Private Dancer

Why Businesses Should Not Wait for Brussels

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On 22 July 2026, a coalition of European companies and organizations published an open letter calling on the Commission to enforce the Digital Markets Act (*DMA*) in full and without delay. The letter responds to hesitant enforcement posture, as the signatories see it: under pressure, particularly from the U.S., they accuse the Commission of holding back or delaying action under the DMA. As if reacting on the spot, the Commission announced two non-compliance decisions against Google under the DMA, just the following day imposing total fines of EUR 890 million. However, as sizeable as the fine may seem, it accounts for less than 1% of Alphabet's annual turnover and sits at the lower end of the DMA's sanctioning scale. Thus, instead of proving the signatories right by showing that public enforcement is ongoing, the decisions actually are best proof that political pressure from abroad continues to weigh on the Commission's decision-making.

We take the opportunity to revisit the DMA's second pillar: private enforcement. Building on our March 2024 briefing, we summarize some rulings that German courts have handed down and shows how private action complements and, in some respects, outpaces the Commission's work in Brussels.

Is Public Enforcement truly lacking?

The DMA equips the Commission with a broad enforcement toolkit. Alongside its power to designate companies as gatekeepers and open non-compliance and market investigations, the Commission can impose fines of up to 10 % of worldwide annual turnover for a single infringement – 20 % for repeat offenders, periodic penalty payments, interim measures and, where infringements are systematic, behavioural or structural remedies. What the Commission cannot do, however, is award damages to any third party that has suffered loss as a result of a gatekeeper's non-compliance.

The Commission has, without question, been active. April 2025 saw the first DMA non-compliance decisions: a fine of EUR 500 million against Apple for App Store steering restrictions, and a fine of EUR 200 million against Meta. The Google decisions of 23 July 2026 for self-preferencing in Google Search and for restrictions on developers in the Google Play Store bring the total against a single company under the DMA to EUR 890 million. This, however, represents only about 0.22 % of Alphabet's annual turnover and falls well short of the DMA's sanctioning ceiling. Commentators have linked the moderate headline number to the Commission's attempt to defuse political tensions with Washington.

Public enforcement has structural limits:

- The Commission has finite resources and must prioritize strategically important cases. Smaller-scale or sector-specific DMA violations, often most acutely felt by individual businesses, may remain below the radar for years.

- Regulatory proceedings take time, and the digital sector does not wait. Even where a case is ultimately resolved, irreversible market harm has mostly likely already occurred in multiples of any possible administrative fine. The Google case best illustrates this point: the resolution of the non-compliance investigation into self-preferencing on Google Search came more than 28 months after the investigation was started.

- Perhaps most importantly: large gatekeepers are, by definition, well-connected across the globe. One of the central achievements of EU law has always been making legal protection independent of political will by enabling direct invocation before national courts. In competition law, this decentralized enforcement is of particular structural significance, as it insulates enforcement from the kinds of political dynamics that the open letter's authors address.

What Private Enforcement Can Deliver

These gaps can be filled by private enforcement, which the DMA expressly contemplates. The DMA guarantees the right of business users and end users to raise concerns about unfair practices by gatekeepers before national courts. It also establishes a framework for cooperation between those courts and the Commission – including that national courts are bound by the Commission's own DMA decisions. The circle of potential claimants is broad: business users, competitors, end users and, under the EU's representative actions framework, qualified consumer associations and other representative bodies. The available remedies match the harms: courts can order gatekeepers to stop or reverse infringing conduct through injunctive and interim relief and, crucially, they can award the damages the Commission cannot.

Private actions can be brought as follow-on claims building on a Commission non-compliance decision or as stand-alone claims that do not depend on any prior Commission action. Injunctive and cease-and-desist relief will almost always be stand-alone by nature; damages claims work in either mode. Stand-alone claims are particularly important where the Commission has not (yet) opened a case, or where affected businesses cannot afford to wait for it.

