

Digital Markets Act

2020/0374(COD) - 12/10/2022 - Final act

PURPOSE: to ensure contestability and fairness in the digital sector in general, and in essential platform services in particular, with a view to fostering innovation, quality of digital products and services, fairness and price competitiveness, and a high level of quality and choice for end-users in the digital sector.

LEGISLATIVE ACT: Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

CONTENT: the digital markets act aims to ensure that the digital sector is competitive and fair. It defines **clear rules for large platforms**. It aims to make sure that no large online platform acts as a 'gatekeeper', a private rule-maker in digital markets by controlling at least one so-called 'core platform services'.

Core platform services include: (i) online intermediation services (i.e. marketplaces, app stores); (ii) online search engines; (iii) social networking; (iv) cloud services; (v) number-independent interpersonal communication services; (vi) operating systems; (vii) web browsers; (viii) virtual assistants; (ix) cloud services; (x) online advertising services.

Designation of gatekeepers

To be considered a gatekeeper a platform must either have had an annual turnover of at least **EUR 7.5 billion** within the European Union (EU) in the past three years or have a market valuation of at least **EUR 75 billion**, and secondly it must have at least **45 million monthly end users** and at least **10 000 business users** established in the EU.

The platform must also control one or more core platform services in **at least three Member States**.

The Commission may conduct a market investigation to examine whether a company providing core platform services should be designated as a gatekeeper.

Obligations for gatekeepers

New obligations and prohibitions directly applicable to market 'gatekeepers' have been introduced.

A gatekeeper should in particular:

- allow third parties to inter-operate with the gatekeeper's own services in certain specific situations;
- allow their business users to access the data that they generate in their use of the gatekeeper's platform;
- provide companies advertising on their platform with the tools and information necessary for advertisers and publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper;
- allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper's platform;
- ensure that unsubscribing from core platform services is as easy as subscribing;

- provide information on the number of users that visit their platforms to determine whether the platform can be identified as a gatekeeper;
- give business users access to their marketing or advertising performance data on the platform;
- inform the European Commission of their acquisitions and mergers;
- ensure that the basic functionalities of instant messaging services are interoperable.

On the other hand, the gatekeeper platforms **may no longer**:

- treat services and products offered by the gatekeeper itself more favourably in ranking than similar services or products offered by third parties on the gatekeeper's platform;
- track end users outside of the gatekeepers' core platform service for the purpose of targeted advertising, without effective consent having been granted;
- prevent consumers from linking up to businesses outside their platforms;
- pre-install certain software applications or prevent users from easily un-installing them;
- restrict business users of platforms;
- prevent or restrict business users or end users from raising any issue of non-compliance with the relevant Union or national law by the gatekeeper with any relevant public authority, including national courts, related to any practice of the gatekeeper.

Governance

The **Commission** will be the only authority empowered to enforce the Regulation. An Advisory Committee and a High Level Group will be set up to assist the European Commission and facilitate its work. The Commission may decide to initiate a dialogue on regulatory measures to ensure that access controllers have a clear understanding of the rules. It may also develop guidelines to provide further guidance on different aspects of the Regulation.

Sanctions

The Commission will have **powers of investigation, control and enforcement**. In order to carry out its tasks, it may require undertakings and associations of undertakings to provide all necessary information, conduct hearings and take statements, carry out inspections or adopt an implementing act ordering interim measures against a gatekeeper.

If a gatekeeper breaches the rules set out in the legislation, the Commission may impose fines of up to 10% of its total worldwide turnover in the previous financial year, or up to 20% in the case of repeated breaches.

If an access controller engages in systematic **non-compliance** (i.e. breaches the rules at least three times in eight years), the Commission may open a **market investigation** and, if necessary, impose behavioural or structural remedies.

ENTRY INTO FORCE: 1.11.2022.

APPLICATION: from 2.5.2023.

