

DMA DAY tomorrow

The Digital Markets Act going live

06 March 2024

March 7th, 2024 has been a big date looming above the skies of Europe. Why? By tomorrow, March 7th, all core platform services, that the European Commission has designated as gatekeepers under the DMA so far, must comply with the DMA's obligation and submit comprehensive compliance reports. In these reports, they must show in a detailed and transparent manner all relevant information needed by the Commission to assess the gatekeeper's effective compliance with the DMA.

In our upcoming series of briefings, we will recap the key milestones of the DMA implementation, deep dive into the various obligations that gatekeepers are facing, lay out the DMA's implications for stakeholders who are not (currently) within the direct scope of the legislation and update you on the current status of affairs in the DMA's implementation.

DMA – Key Milestones

In a nutshell, the DMA – alongside its sister legislation, the Digital Services Act – is one of the core elements of the EU Digital Strategy. It aims to ensure that multi-sided platform markets remain fair and contestable. The legislation was born out of the rational that traditional competition law instruments have often proven 'too little, too late' when addressing the behaviour of 'Big Tech' – in particular of huge digital platforms with global reach. Two main concepts are crucial to understand how the DMA works: Gatekeepers and 'core platform services' (CPS).

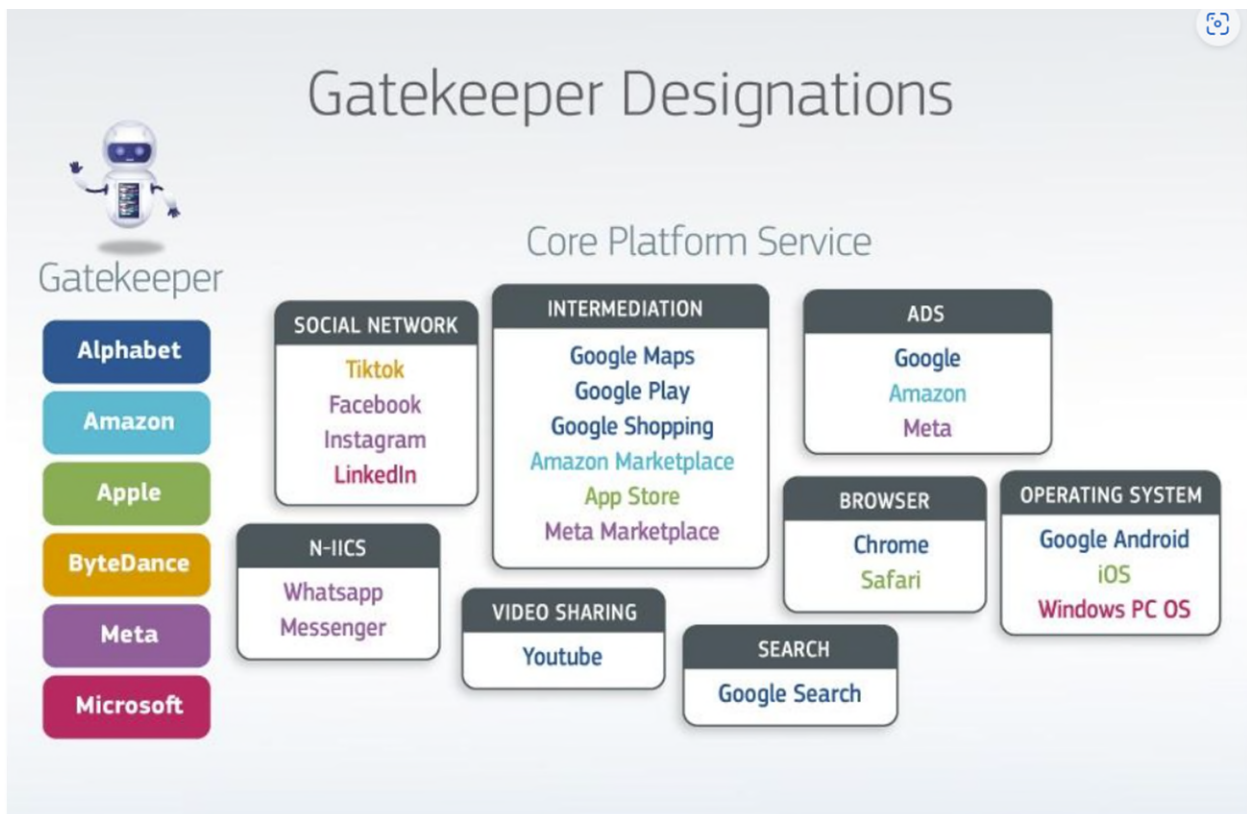
Only designated gatekeepers that provide a core platform will be caught by the new rules. Typical **CPS** include online intermediation services, online search engines, social networking services or video sharing platform services. Ultimately, this includes all important services offered by the major digital companies. In order for an operator of a CPS to qualify as a **gatekeeper**, certain qualitative criteria have to be met such as the operator having a significant impact on the domestic market and playing an important role as an intermediary. The DMA contains a rebuttable presumption that the qualitative criteria are met if certain quantitative criteria are met. In short: The CPS must be present in at least three EU Member States and have an annual EU-wide group turnover of at least EUR 7.5 billion in each of the last three financial years, or an average market capitalization or equivalent fair market value of at least EUR 75 billion in the last financial year; and the CPS must have at least 45 million active monthly end users and at least 10,000 yearly active business users in the EU in the last three financial years.

