



## **NEW EU COMPETITION LEGISLATION REGULATING THE DIGITAL WORLD**

### **Introduction**

On 24 March 2022 the European Parliament, the Council and the European Commission agreed on the new “Digital Markets Act” (“Act”), which aims to make the digital sector fairer and create a more competitive space for new players and European companies.

The Act still needs to be formally adopted by the European Parliament and Council. Once it has been formally adopted and publicised, it will come into force in all EU countries in 20 days. All companies will have to observe the Act no later than six months after the adoption.

### **Background**

The Act was proposed by the European Commission in late 2020 with the overall purpose to make the digital market more fair, open, and contestable for everyone. In the past decade, the European Union has imposed large fines on tech giants, such as Google, Facebook, Apple, and Amazon. Consequently, they have used their market dominance to squeeze out

the competition and made it hard for small and midsize companies to enter the digital market. As an example of case law, Google forced smartphone manufacturers using the Android system to pre-install the Google browser app – those who denied such were denied access to Google’s streaming services and Google Play Store. In practice, this meant that only a few users of the Android system downloaded another searching app or an alternative browser.

It is set out to address systemic issues in the market instead of case-by-case handling as it has been so far. Moreover, the Act is based on the settlements in several antitrust cases that the the European Commission has settled in the past decades. This will strengthen the power of the European Commission to enforce it.

### **“Gatekeepers”**

The Act introduces the “gatekeeper”-status to which the Act will apply. A gatekeeper is a large platform that meets the below thresholds:

- Significant impact on the internal market: It is presumed to be the case if the company has an annual turnover within the European Economic Area above EUR 7.5 billion in the last three financial years or a fair market value amounting to at least EUR 75 billion in the last financial year, and it provides its core platform services in at least three member states.
- Core platform service, which serves as an important gateway for business users toward end-users: A core platform is defined as a platform with more than 45 million monthly active end-users and more than 10,000 yearly active users within the EU in the last financial year.
- Entrenched and durable position: This criterion is met when the above threshold regarding end-users has been met in each of the last three financial years.

### **Consequences of the Act**

Gatekeeper platforms, e.g., Google, Facebook, Apple, and Amazon, will be subject to several clearly defined obligations and prohibitions. The following restrictions in the Act is described:

#### Self-preference and ranking of Products and Services

Gatekeepers will, going forward, not be allowed to self-preference or rank their own products or services higher than such from competitors.

### Interoperability between Gatekeepers and Third Parties

Gatekeepers will, in specific situations, be obligated to allow third parties to inter-operate with the gatekeeper's service/platform. An example of such is that Apple going forward will be obligated to allow third-party payment solutions on their market platform "App Store" opposite now where users only can use Apple's own payment systems.

### Data Access

Gatekeepers must allow third-party companies to access and receive data that the gatekeepers generate on their platforms. The gatekeepers will only be allowed to use the afford mentioned data for targeted advertising if they have obtained explicit consent from the third-party company.

Further gatekeepers are not allowed to use data collected from one service or app for the purpose of another.

### Pre-installing of Software and Apps

The Act implies that gatekeepers going forward will, e.g., no longer be allowed to prevent users from un-installing pre-installed software or apps if the end-users wish to do so. An example of such is, that Google (Android) is not allowed to prevent end-users from un-installing Google Chrome or using any other searching app.

### Fines

If companies infringe the legislation set out in the Act, the European Commission can impose large penalties of up to 10 % of a company's worldwide turnover, and if repeated infringements, the penalties can be as high as 20 % of the company's worldwide turnover. At worst, if the infringements have been systematic, the European Commission may impose any non-financial remedies, if necessary, e.g., a ban from further acquisitions relevant to the infringements.

### **Our Comments**

The Act will impose significant burdens on gatekeepers to secure the rights of mid-and small size companies (competitors to gatekeepers) and European based users. Further, the Act is intended to make a fairer, more digital market.

The size of the penalties is determined to incentive gatekeepers to comply with the new legislation. Given this, all such must start preparing for when the Act comes into force.

Smaller-and midsize companies (competitors to gatekeepers) must be aware of their rights in accordance with the Act to prevent that they harmfully squeezed out of the market by gatekeepers in a way that will be contrary to the Act.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



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