

Dismantling Digital Walls: The Promise of the DMA

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Since March 7th, all core platform services that the European Commission has designated as gatekeepers under the Digital Markets Act (DMA) so far, must comply with the DMA's obligations and had to submit comprehensive compliance reports. In these reports, they must show in a detailed and transparent manner all relevant information needed by the European Commission to assess the gatekeeper's effective compliance with the DMA.

In our series of briefings, we 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.

This time we focus on: interoperability, portability and switching.

How Gatekeepers Have Shaped Digital Markets

Have you already come across a so-called choice screen on your smartphone after an update, prompting you to pick your preferred browser and search engine? This new feature is a direct consequence of the DMA, designed to **empower consumers in making conscious and unbiased choices**. Before the DMA's implementation, gatekeepers often subtly influenced user choices by, inter-alia, pre-installing their own applications, setting them as defaults and constructing closed ecosystems. Their **resistance to ease user switching** to competing products, coupled with creating barriers for the use of third-party applications, has significantly undermined the **contestability of digital markets**, resulting in less innovation and choice. The DMA aims to break down these obstacles, with the choice screen being just one of the measures we'll explore in this briefing.

The DMA's Response: Consumer Choice, Service Switching, Interoperability, and Data Portability

To facilitate the use of services beyond those offered by gatekeepers, the DMA introduces specific obligations on gatekeepers ensuring conscious consumer choice, easy service switching, interoperability, and data portability.

Empowering Consumers: The Choice is Yours, Article 6(3) DMA

Article 6(3) DMA specifically targets the ways gatekeepers have nudged consumer preferences toward their own services. Central to this provision is the requirement for gatekeepers to allow for **easy modification of default settings**. This is complemented by the introduction of the previously mentioned mandatory **choice screen**, presenting users with alternatives during initial browser or search engine usage. Lastly, under Article 6(3) DMA, gatekeepers must ensure end-users can easily **uninstall** any pre-installed software applications, except for those critical to the operating system or device's functionality and which cannot be technically provided by third parties.

These measures are informed by the European Commission's experiences with software product tying (see also our briefing on tying and bundling [here](#)). In its [Google decision](#), for instance, the European Commission identified Google's practices of tying mobile apps and services, and mandating the pre-installation of its Play Store, Google Search, and Google Chrome on Android devices without offering the possibility to uninstall them as anti-competitive. These practices illustrated how pre-installed apps can entrench a gatekeeper's market position by exploiting consumers' tendency to stick with the default options due to convenience. Article 6(3) DMA is here to change that, making sure users are presented with clear options right from the start and have the freedom to explore and choose unbiasedly what services they actually want to use. A critical question is how strictly the European Commission will interpret Article 6(3) DMA. Initial answers may soon emerge, particularly as [investigations](#) into Apple's compliance with this provision have already begun, with a specific focus on aspects such as the design of the web browser choice screen in iOS.

Opening Digital Ecosystems: Beyond the Walled Gardens, Article 6(4) DMA

Article 6(4) DMA directly addresses the control gatekeepers hold over which apps and app stores can operate within their ecosystems. It mandates that gatekeepers must allow the **installation and effective use of third-party apps as well as app stores** using their operating system or interoperating with it. A key aspect of this is **sideloading** – the ability of installing apps without going through the official app store. Given the **potential security risks** this openness introduces, Article 6(4) DMA permits gatekeepers to take measures to protect hardware and operating system integrity. Yet, these measures must be strictly necessary and proportionate, preventing gatekeepers from citing security as a pretext to unjustifiably exclude competing apps and stores.

