

EU Digital Markets Act

Luís Cabral

July 2022

The EU Digital Markets Act A Report from a Panel of Economists

Luís Cabral
Justus Hauc
Geoffrey Parsons
Georgios Petropoulos
Tommaso Varian
Marshall Varian

2021

By means of introduction

- Paganelli-Bull Professor of Economics and International Business, Stern School of Business, New York University
- Teaching and research focus on firm competition as well as public policy related to firm competition
- Co-authored Cabral et al (2021) report, commissioned by the European Commission, on the proposed Digital Markets Act
- Disclosure: I have no financial conflicts of interest to report related to the work I've done on digital markets.



A simplified view of the Internet

1. Infrastructure

- What you work on and I am wholly ignorant of
- Standards, basic rules, etc
- Mostly based on consensus and voluntary work

2. Economic activity on the Internet

- What I work on and would like to talk about today
- Mostly based on commercial motive
- Issues of IP, competition rules, etc
- Some overlap with 1.

A close-up photograph of a hand moving a dark chess piece, likely a king or queen, on a chessboard. The lighting is warm and focused on the piece being moved, with other pieces and the board visible in the background.

Antitrust 101

- Best known outside of North America as *Competition Policy*
- Set of institutions (agencies and laws) that regulate market competition. Some key players:
 - US DoJ Antitrust Division
 - European Commission DG Comp
 - firms and consumers as litigants
- Some key areas of antitrust:
 - agreements between competitors (e.g., price fixing)
 - mergers and acquisitions (block or require remedies)
 - other possibly anticompetitive practices (e.g., exclusive dealing)
- Important point regarding jurisdiction: because most of the target firms (e.g., Google) are global, local agencies may effectively have a global jurisdiction. Exhibit A: In 2021, UK authority blocked merger of two US corporations (Meta and Giffy)



The Great Reversal (h/t Thomas Philippon)

- Antitrust is particularly ingrained in the US tradition (dating back to the 1890s in Canada and US)
- In the past 30 years or so, the EU has stepped up its competition policy efforts, whereas US agencies have been mostly “asleep at the wheel”
- Exhibit A: air travel. In 1980s, European fares were twice the US. Currently, European fares are one half of the US.
- There is a general clamor for stricter antitrust / competition policy, ***especially in digital markets (platforms)***. EU is taking the lead, also in this area.

The logo features the letters 'DMA' in a large, white, sans-serif font. It is set against a blue background filled with a pattern of white binary code (0s and 1s). Several yellow, five-pointed stars are scattered across the background, some appearing to be part of a larger graphic element on the left side.

DMA

Digital Markets Act (DMA)

- Goal: to restore a level playing field in digital markets, especially in the presence of major **gatekeepers** (Alphabet, Amazon, Apple, Meta, etc).
- Current system characterized by closed systems (e.g., Apple “eco-system”). Proprietary software, data, customer information.
- Three important aspects of DMA
 1. defining what gatekeepers come under DMA’s reach. Series of thresholds that lead to about a dozen platforms.
 2. listing of **obligations** and **outlawed practices**
 3. implementation provisions

Next, will go over this in greater detail.

The logo features the letters 'DMA' in a large, white, bold, sans-serif font. It is set against a blue background filled with a pattern of white binary code (0s and 1s). Several yellow, five-pointed stars are scattered across the background, some overlapping the binary code and the letters.

DMA

Gatekeepers

Article 3.1. A provider of core platform services shall be designated as gatekeeper if:

- (a) it has a significant impact on the internal market;
- (b) it provides a core platform service which is an important gateway for business users to reach end users; and
- (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.

Article 15.1. The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6) ...

The logo features the letters 'DMA' in a large, white, sans-serif font. It is set against a blue background filled with a pattern of white binary code (0s and 1s). Several yellow, five-pointed stars are scattered across the blue background, some appearing to be part of a larger graphic element on the left side.

DMA

DMA Dos and Donts

Chapter III (“Practices of gatekeepers that limit contestability or are unfair”) includes two important articles:

- Article 5 (“Obligations for gatekeepers”)
- Article 5 (“Obligations for gatekeepers susceptible of being further specified”)

The lists are long and I will try to list some typical implications, especially from the point of view of large platforms.

A blue background with a pattern of white binary code (0s and 1s). Several yellow five-pointed stars are scattered across the background. The letters 'DMA' are prominently displayed in the center in a large, white, sans-serif font.

DMA

DMA Dos and Donts

- No self-preferencing in ranking or indexing (Amazon, Google, etc)
- FRAND (fair and non-discriminatory) access to click and query data (Amazon, Google, etc)
- Interoperability (e.g., messaging services) (Apple, Meta, etc)
- Interoperability app stores (Apple, Google)
- No restrictions on transactions off the platform (Amazon, Apple)
- Data portability (Amazon, etc)
- Notification of acquisitions, even when previous regime would not require (all platforms)

The logo features the letters 'DMA' in a large, white, bold, sans-serif font. It is set against a blue background filled with a pattern of white binary code (0s and 1s). Several yellow, five-pointed stars are scattered across the blue background, some overlapping the binary code and the letters.

DMA

Non-compliance

Article 16.1. Where the market investigation shows that a gatekeeper has systematically infringed the obligations laid down (...) the Commission may (...) impose on such gatekeeper any behavioural or structural remedies which are proportionate to the infringement (...).

Article 21.1. The Commission may conduct on-site inspections at the premises of an undertaking or association of undertakings. (...)

Article 26.1. In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total turnover in the preceding financial year. (...)



It's on!

- European Council gives DMA's final approval on July 18, 2022. Awaiting publication in the Official Journal of the European Union.
- Now comes the hard part: implementation. The devil is in the details.
- DMA gives European Commission regulatory and market investigation powers. Does EC have the staffing (numbers and skill) to do it?
- What role for private plaintiffs?

[illegible]

LUÍS M B CABRAL

INTRODUCTION TO
MICROECONOM

...and a shameless plug

