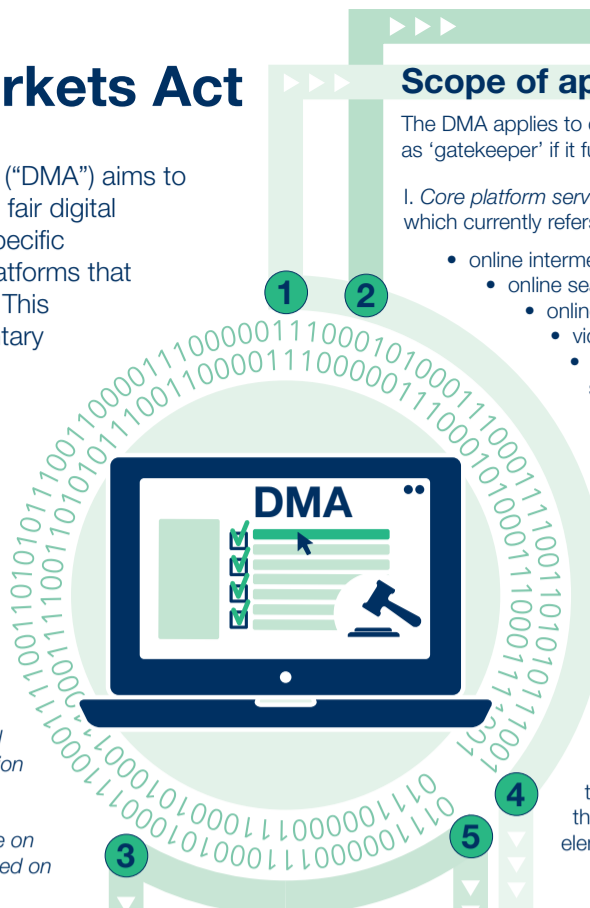


The Digital Markets Act ("DMA") aims to ensure contestable and fair digital markets by imposing specific obligations on digital platforms that qualify as gatekeepers. This objective is complementary to (but differs from) the goal of EU and national competition rules: protecting undistorted competition on markets. [Click here](#) for the full legal text of the EC proposal for the DMA.

Disclaimer: this visual was based on the Commission proposal of 15 December 2020 and the information currently available on the political agreement reached on 25 March 2022.

The changes to the Commission's initial proposal have been marked in red.

The final DMA text has not been released yet.



Scope of application

The DMA applies to digital platforms that act as gatekeepers. A digital platform qualifies as 'gatekeeper' if it fulfils the following cumulative criteria.

I. *Core platform service* – the digital platform is a provider of a core platform service, which currently refers to:

- online intermediation services;
- online search engines;
- online social networking services;
- video-sharing platform services;
- number-independent interpersonal electronic communication services;
- operating systems;
- **voice assistants;**
- **web browsers;**
- cloud computing services; and
- if the provider also offers one of the previous services: advertising services (including advertising networks, advertising exchanges and any other advertising intermediation services).

II. *Qualitative criteria and quantitative thresholds* – once designated a core platform service provider, the following criteria must also be met before designation as a gatekeeper.

N.B. a 'gatekeeper' can rebut this presumption by presenting sufficiently substantiated arguments that the criteria are not met. The Commission can also designate providers as gatekeepers if they meet the qualitative criteria but not all quantitative thresholds. In assessing these situations, the Commission pays particular attention to the elements set out in article 3(6).

Obligations for gatekeepers

The DMA distinguishes between gatekeepers' obligations towards the Commission and towards their business users and end users.

I. Obligations towards the Commission

- *Notification obligation* – Within three months of meeting all the quantitative thresholds, core platform service providers must notify the Commission of this fact and provide relevant information.
- *Information obligation* – A gatekeeper must inform the Commission about every intended concentration that involves an entity providing services in the digital sector - even concentrations that are not notifiable under national or EU competition thresholds.
- *Audit obligation* – Within six months after its designation, a gatekeeper must submit an (independently audited) description of its user profiling methods to the Commission.

II. Obligations towards business users and end users

Both positive and negative obligations are imposed on gatekeepers. Examples of these obligations on gatekeepers are listed in the table.

N.B. The Commission can add new obligations after conducting a market investigation.

Market investigations

The Commission can conduct market investigations:

- I. *to designate gatekeepers* – the Commission will investigate whether providers of core platform services should be designated as gatekeepers or which core platform services a gatekeeper provides (each service must meet the criterion of serving as an important gateway for business users to reach end users).
- II. *into systematic non-compliance* – the Commission will investigate whether a gatekeeper has systematically failed to comply with its obligations and has further strengthened or extended its gatekeeper position in relation to the three qualitative gatekeeper criteria. In such cases, the Commission can impose behavioural or structural remedies (including the possibility of a merger ban for a limited period). As a matter of last resort, the Commission can decide to break up the gatekeeper.
- III. *to add new services and practices* – the Commission will investigate whether the list of core platform services or obligations imposed on gatekeepers should be expanded.