With these obligations, Article 6(4) DMA seeks to challenge the norm of closed ecosystems dominated by a single app store. It aims to diversify the sources through which app developers can reach users and thereby foster competition. The push for such measures gained momentum from disputes like Spotify's successful complaint against [Apple](#), highlighting the restrictive nature of being bound to a single app store

and its respective payment system even for in-app purchases (for more information see our briefing on anti-steering clauses under the DMA [here](#)). With the DMA in place, Apple finds itself under scrutiny once more. The European Commission is now investigating whether Apple's new fee structure and other terms and conditions for alternative app stores and distribution of apps from the web may be defeating the purpose of its obligations under Article 6(4) DMA.

Switching Made Simple: Enhancing Digital Mobility (Article 6(6) DMA)

Article 6(6) DMA complements Article 6(4) DMA by ensuring that **users can easily switch between, and subscribe to, different apps and services**. This provision is broad, prohibiting not only technical barriers but any practices that could discourage users from exploring alternative apps and services. In doing so, it aligns with the DMA's overarching goal of fostering a competitive landscape where free consumer choice and innovation, rather than gatekeeper power, determine success across both upstream markets, such as internet access services, and downstream markets, like software applications.

Interoperability: Connecting Digital Worlds (Article 6(7) DMA)

The goal of Article 6(7) DMA is to ensure (vertical) interoperability, requiring gatekeepers to **make their software and hardware work as smoothly with third-party applications as they do with their own**, at no additional cost. Promoting interoperability aims to ensure that markets connected to gatekeeper platforms, both upstream and downstream, remain open and contestable.

The provision's impact became evident in a dispute between Apple and the European Commission about Apple's wallet solution Apple Pay: The Commission argued that Apple misused its market dominance (Article 102 TFEU) by restricting third-party access to the essential Near-Field Communication (NFC) technology, crucial for 'tap and go' payments in physical stores, thereby stifling competition within the iOS mobile wallet market. This year marked a significant turning point as Apple committed to open its NFC technology to other payment providers, aligning with DMA's interoperability requirement.

Data Portability: Breaking Down Data Silos, Article 6(9) DMA)

Data portability, which is provided for in Article 6(9) DMA, refers to the **ability of users to transfer their data from one platform to another**. Consider social media users who contribute vast amounts of personal data, which platforms often use to refine algorithms for personalized content and advertisements. In the past, the significant challenges associated with transferring data, such as Instagram content, resulted in a lock-in effect, where users were forced to choose between continuing with a gatekeeper's service or switching platforms and losing their personal data. Article 6(9) DMA mandates that gatekeepers must now ensure that end users, and third parties they authorize, can transfer their data effectively and without charge. This simplifies

platform switching or the simultaneous use of multiple platforms ("multi-homing"), enhancing market contestability and fostering a more dynamic digital sector.

Implications for Gatekeepers, Third-Party Businesses and Consumers

The DMA provisions on consumer choice, interoperability, data portability, and service switching demand substantial modifications to **gatekeepers'** established business models. Their challenge is not only opening up their platforms for greater competition and interoperability but also maintaining the security and user experience that have been key to their success. Striking this balance is pivotal, requiring a thoughtful approach to innovation and adaptation that upholds the DMA's principles without compromising user safety or satisfaction.

The effects of these foundational changes extend far beyond the gatekeepers themselves, offering significant opportunities for **third-party businesses**. Particularly for app developers, the DMA levels the playing field, breaking down previous barriers to entry and competition within the ecosystems of major tech companies. For a deeper dive into leveraging these new opportunities, our briefing on private enforcement provides essential insights (see [here](#)).

As for **consumers**, the benefits are twofold. First, there's the immediate benefit of being able to switch between services more freely. Second, and perhaps more importantly, these changes are likely to stimulate more competition and innovation in the digital space, leading to better products and services for everyone. However, it's worth noting that the new rules might also complicate the seamless user experience typically associated with gatekeepers' ecosystems, particularly due to the introduction of potentially cumbersome choice screens.

BLOMSTEIN will continue to monitor and assess the developments and practical application of the DMA provisions. If you have any questions on the topic, [Elisa Theresa Hauch](#) and [Kai Woeste](#) will be happy to assist you.