

Navigating the Regulatory Landscape: Assessing the Impact of the EU's Digital Markets Act on Global Antitrust Policies

Prof. Shoba R¹, Mr. Srivatsa B Naidu²

¹Professor, Law, St. Joseph's of Law, Bangalore

²Corporate Lawyer, Law, Private Practice

Abstract:

This paper examines the profound transformation of antitrust regulation in the digital age, with a focus on the European Union's Digital Markets Act (DMA). As digital platforms reshape global markets, traditional antitrust frameworks have grown inadequate for addressing new challenges such as network effects, data-driven business models, and transnational digital ecosystems. The study traces the evolution of competition law in the EU, highlighting key reforms including the landmark DMA and related enforcement mechanisms aimed at curbing anti-competitive behaviors of major tech 'gatekeepers.' By analyzing the DMA's provisions, enforcement strategies, and early implementation, this research evaluates its potential as a model for global antitrust policy reform. The paper further discusses the practical implications, limitations, and adaptability of the DMA in non-EU jurisdictions, emphasizing the need for flexible, innovation-friendly, and evidence-based approaches to regulating dynamic digital markets.

Keywords: Digital Markets Act (DMA); Antitrust regulation; Big Tech; Competition policy; Global digital markets.

Introduction

Anti-competitive conduct by Big Tech has forced policymakers across the world to reassess traditional antitrust frameworks to accommodate the challenges of digital markets. Digital platforms have reshaped markets and industries posing new challenges for the existing institutional setting of antitrust rules. These rules were not designed to deal with network effects and digital ecosystems but were established for a business world where coal, steel, and cars were the primary products.¹ Amazon, for instance, encompasses multiple industries combining traditional retail, manufacturing, advertising, and logistics alongside online marketplaces and software services. This nature of digital markets renders traditional law obsolete as it neither acknowledges the zero-price nature of digital services nor provides a market definition.²

The current regulatory framework for competition law fails to take into account that anticompetitive horizontal mergers, agreements among competitors, and vertical restraints can produce as much harm in digital markets as in traditional ones.³ The gap between disruptive technologies and regulatory response, uncertainties surrounding innovations, the complexity surrounding digital ecosystems, and the

transnational nature of the digital economy have led to legitimate concerns from a regulatory standpoint. A regulatory intervention for digital ecosystems is imperative to secure personal data, maintain competition, encourage innovation, and protect consumers from long-term harm.⁴

To overcome obstacles caused by digital markets, a significant amendment was required in the existing competition law. A growing consensus globally resulted in the emergence of new legislations and guidelines such as the Competition Act in Germany, the Digital Markets Act in

¹Podszun, Rupprecht. "From Competition Law to Platform Regulation – Regulatory Choices for the Digital Markets Act" *Economics*, vol. 17, no. 1, 2023, pp. 20220037. <https://doi.org/10.1515/econ-2022-0037>.

²Gupta, Pranjal. "Competition policy in the age of 'Big Tech': Assessing the EU's approach." (2020).

³"OECD Handbook on Competition Policy in the Digital Age." *OECD*, 2022. www.oecd.org/daf/competition/oecd-handbook-on-competition-policy-in-the-digital-age.pdf.

⁴Schrepel, Thibault. "Beatriz Kira: 'Rethinking Regulation for Dynamic Digital Ecosystems' - Network Law Review." *Network Law Review*, 16 Feb. 2024, www.networklawreview.org/regulating-dynamic-ecosystems.

the EU, the Strategic Market Status regime in the UK, and several legislative bills in the US. This article examines the existing competition law regime in the EU, specifically the Digital Markets Act, its effects, and its adaptability globally.⁵

Evolution and Enforcement of Antitrust Regulations in the EU

With the rapid expansion of digital markets worldwide, regulators globally, particularly in the US and Europe have taken steps towards expanding their antitrust policies to curb anti-competitive practices of large tech companies. These steps primarily target cartels, anti-competitive agreements, and abuse of market dominance by way of legislative and judicial actions.⁶

EU antitrust regulations have a strong influence in setting national and international standards in competition law. Both European and national regulators cooperate in enforcing these regulations. National regulators also stand as strong reinforcers of antitrust rules in Europe. For instance, in 2016, the Federal Cartel Office (*Bundeskartellamt*) in Germany

initiated an investigation against Facebook for abusing its dominant position and illegally collecting users' data. Digital giants have also been targeted by regulators in Italy and Spain. The National Commission for Markets and Competition in Spain investigated into the allegedly imposed "*unfair commercial conditions on publishers of press publications and press agencies in Spain, regarding the exploitation of their content protected by intellectual property laws*" by Google in 2023.⁷ However, when Ireland granted tax breaks to big tech companies such as Apple, the European Commission interjected and dragged Ireland to the Court of Justice of the European Union (CJUE) for failing to recover dues.⁸

To keep in check such anti-competitive practices, the EU adopted the Treaty on the Functioning of the European Union (TFEU) in 2007, which has become the key legislation governing anti-trust laws in the European region. Articles 101 to 109 incorporate agreements and

⁵ Deutscher, Elias. "Reshaping Digital Competition: The New Platform Regulations and the Future of

Modern Antitrust.” *The Antitrust Bulletin*, vol. 67, no. 2, SAGE Publications, Apr. 2022, pp. 302–40. *Crossref*, <https://doi.org/10.1177/0003603x221082742>.

