Digital Markets Act shapes Big Tech behaviours in Europe

Dr Christophe Carugati

The Digital Markets Act changes big tech behaviours. Businesses and consumers can share feedback on proposed compliance solutions to improve them by engaging in constructive dialogue.

The 6 March deadline for compliance with the Digital Markets Act (DMA) is approaching. The landmark European legislation mandates that gatekeeping platforms controlling access to some of the most important digital services must change how they operate in Europe. In practice, Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft must change their behaviours, allowing businesses and consumers to benefit from more competition and innovation. These changes also impact how businesses and users use digital services in Europe. As some gatekeepers have already announced changes, stakeholders can now share views on the proposed compliance solutions to improve them by engaging in constructive dialogue. This blog post is the first of a DMA Dialogue Series in the context of our DMA Dialogue Hub, delving into proposed compliance solutions and seeking consensus with stakeholders.

The proposed compliance solutions

Among the six designated gatekeepers, Alphabet, Amazon, Apple, and Meta have proposed changes to comply with the DMA.

Alphabet

Alphabet has proposed several changes. Google users will be able to consent to data-sharing across some of Google's services and products via a consent choice screen. Currently, this screen is not available to all Google users. However, Google explains the consent requirement on Google Assistant, providing users with implications of the choice. These implications might not be understandable enough when consenting, as users lack context. Therefore, Google should offer the consent choice screen or remind users of their choice when the context requires it (e.g., when users make reservations on Google Search or Google Maps, rather than when they initially start using these services).

Google users will encounter more units with comparison websites on Google Search, like when booking a hotel. While Google has not officially announced the access conditions to these units for comparison websites, it appears, based on the units already visible on Google Search, that Google provides the same treatment to all comparison websites.

Google users will also have the option to select a default browser provider through a browser choice screen on Android smartphones and tablets, and a default search provider via a search choice screen on Google Chrome for non-Android platforms. Google offers transparent and objective access conditions. Furthermore, the design of the choice screen appears to present ample information in a neutral manner, enabling users to make their selections freely.

Finally, Google users will be able to port their data more easily to third parties. However, Google did not provide detailed information for commenting.

Amazon

News reported that Amazon is now offering Amazon users the choice to share data from Amazon Marketplace with other services, like Amazon Prime Video. Amazon did not provide detailed information about its compliance measures at this stage. However, Amazon's commitment to address competition concerns in the Amazon Marketplace case in Europe is likely to comply with the DMA as the commitment mirrors the DMA obligations.

Apple

Apple is the only gatekeeper that has provided detailed information on its compliance solutions. In this context, this blog post only offers high-level observations of the main changes. In a separate blog post, we will soon provide an in-depth analysis of Apple's changes, including stakeholders' reactions.

First, Apple is changing its smartphone operating system (iOS). It allows non-Apple distribution channels, including alternative application marketplaces, browser engines, hardware and software features, and contactless payments. The changes will drive competition and innovation as Apple and non-Apple developers will attract customers based on price and quality features.

However, Apple protects the integrity of its iOS with security and privacy features applicable to all applications. According to Apple, these measures are necessary to reduce risks posed by malicious developers. The DMA empowers Apple to safeguard its iOS with necessary and proportionate privacy and security features. However, an in-depth analysis of the risk assessment conducted by Apple is required to determine the validity of these measures.

Moreover, Apple plans to educate users on options and best practices to protect them from privacy and security risks. While Apple has not released the educational materials, the explanations should be understandable, proportionate, and objective. They should not deter users from using non-Apple features through unjustified and alarming messages. Behavioural studies will be relevant in assessing the objectivity of these educational materials.

Second, Apple will also offer a browser choice screen to select a default provider when users first use Safari following new iOS updates. However, Apple did not provide detailed information on the access conditions and the design of the choice screen.

Third, Apple is changing the terms of its AppStore. Application developers will be able to communicate directly with their users (e.g., payment within and outside the application, promotions) and use non-Apple payment processing services.

However, through an information screen, Apple will inform its users of the consequences of using non-Apple payment processing services (e.g., inability to request refunds from Apple). In essence, users will encounter a screen interruption each time they use non-Apple payment processing services. While these information disclosures might be justified, they could be deemed discriminatory as they specifically target non-Apple payment processing services. Furthermore, as mentioned earlier with the educational materials, the design of the information screen must not dissuade users from using non-Apple payment processing services with unjustified alarming messages.

Moreover, Apple AppStore users will be able to port their data to an authorised third party. However, Apple did not provide detailed information.