Qualitative criteria

Significant impact on the internal market
The core platform service provider has a significant impact on the internal market

Quantitative thresholds

This is presumed to be the case if:

- the EEA group turnover is greater than **EUR 7.5 billion** in the last three financial years; OR
- the average market capitalisation (for publicly listed companies) or equivalent fair market value is greater than **EUR 75 billion** in the last financial year; AND
- the core platform service is provided in at least three Member States.

Important gateway
The relevant core platform service is an important gateway for business users to reach end users

This is presumed to be the case if, in the last financial year, the core platform service has:

- over 45 million monthly active end users established or located in the Union; and
- over 10,000 yearly active business users established in the Union.

Entrenched and durable position
The core platform service provider enjoys an entrenched and durable position in its operations or it is likely do so in the near future

This is presumed to be the case if, in each of the last 3 financial years, the core platform service has:

- over 45 million monthly active end users established or located in the Union; and
- over 10,000 yearly active business users established in the Union.

Key positive obligations

Gatekeepers must ensure that:

- business users are able to promote offers to end users obtained via the platform, and conclude contracts with end users both using the platform and outside of it. End users must be able to use on the platform items purchased from business users outside the platform.
- advertisers and publishers can request (i) information on prices for a given ad and advertising services and (ii) access to tools and information in order to verify the gatekeeper's ad inventory.
- end users are able to uninstall pre-installed software applications on the service unless these are essential for the function of the operating system/device.
- under certain circumstances, (ancillary / **messaging / social network services**) services of third parties are interoperable with the core platform service of the gatekeeper (or operating system/features used by the gatekeeper when providing ancillary services).
- access to certain data is provided to business users and end users. This data must be effectively portable. Business users must also be given access to designated app stores under fair and non-discriminatory conditions.
- access to certain data is provided to third party providers of online search engines on FRAND terms.

Key negative obligations

Gatekeepers are prohibited from:

- combining personal data from different services offered by the gatekeeper or from third parties, unless the end user has consented to it.
- **combining personal data for the purpose of delivering targeted advertising, unless there is effective consent.**
- imposing most-favoured-nation clauses relating to offer prices and conditions.
- hampering the ability of business users to raise with the relevant public authorities concerns relating to gatekeepers' practices
- imposing their identification service on business users offering services on the platform.
- tying core platform services.
- using sensitive information from business users when competing with them.
- self-preferencing in relation to ranking.
- preventing end users from: **unsubscribing from core platform services**, switching between or subscribing to different software applications and services while using the gatekeeper's operating system.

Investigation and monitoring powers

The DMA lists the investigative and monitoring powers of the Commission. The Commission can:

- request all necessary information as well as access to databases and algorithms.
- carry out interviews and take statements from any natural or legal person in the process of an investigation. Such person must consent to being interviewed.
- conduct dawn raids at the premises of an (association of) undertaking(s). If the Commission orders an inspection by decision, the undertakings or associations of undertakings are obliged to comply.
- monitor "effective implementation and compliance" with the obligations, as well as decisions taken by the Commission. The Commission can turn to external experts and auditors for assistance.

Enforcement powers

The DMA lists the enforcement powers of the Commission. The Commission may:

- specify measures that a gatekeeper needs to implement to ensure effective compliance with certain obligations.
- order interim measures in urgent situations. There should be a risk of serious and irreparable damage for business or end users. Interim measures can only be ordered if the Commission is considering adopting a non-compliance decision. The Commission is required to specify the duration of the interim measures.
- make binding any commitments offered by the gatekeepers. Gatekeepers can offer commitments when the Commission is considering adopting a non-compliance decision or is conducting a market investigation into systematic non-compliance. The Commission can also decide that the commitments are insufficient; it should explain its reasons in a decision that concludes the proceedings.
- adopt a decision finding non-compliance with obligations, behavioural or structural remedies (**including a temporary merger ban**), (interim) measures imposed by the Commission, or binding commitments.
- impose fines up to 10% of a gatekeeper's total turnover in the preceding financial year in cases of non-compliance (**up to 20% for a repeat offence**). If the problematic behaviour concerns information or access provision, the maximum fine is 1% of a gatekeeper's total turnover in the preceding financial year.
- impose periodic penalty payments per day of up to 5% of the average daily turnover in the preceding financial year. Such payments are imposed to compel the undertaking to comply with decisions and provide requested information and access.