For designated gatekeepers that provide a core platform service the DMA imposes very specific obligations and prohibitions. Some of these are self-executing and directly applicable, whereas others need to be further specified by the Commission on a case-by-case basis. Many of them mirror previous and current high profile competition enforcement cases in the digital sector. Watch this space for more detailed explanations of the various obligations in our deep dive briefings on self-preferencing, data sharing, interoperability and more.

What happened so far?

Since the DMA started to apply on 2 May 2023, the Commission held several workshops on how to interpret the DMA obligations, including on “The DMA and data-related obligations”, “The DMA and interoperability between messaging services” and “Applying the DMA’s ban on self-preferencing: how to do it in practice?”. We have summarized a few takeaways from the latter [here](#).

On September 6th, 2023, the EC finally designated six digital players as gatekeepers, namely Alphabet, Amazon, ByteDance, Meta and Microsoft with overall 22 of their services qualifying as core platform services.



Source: European Commission

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Noteworthy, it has been the first but certainly not the last time the European Commission has designated the DMA gatekeeper status: there are already five market investigations pending as to whether Microsoft Bing, Microsoft Edge and Microsoft Advertising, Apple: iMessage and Apple's iPad OS should be designated as gatekeepers as well. The list of CPS among the already designated gatekeepers may thus grow further. Going forward the Commission will also review the list of gatekeepers annually. Clearly, big tech players who do not yet qualify today may well qualify as gatekeepers in future, once they meet the statutory thresholds.

What happens next?

On March 7th, the next DMA milestone will be reached: On the upcoming inception day, the six gatekeepers are due to submit their first reports demonstrating how they comply with the new regulation. A small foretaste can be derived from the compliance report templates the European Commission published [here](#). The European Commission is expected to publish non-confidential versions of the reports hereafter.

So, it's a wrap? Not quite. The DMA generally is a living, breathing document, that will probably take some more years of interpretation and application to find its full form and effect. Moreover, as of March 7th, there are also new players in the mix: So far, DMA enforcement has mostly been a dialogue between the European Commission and the gatekeepers. Going forward it remains the European Commission's prerogative to monitor DMA compliance and thus ensure "competition on the merits" in the digital markets. However, beyond its general aim of restoring healthy competition in the digital markets, the DMA also grants some direct claims for companies that entertain business relationships with the gatekeepers. These will mostly be kicking in as of March 7th. We will explore possibilities for stakeholders to take action and engage in the private enforcement of the DMA in a separate briefing.

BLOMSTEIN will continue to monitor and assess the developments and practical application of the DMA provisions. If you have any questions on the topic, [BLOMSTEIN competition law team](#) will be happy to assist you.