Finally, application developers must adhere to new business terms to use non-Apple distribution channels or payment processing services. They will pay a reduced commission on the iOS AppStore and be able to use Apple payment processing services against a payment processing fee or use alternative payment methods to contract with their users (e.g., payment

within the app) for free. They will also have to pay a core technology fee annually for each first annual iOS application downloaded from the AppStore or alternative application marketplace.

Developers cannot use alternative distribution channels or payment processing services if they do not agree with these terms. If they do not, they must adhere to the existing business terms. By imposing these new business terms, Apple anticipates potential competition from alternative distribution or payment processing. The first two conditions on the reduced commission fee and payment processing fee have the effect of a price reduction, allowing Apple to compete on price to retain application developers on its AppStore.

At first glance, these conditions do not pose issues because application developers will be able to choose distribution channels or payment processing services based on price and quality features. However, they might pose issues under competition laws if the conditions are deemed predatory pricing to exclude rivals from competing with Apple services.

The last condition on the core technology fee might pose issues because application developers will have to pay an additional fee that might, in practice, dissuade them from using alternative distribution channels or payment processing services. If this is the case, the new business terms might allow Apple to circumvent its obligations under the DMA, which prohibits such circumvention. However, a thorough legal and economic analysis is required to answer this question, considering Apple's fundamental right to conduct business in Europe. Therefore, we will refrain from addressing this aspect in detail in this blog post.

Meta

Meta announced that Facebook and Instagram users can choose to share information with Meta services. At this stage, Meta did not provide how it will display the choice screen to users. However, the announcement uses understandable language with clear implications of the choice.

Meta also offers a "pay-or-consent" offer, where users can choose between an ad-free paid version or an ad-supported free version. The offer poses legal issues as the ad-supported free version does not offer the choice between consenting and non-consenting to data collection. Some stakeholders have already challenged the offer for alleged consumer protection and data protection law violations.

Next steps

To enhance the proposed compliance solutions, stakeholders now have the opportunity to engage in a constructive dialogue with the Commission and gatekeepers before the 6 March deadline. This dialogue is crucial for building trust and ensuring effective implementation while preventing unnecessary, lengthy, and costly legal challenges. In this participative approach, stakeholders and gatekeepers should have equal opportunities and speaking time and engage constructively. The Commission should thoroughly consider each proposed solution, providing guidance that gatekeepers should follow to achieve effective compliance.

While we strongly advocate for this dialogue, we acknowledge that it might be challenging to engage without full information about the proposed compliance solutions and considering the presence of various stakeholders with different interests, all within the short time constraints faced by gatekeepers to comply.

From now until the 6 March deadline, the dialogue should thus primarily focus on access conditions to gatekeepers' changes, such as those involving the search and browser screen. Stakeholders can also assess and test the effectiveness of the proposed solutions, engaging in a constructive dialogue with gatekeepers to resolve issues (e.g., when technical solutions to create alternative app marketplaces do not work).

After the 6 March deadline, the Commission should facilitate continued constructive dialogue through public and private (when confidentiality issues arise) workshops. It should also raise awareness of the DMA's opportunities to businesses and consumers through publications and public conferences. The Commission should release the public version of the compliance reports as soon as possible and at least a summary of each compliance report on the days following the deadline to inform the stakeholders of the changes. Finally, the Commission should encourage national competition authorities to explain the DMA changes to stakeholders at the local level.

About

Digital Competition

Digital Competition (digital-competition.com) is a research and advisory firm. Our mission is to advance open digital and competition policies for better innovation. We inform our members and clients on emerging and global digital and competition issues through impartial, forward-looking analyses, shaping policies that foster innovation for all. This comment did not receive any funding.

This paper is part of our DMA Dialogue Hub (https://www.digital-competition.com/dmadialoguehub), which is dedicated to a participatory approach of the DMA, ensuring compliance solutions that benefit everyone. We act as an expert-driven, trusted intermediary, fostering constructive dialogue between stakeholders and the Commission. We propose to be remunerated and chosen on the model of a trustee in competition law. Finally, we help navigate policy challenges, including with other European and non-European digital competition laws.

To enhance this dialogue, we are launching the DMA Dialogue Series, delving into compliance solutions and seeking consensus with stakeholders. We encourage them to share publicly available research and relevant documentation on compliance solutions. We also offer consultations, training sessions, and conferences on DMA. Contact us to join the Hub as a member and/or for consultation/press inquiries.

Dr. Christophe Carugati

Dr. Christophe Carugati (christophe.carugati@digital-competition.com) is the founder of Digital Competition. He is a renowned and passionate expert on digital and competition issues with a strong reputation for doing impartial, high-quality research. After his PhD in law and economics on Big Data and Competition Law, he is an ex-affiliate fellow at the economic think-tank Bruegel and a lecturer in competition law and economics at Lille University.