

THE EU DIGITAL MARKETS ACT TWO YEARS ON

A SHIP IN A STORM WITH CHANCES TO RIDE THE WAVES?

When the [EU Digital Markets Act](#) (“DMA”) became applicable in May 2023, the European Commission (“Commission”) promised it would be a game changing set of new rules, *“one of the centrepieces of the European digital strategy”* ensuring fair and contestable digital markets. Two years on, whilst headlines about digital regulation continue to grab attention, the DMA’s own trajectory is shifting. The Commission’s approach and deliverables are evolving, especially in respect of enforcement. Simultaneously, there are early indications of some decentralization of the DMA via private actions. These developments create potential opportunities for digital players to shape outcomes in Europe which this two-pager explores.

The DMA introduced a set of new Dos and Don’ts on some of the largest digital players, formally designated as “Gatekeepers” that control important core platform services (“CPS”). The new positive obligations focus on obliging the designated Gatekeepers to provide interoperability with their own services and access to data for third parties as well as real switching options for end users, whilst a list of Don’ts prevent Gatekeepers from for example self-preferencing and combining personal data from personal services. These new obligations apply in a stand-alone way, without the need to prove dominance, and compliance is checked via reporting requirements.

CONTEXT

WHAT HAS HAPPENED SO FAR?

In March 2025, the Commission imposed its [first ever fines for non-compliance under the DMA](#). Two separate fines were imposed on two designated Gatekeepers, with more investigations and potential penalties signalled. Interestingly:

- the **fines** imposed were well below the legal maximum of 10% of the company’s total worldwide turnover, but the figures in the hundreds of millions remain noteworthy, especially considering the duration of the alleged infringement and the novel nature of the rules in question. Going forward, fines are likely to be a lot higher;
- in addition to the penalty payments, the parties were also ordered to **change their ways of working** to comply with the Commission’s decision in just 60 days, and now also find themselves at **risk of private damages actions** being brought in national courts (see further below); and
- the opening of the non-compliance investigations in 2024 were some of the last actions by former Competition Commissioner Margrethe Vestager towards the end of her tenure. The new Competition Commissioner Teresa Ribera has been given a [clear political mandate to keep this direction of travel going](#).

Although enforcement of the DMA was always intended to be within the sole competence of the Commission, National Competition Authorities (“NCAs”) naturally remain vital players on the digital regulatory scene in Europe operating as “eyes and ears on the ground”, informing the Commission about what they are hearing about DMA compliance in their territories and even carrying out some investigatory steps.

More broadly, all NCAs continue to prioritise digital markets, and devote staff and resources to cases in this area using complementary national provisions to take action. For example:

- the French Competition Authority has multiple on-going high-profile cases in the digital sector particularly based on abuse of dominance concerning allegations of self-preferencing or discriminatory operating rules. It has also been at the forefront of understanding and considering how to regulate emerging sectors like AI and [cloud computing](#); and
- in July 2025, [the German Competition Authority said that “The Bundeskartellamt has issued some trailblazing decisions in proceedings against large tech companies”](#) with the clear indication that this trend would continue, noting elsewhere that *“Competition law will thus continue to play a significant role in the digital economy, and the Bundeskartellamt will continue to cooperate closely with the European Commission and other authorities.”*

In this context, it is striking that [one of the most recent and high profile penalties in the tech space](#) imposed by the Commission was on the basis of traditional antitrust rules (abuse of dominance), not the DMA.

As a result, the digital regulation picture across Europe continues to look rather less joined-up than one may have envisaged with the introduction of the DMA.

CONSULTATIONS

A COURSE CORRECTION?

Over the summer of 2025, the Commission ran a consultation on the DMA “to gather feedback and evidence on the effectiveness of the DMA so far in achieving its objectives of ensuring contestable and fair digital markets.” This will be used, along with other input to prepare a report assessing the impact of the DMA – not expected until late Spring 2026.

Arguably, the most interesting aspect of this consultation is the request for “feedback on the DMA regarding its implications for the Artificial Intelligence (AI) sector. The Commission welcomes any type of concrete feedback on how and whether the DMA can effectively support a contestable and fair AI sector in the EU.” Over the past few months, the Commission has, to some extent, been unclear on how AI may or may not be scoped into the DMA, with on the one hand fears of regulatory overreach, but on the other hand, an acceptance that AI now forms an important part of CPS as designated under the DMA.

The Commission is now considering feedback received, but the questions asked might signal its openness to some recalibration if not of the DMA per se, but its practical application to CPS, including on scope, process, and enforcement.

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COURTS

GROWING PARALLEL TRACKS?

Right from the start, DMA related litigation was widely expected. Indeed, this has certainly proved true in terms of appeals against the Commission’s actions by designated Gatekeepers, several of which have appealed designations and/or non-compliance findings.

Perhaps what has been slightly less expected, are the national dynamics, seen most recently in a striking ruling from Germany which establishes that there is scope in Germany at least, for private injunctive relief arising from DMA obligations. In this case, a German court granted an injunction to swiftly curb suspected harm arising from a perceived DMA violation, even though the Commission had not yet opened a formal investigation. Notably, the German proceedings took only 10 months to reach its ruling, offering rather swift relief compared to Commission DMA proceedings. However, the German ruling is not yet final and the appeal proceedings might lead to a different outcome. In a different case, another German court dealt with a representative action in the sense of Article 42 DMA, but found no DMA violation. These cases show that more national actions concerning DMA obligations could

emerge, raising coordination questions and potential fragmentation alongside Commission enforcement. Ultimately, it is possible that over the next few months, the unique public enforcement model foreseen for and by the DMA, could be substituted or at least complemented by private enforcement actions, in many ways akin to what we see in the US where antitrust issues are more often tackled through private, rather than public, enforcement.

Furthermore with vocal consumer groups getting ready to bring private actions on behalf of groups of consumers in Europe based on alleged breaches of the DMA by designated Gatekeepers, the risk of court-based enforcement is certainly growing.

CONCLUSION

With transatlantic political headwinds and mixed early outcomes, the path of DMA enforcement remains unsettled. For now, national court routes may offer the most immediate leverage for ensuring fair and contestable digital markets, even as the Commission refines its centralized approach. Companies that engage early, document robust compliance, and plan for multi-forum risks will be best positioned to ride the waves rather than be caught in the storm.