

JEDI

TECH & POLICY BRIEFINGS



THE DMA – DIGITAL MARKETS ACT

TRULY EFFECTIVE AGAINST BIG TECH ?

JANUARY 2022

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JEDI'S 4 RECOMMENDATIONS FOR THE DMA



Clarify, expand & regularly update DMA assessment criteria



Strengthen the deterrent effect of sanctions, including blocking



Expand the definition of relevant markets, including data flows



Control mergers and put an end to "killer acquisitions"

THE JOINT EUROPEAN DISRUPTIVE INITIATIVE

The Joint European Disruptive Initiative (JEDI) is the European advanced research projects agency (ARPA) with a mission to bring Europe in a leadership position in emerging and breakthrough technologies.

To achieve this goal, JEDI is launching GrandChallenges to push the frontiers of science & innovation, with a radical new method based on purpose-driven research, maximum speed, full focus on excellence, deep interdisciplinarity, and bold ‘moonshot’ risk-taking.

JEDI aims to provide Europeans and free societies with the means of technological and scientific power, for prosperity and societal resilience. Driven by humanistic values, JEDI is focused on solving major societal challenges of our time (environment, healthcare, digital, education, oceans, space) through innovation.

To be always ahead of the curve, JEDI has developed cutting-edge technology foresight and is actively engaged in high-level tech & policy recommendations.

JEDI is working for the common good, powered by 4.600 technology and scientific leaders from academia, industry and deeptech startups in 29 countries in Europe and globally. Fully independent, it is financed by engaged foundations, companies, individuals & public institutions.

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JEDI TECH & POLICY BRIEFINGS

Technological innovation cannot be reduced to the inventiveness, let alone the genius, of solitary minds. It is part of a political and geopolitical framework. This is why this series of briefing notes aims to shed light on the role of national and European public action on technological and innovation topics in the light of the fundamental values and interests of Europeans. These Briefings are both an analysis of current projects and regulations, and a place for concrete recommendations.

The aim is to support positive impact on our societies and on the greatest number of our citizens of emerging and disruptive technologies, and to allow Member States and Europe to remain sovereign in our technological century.

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THE DIGITAL MARKETS ACT: TRULY EFFECTIVE AGAINST BIGTECH ?

CONTEXT

Unveiled on December 15, 2020, the Digital Markets Act (DMA) is a draft regulation aimed at ensuring a "level playing field" for all companies in the field of digital economy, regardless of their size. It is based on a series of measures aimed at

reducing the relative weight of large American technology firms on the European market, in particular their ability to distort the principle of free and undistorted competition.

GOAL OF THE DMA PROPOSAL

The DMA targets a particular category of actors: gatekeepers. These actors are defined by their market power on online intermediation services, social networks, search engines, shared video platforms, etc.

The European Commission has the task of granting gatekeeper status to a given player, according to three essential conditions (Article 3):

- Having a significant impact on the market concerned;
- Playing a major role as an intermediary between professionals and users or customers;
- Benefitting from a well-established and durable position, or one that is about to be established.

Other criteria are also taken into account, such as size, number of business users, the benefit of network effects, the amount of data collected or the capture effect on users.

This qualification entails a certain number of duties, which the Commission summarizes in one formula: "[...] ensure that these platforms behave fairly online." In short, the objective is to weaken their dominant position, while they "capture the largest share of the total value generated".

DETAILED RECOMMENDATIONS

1-CLARIFY AND EXPAND THE CRITERIA FOR EVALUATING THE DMA

- by qualitative criteria (feedback in the form of questionnaires to stakeholders) judging the usefulness, relevance, positive aspects and limitations of the DMA;
- by quantitative criteria (evolution of gatekeepers' and professional users' profit).
- by updated criteria every year to keep up the pace of technological change (eg amending the DMA to take into account the metaverse)

***"The effectiveness of the DMA will depend
on the quality of its assessment"***

2-REINFORCE THE DISSUASIVE EFFECT OF SANCTIONS

- by setting the deadline for compliance with the regulation at 6 months after its entry into force, after which the penalty is automatic;
- by adding additional levels of sanctions (access restriction, temporary access blocking, then permanent blocking...), including dismantling: separation of the European activities from the non-European parent company, to make them independent firms. When their activities are deemed strategic, particularly in terms of national security: make it compulsory to acquire holdings in public institutions (for example, the Caisse des dépôts et Consignations in France). This also implies the creation of a EU Shareholding Agency.
- by imposing “additional remedies” (including “non-financial remedies”) not necessarily after “systematic infringements” — and by letting the regulator enforcing those kinds of sanctions after a single infringement, not necessarily numerous ones

3-EXPAND THE DEFINITION OF RELEVANT MARKETS

- Taking into account not only monetary transactions, but also data flows in the potential & future markets.

4-CONTROLLING CONCENTRATIONS AND STOPPING 'KILLER ACQUISITIONS'

- By going beyond the sole criterion of sales;
- By taking into account not only the value of an acquisition, but also its growth rate, and potential growth in the next 5-10 years;
- By boosting the technological competence of the watchdog (DG Competition)
- By carrying out ex post controls, up to 6 months after the acquisition;
- Without the approval of the competition authorities and without waiting for the acquisitions to cross the national thresholds for notification to the Member States.

"There is no effective sanction without a dissuasive effect"

CALENDAR

15 December 2020

The legislative proposal for the Digital Markets Act is submitted to the European Parliament and the Council of the European Union by the European Commission.

25 November 2021

The European Council adopts its common position on the DMA.

16 December 2021

The European Parliament approved the IMCO report amending the Commission's proposal

First half of 2022

Trilogue between the European Parliament, the Council of the European Union and the European Commission for its final adoption.

KEY PLAYERS

European Parliament

Internal Market and Consumer Protection Committee (IMCO)

Rapporteur: Andreas SCHWAB (EPP)

Shadow Rapporteurs: Evelyn GEBHARDT (S&D), Andrus ANSIP (Renew), Marcel KOLAJA (Greens)

Legal Affairs Committee (JURI)

Rapporteur: Tiemo WÖLKEN (S&D)

Economic and Monetary Affairs Committee (ECON)

Rapporteur: Stéphanie YON-COURTIN (Renew)

Industry, Research and Energy Committee (ITRE)

Rapporteur: Carlos ZORRINHO (S&D)

Telecommunication Council

Digital/Telecommunication ministers of the 27 Member States.

European Commission

Executive Vice President of the European Commission for A Europe Fit for the Digital Age: Margrethe Vestager

European Commissioner for Internal Market: Thierry Breton

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