



## IS YOUR COMPANY A “GATEKEEPER”? DIGITAL MARKETS ACT NEWS

### I. WHAT HAS HAPPENED SO FAR

The applicable e-commerce policy is over 20 years old. That is why the European Union launched a regulatory package for online platforms a few years ago. This package includes two ordinances:

- The **Digital Services Act (DSA)** aims to better protect consumer rights and eliminate “illegal content” in the digital environment. Particular attention is therefore paid to transparency and accountability towards users in online advertising. The DSA has now been adopted and was published on 27 October 2022 in the Official Journal of the European Union (OJ L 2022\_277). We have already reported on the content of the DSA in our newsletter “**The Digital Service Act and the upcoming reform of the digital services**“.
- The **law regarding digital marketing, (Digital Markets Act, DMA)** has progressed and is effective 1 November 2022. The DMA goes into effect from 2 May 2023. The essential regulations are presented below.

### II. WHO IS A “GATEKEEPER” UNDER THE RULES OF DMA?

Gatekeepers are companies that

- provide a central platform service,
- serve as an important gateway to end users for commercial users, and
- have a significant impact on the internal market.

The DMA expressly refers to the following services as “central platform service”:

- Online brokerage services
- Online search engines
- Online social networking services
- Video sharing platform services
- Number-independent interpersonal communication services
- Operating systems
- Web browser
- Virtual assistants
- Cloud computing services
- Online advertising services, including advertising networks, advertising exchanges and other advertising brokerage services.

Other requirements are

- certain revenue thresholds in the last three fiscal years and
- a certain number of annual active commercial users, wherein the determination and calculation are carried out individually according to the indicators determined by the DMA.

### III. WHAT ARE THE RESPONSIBILITIES OF A “GATEKEEPER”?

The DMA aims to prevent unfair or deniability practices by gatekeepers.

In this way, Art. 5 et seqq. in particular stipulates the following obligations for gatekeepers:

- Regulations on the Promotional Use, Merging and Re-Use of Personal Data



- Compliance with the regulations for the consent of the end users with regard to Art. 7 GDPR
- Regulations on terms of offer of online brokerage services and communication as well as application
- Use and access to content, subscriptions, features, etc.

Art. 6 also lists obligations that may be further detailed by the Commission:

- no use of non-public data
- enabling of software application de-installation
- changing operating system default settings
- option to use third-party software applications
- switching between different software applications

Art. 7 lists the obligation to interoperate number-independent interpersonal communication services:

- provision of required interfaces
- interoperability, such as end-to-end text messages, end-to-end voice/video calls

By monitoring these procedural obligations, certain mergers have enhanced reporting obligations that are more stringent than the merger control regime. Gatekeepers face fines of up to 20% of global annual revenue for violations, among other things.

#### **IV. WHO ELSE IS AFFECTED BY THE DMA?**

Digital services in general and online platforms in particular play an increasingly important role in the economy, especially in the internal market, as they enable companies to reach users across the Union, facilitate cross-border trade and open up entirely new business opportunities for a large number of companies in the Union, benefiting consumers in the Union.

Gatekeepers have a significant impact on the internal market as they serve many commercial users as gateways to end users across the Union and in various markets. The adverse effects of

unfair practices on the internal market and the particularly low deniability of central platform services, including the negative effects of such unfair practices on the economy and society, are to be prevented. Because applicable regulations cannot prevent these effects, the DMA provides for appropriate regulations that enable commercial users of the platforms to gain fair access and to develop themselves better and faster on the platforms.

Commercial users can complain to the European Commission in the event of disadvantages by gatekeepers or can also proceed against gatekeepers by means of class action suits.

#### **V. CONCLUSION**

By 23/05/2023, companies must assess the extent to which they are affected by the DMA and, if necessary, ensure their compliance. In particular, the obligations of the DMA for “gatekeeper” must be complied with.



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