In Germany these tools are already highly developed. The legislator expressly integrated DMA infringements into the general private-enforcement regime. Claimants can seek injunctive relief and damages; rely on the binding effect of Commission decisions before national courts; use extended disclosure rights for stand-alone claims; and benefit from a rule that allows German courts to estimate the quantum of damages where exact proof would be too onerous. Together with specialised cartel benches, these rules make Germany a natural forum for cross-border DMA litigation.

The rulings handed down by German courts in the last two years illustrate three distinct avenues of private enforcement:

- Businesses can sue for non-discrimination. In August 2025, the Regional Court of Mainz prohibited Google from preferencing its own email service Gmail when users set up an Android smartphone. The case was brought by German email providers GMX and Web.de, who argued that Google forced users to create a Gmail address in order to use the Play Store, Chrome or YouTube. The court ruled that this amounted to unlawful tying under the DMA. Notably, the judgment was delivered just ten months after the action was filed – far faster than any Commission proceeding – and with EU-wide effect. The court also rejected Google's application to pause proceedings finding that mere "regulatory dialogue" with the Commission is not the kind of pending decision that requires a national court to pause.

- Substantial damages are achievable. In November 2025, the Regional Court of Berlin II ordered Google to pay approximately EUR 465 million in damages to price-comparison platform idealo. The court found that Google had abused its dominant position by systematically favoring its own shopping service in search results over competitors; a practice known as self-preferencing, also expressly prohibited under the DMA. The judgment was a follow-on action based on the European Commission's 2017 decision against Google. In a parallel case, the same court awarded a further EUR 107 million to Testberichte.de. Both judgments are not yet final; appeals are pending. Nonetheless, they demonstrate that private litigation can translate competition law infringements into direct monetary relief.

- Consumer associations can bring DMA claims. In May 2025, the Higher Regional Court of Cologne ruled on a request by the Consumer Association of North Rhine-Westphalia to prohibit Meta from using publicly available user data from Facebook and Instagram to train its AI models. The court dismissed the interim application, finding that feeding public content into an unstructured training dataset does not amount to the kind of cross-service data combination prohibited by the DMA. While the outcome favored Meta, the case confirms that consumer associations have standing to bring DMA claims before national courts opening a further enforcement channel alongside actions by individual businesses.

A Parallel National Track

Private DMA enforcement in Germany is reinforced by the parallel national tool, Sec. 19a GWB. The Federal Cartel Office can also designate gatekeepers and prohibit specific conduct on that basis. In some respects, this national track reaches further than the DMA: it can catch undertakings that have not been designated as gatekeepers under EU law, and it can address conduct not covered by the DMA. For private claimants, this matters because a violation triggers exactly the same claims for injunctive relief and damages as a DMA infringement, and the growing body of case law is already producing interpretive guidance that courts will draw on in DMA proceedings.

Two Pillars Are Better Than One

Public and private enforcement are complementary, not substitutes. The Commission is best placed to set strategic priorities, develop guidance and take flagship decisions shaping the DMA's interpretation. Private claimants – businesses that live with harmful gatekeeper conduct day-to-day – are best placed to identify smaller-scale infringements that never reach Brussels, and to force those infringements out into the open in national courts. In doing so, they also feed back into public enforcement: national courts can request information from the Commission under the DMA's cooperation framework, and the sheer volume of stand-alone proceedings can put pressure on the Commission to prioritise cases it might otherwise pass over.

That interplay has a further, stabilising function. Where public enforcement comes under political pressure gatekeepers remain exposed to actions brought by their own commercial counterparts in national courts, and those actions cannot be traded away in a diplomatic package. Decentralised enforcement is one of the DMA's built-in safeguards against a change of political weather.

Conclusion

Two years of German practice show that private enforcement is no longer only a theoretical companion to the DMA. Indeed, it is closing the structural gaps that public enforcement cannot. It gives affected businesses direct monetary redress, forces gatekeepers to defend their practices where the conduct occurs and keeps the momentum of DMA enforcement going even where politics slows the Commission down. For businesses that have felt the effects of harmful gatekeeper conduct the message is straightforward: the tools are in place, the courts are willing, and the case for waiting has become hard to make.

BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions on private enforcement of the DMA, Anna Blume Huttenlauch, Mattis Leson and the entire team are ready to assist you.