⁶Gupta, Pranjali. “Competition policy in the age of ‘Big Tech’: Assessing the EU’s approach.” (2020).

⁷Ma, Aifang. “A Comparative Look at Antitrust Regulation of the Digital Economy in Europe and China.” *Robert Schuman*, 12 Dec. 2023,

www.robert-schuman.eu/en/european-issues/730-a-comparative-look-at-antitrust-regulation-of-the-digital-economy-in-europe-and-china.

⁸ *Apple Has €13bn Irish Tax Bill Overturned*. 15 July 2020, www.bbc.com/news/business-53416206.

commercial practices that restrict competition and abuse of dominant positions.⁹ Furthermore, the European Competition Network (ECN) was established to ensure enforcement of TFEU Articles 101 and 102. (Regulation 1/2003) The Directorate-General (DG) Competition enforces competition rules and conducts investigations. The EC has the authority to impose fines and take remedial actions. These decisions can be nullified or modified by the EU’s General Court and the (higher) Court of Justice of the European Union (ECJ).¹⁰

Though these rules have guided antitrust regulation in the EU, with the expansion of the digital economy these rules have become outdated. Consequently, the EU has taken steps to revise its framework and instituted a framework exclusively for antitrust regulations for digital ecosystems. In 2015, the Strategy for a digital single market was adopted which focused on three pillars: better access for consumers and businesses to online goods and services, creating the right conditions for digital networks and services to flourish, and maximizing the growth potential of the European digital economy.¹¹ In 2018, the enactment of GDPR (General Data Protection Regulation) indicated Europe’s stand on data privacy and security which not only applies to the EU but also to organizations elsewhere that target or collect data about people in the EU. Two years later, in 2020, the EC released three reports: Shaping Europe’s Digital Future, White Paper on Artificial Intelligence, and European Data Strategy, aimed at creating a fluid market and fair competition. Finally, in 2022, the EU made a revolutionary move in antitrust regulation by implementing an ex-post approach and enacting the Digital Markets Act (DMA) and the Digital Services Act (DSA).¹²

⁹“Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.” *European Commission*, 6 May 2015,

eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192.

¹⁰Gupta, Pranjali. “Competition policy in the age of ‘Big Tech’: Assessing the EU’s approach.” (2020).

¹¹“Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.” *European Commission*, 6 May 2015,

eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192.

¹²Ma, Aifang. “A Comparative Look at Antitrust Regulation of the Digital Economy in Europe and China.” *Robert Schuman*, 12 Dec. 2023,

www.robert-schuman.eu/en/european-issues/730-a-comparative-look-at-antitrust-regulation-of-the-digital-economy-in-europe-and-china.

Digital Markets Act: A Paradigm Shift in EU Antitrust Law

Initially, EU's legislations were to a large extent ex-post, where the rulings and decisions by the EC and the Court of Justice came post infringement. With the implementation of the DMA, there has been a shift towards ex-ante regulatory compliance highlighting the precautionary principle.¹³ With this shift the commission sought to take action even before the anticompetitive practices occurred, eliminating the problem of prolonged investigations which allowed big tech to grow bigger and prevent potential harm to consumers. Modern antitrust emphasizes that the main objective of competition laws extends beyond consumer welfare and focuses on the protection of competition. Specific conduct that results in potential anticompetitive harm will be a compelling force in antitrust intervention under the new regulations. The shortcomings of traditional antitrust laws are overcome by the DMA by adapting to a rapidly evolving digital economy, thus signifying a shift to a more proactive and forward-looking approach to competition law.¹⁴

The DMA effected in May 2023, is a result of a decade of EU antitrust enforcement in digital markets. It defined digital sectors as the "sector of products and services provided by means of or through information society services."¹⁵ It also defines gatekeepers as large digital companies providing core platform services like app stores, operating systems, messenger services, and online search engines. To be regarded as a gatekeeper, companies also need to fulfill certain quantitative criteria which include, an annual turnover of more than \$7.9 billion, a market valuation above \$79 billion, and 45 million active users per month in the EU. The DMA imposes on digital gatekeepers the responsibility to allow interoperability of rival services on their platforms and permits users to delete pre-installed proprietary apps. Additionally, they are required to refrain from favoring their own services and tracking user data outside their

¹³ Portuese, