The Great European Digital Markets Act Battle

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European businesses are already fighting how Big Tech firms shape their behaviours in response to the Digital Markets Act. They can avoid legal battles by engaging in constructive dialogue.

When it comes to regulating Big Tech, Europe stands as the pioneer in setting rules. From March 2024, Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft will have to comply with the Digital Markets Act (DMA), which mandates them to change how they operate in Europe. The legislation aims to foster fairer and more competitive digital markets for businesses and users. However, several European businesses express discontent with the changes Big Tech firms have made, anticipating lengthy legal disputes before the European Commission and national courts.

Europe is on a mission to open gates in digital markets with the DMA. In a record time, European legislators have set the rules of the game with prescriptive obligations that "gatekeepers" must follow if they do not want to pay heavy fines and undergo potential breakups. This regulation is painful for Big Tech firms, who have to adapt their global business to the European market on short notice by dedicating significant time and resources at a time when their priority is to harness Artificial Intelligence (AI) in their products and services.

Big Tech firms played the game and proposed compliance solutions in recent months, allowing the public to experiment and provide feedback. As expected, some European firms, long advocates of the DMA, are dissatisfied with some changes. Spotify's reaction to Apple's change is particularly vehement, accusing Apple of violating the law's spirit with a plan deemed a "*complete and total farce*".

The dispute revolves around Apple's new business terms for application developers seeking to leverage the DMA opportunities by using alternative app stores or payment processing services. Large application developers with over a million customers will pay Apple a 0.50€ core technology fee (CTF) per download each year. In addition, developers of digital goods and services wishing to use the Apple AppStore will have to pay a 17% (or 10%) commission fee to Apple. Last, they must pay a payment processing provider, who will also charge a fee. Should they choose Apple's payment processing service, they will pay an additional 3% fee. If they do not adhere to the new business terms, they will have to stay with the existing Apple business

terms that impose them to be present on the AppStore, pay a 30% (or 15%) commission fee and use Apple's payment system. This new term was predictable as Apple will not abandon a lucrative commission fee, contrary to Spotify's desires. Spotify and other large developers will fight on the ground that the new terms dissuade them from effectively leveraging the DMA opportunities as they might pay more than under the existing Apple terms. No rational economic actor will accept it.

However, the battle will be difficult. Apple will fight back by arguing that most application developers—99% according to Apple—will not pay the CTF and that all developers have the choice to use an alternative application store and payment processing service, which are likely to compete on price by charging a lower commission fee and quality by offering developers with a better application store. Even though they do not use an alternative app store, Apple will argue that they pay a lower AppStore commission fee under the new business terms and are free to choose an alternative payment processing service. Small developers might pay less than under the existing terms, and all developers can use alternative app stores or payment processing services.

Ultimately, the victory will hinge on the DMA's goals of ensuring fairer and more competitive digital markets. The law only requests gatekeepers to provide opportunities, regardless of whether businesses and users actually seize them. While one might argue that the proposed changes are ineffective due to increased costs, evidence demonstrating businesses' ability to capitalise on opportunities while paying less or enjoying better quality could undermine such claims.

The great Digital Market Act battle has only begun. However, the battle is avoidable if gatekeepers and stakeholders engage in constructive dialogue with the Commission, focusing on refining proposed solutions rather than adamantly advocating for contentious alternatives that are unlikely to gain acceptance from the opposing party. Such dialogue is crucial for building trust and ensuring effective implementation while preventing unnecessary, lengthy, and costly legal battles.

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.

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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.