designated by the European Commission as gatekeepers and be subject to the provisions of the Act:

- ▶ *A Size that Impacts the Internal Market.* The undertaking should achieve an annual turnover of at least EUR 7,5 billion in the European Economic Area (EEA) and provide a core platform service in at least three EU Member States;
- ▶ *The Control of an Important Gateway for Business Users to Reach End-Users.* The undertaking should provide a core platform service to more than 45 million monthly active end users established or located in the EU and to more than 10,000 yearly active business users established in the EU;
- ▶ *An Entrenched and Durable Position in Competition.* in the case the company met the second criterion during the last three years.

3. General Obligations for Gatekeepers

The DMA imposes the following ex ante prohibitions on gatekeepers regarding practices that limit contestability or are unfair:

- ▶ Ban on restricting business users or end users from subscribing to, or registering with other core platform services;
- ▶ Ban on using the data of business users when gatekeepers compete with them on their own platform;
- ▶ Ban on ranking the gatekeeper's own products or services in a more favourable manner compared to those of third parties. Instead, gatekeepers are required to apply transparent, fair and non-discriminatory conditions to such ranking;
- ▶ Ban on disproportionate conditions of terminating the provision of a core platform services;

Gatekeepers are also required to introduce a compliance function, which is independent from the operational functions of the gatekeeper, and provide it with sufficient authority, stature and resources, as well as access to the management body of the gatekeeper to monitor the compliance of the gatekeeper with the Act.

Finally, gatekeepers are required to inform the Commission about any intended concentration 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.

4. Gatekeeper Obligations Towards Business Users

Gatekeepers have the following main obligations vis-à-vis the business users of their core platform services:

- ▶ They are prohibited from preventing business users from offering the same products or services to end users through third-party online intermediation services;
- ▶ They are prohibited from requiring app developers to use certain of the gatekeeper's services (such as payment systems or identity providers) in order to appear in app stores of the gatekeeper;
- ▶ They are required to allow business users, free of charge, to communicate and promote offers, including under different conditions and to conclude contracts with them;
- ▶ They are required to allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, their operating systems;
- ▶ They are required to provide business users at their request and free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data generated in their platform;
- ▶ They are required to apply fair, reasonable, and non-discriminatory general conditions of access for business users to their software application stores, online search engines and online social networking services.
- ▶ They are required to provide business users with access to the data generated by their activities on the gatekeeper's platform.

In terms of interoperability, messenger gatekeepers are required by the Act to render basic functionalities of their platforms interoperable to third parties.

5. Gatekeeper Obligations Towards End Users

Gatekeepers have the following main obligations vis-à-vis the end users of their core platform services:

- ▶ They are prohibited from tracking end users outside of the gatekeeper's core platform service for the purpose of targeted advertising, without their consent;
- ▶ They are prohibited from combining personal data from different core platform services or other services of the gatekeeper through various unfair techniques without the consent of data subjects;
- ▶ They are prohibited from restricting the switching of end users between, and subscription to, different software applications and services that are accessed using the core platform services of the gatekeeper;
- ▶ They are required to allow end users to install third party apps or app stores that use or interoperate with the operating system of the gatekeeper;
- ▶ They are required to allow and technically enable end users to easily change default settings or uninstall any software applications on the operating system of the gatekeeper;
- ▶ They are required to provide end users at their request and free of charge, with effective portability of data.

6. Supervision & Enforcement

To ensure that the DMA remains future proof, the European Commission is empowered to supplement gatekeeper obligations with additional ones following a market investigation and the adoption of a delegated act.

The Commission also has the power to conduct market investigations (i) for the identification and designation of gatekeepers in a certain market, (ii) for the examination of systematic non-compliance by a gatekeeper and the adoption of an implementing act with behavioural or structural remedies (iii) for the addition of more services to the list of core platform services of the Act or for the detection of practices that limit the contestability of core platform services or are unfair.

In addition, the Commission is delegated with investigative, enforcement and monitoring powers by the Act. If a gatekeeper does not comply with the rules, the DMA grants the Commission with the power to impose fines of up to 10% of a company's worldwide turnover in case of infringements of the

Act and up to 20% in case that infringements are found to be repeated. The Commission may also impose periodic penalty payments not exceeding 5 % of the average daily worldwide turnover of undertakings in order to compel them to comply with the Act and its implementing acts. In the case of systematic infringements, the Commission will also be able to impose behavioral or structural remedies necessary to ensure the effectiveness of the obligations.

7. Conclusion

The DMA has been introduced in par with the Digital Services Act ("DSA") as an effort of the European Union to regulate the effects that digitalisation - and more specifically online platforms - have on fundamental rights, competition, and, more generally, on European societies and economies.

Whereas the DSA applies horizontally to online intermediaries, the DMA introduces a comprehensive set of ex ante obligations and requirements for platforms that act as "gatekeepers" in the digital sector.

The Act is also complemented by Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services ("P2B Regulation"), which has a much wider scope, establishing general fairness- and contestability-oriented obligations for all online platform service providers towards their business users.

The DMA is expected to have significant benefits for business users, innovators and end users. In particular:

- ▶ Business users will provide their services through gatekeepers in a fairer business environment.
- ▶ Innovators will have more opportunities to innovate in the online platform environment.
- ▶ End users will have the freedom to choose among more and better services, more opportunities to switch their provider if they wish so, direct access to services, and fairer prices.

Except for certain provisions related to the designation of gatekeepers and the establishment of its supervisory mechanisms, the Act shall enter into application from 2 May 2023.

The published text of the Digital Markets Act is available [here](#).

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Especially in our geographical area, we have established an ongoing cooperation with the respective law firms which are associated with EY, in order to offer seamless and consistent regional services to our clients that have cross country operations.

Our experience allows us to better understand our clients' needs and offer them integrated multidisciplinary solutions in the fields of accounting, tax and financial advisory services. Platis - Anastassiadis & Associates law office is solution focused. We work closely with our clients to seek innovative and practical ways of dealing with their issues. Our priority is to help our clients meet their business objectives. Our expertise, commitment and enthusiasm has resulted in the build up of a client base which includes local and international listed, state and private sector companies and financial institutions.

For more information on digital law issues, please contact:

Eirnikos Platis

Partner

eirnikos.platis@gr.ey.com

Antonios Broumas

Senior Manager

antonios.broumas@gr.ey.com

at the

Platis - Anastassiadis & Associates Law Partnership

Tel.: +30 210 2886 512

Email: platisanastassiadis@gr.ey.com

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Partners: E. Platis, A. Anastassiadis
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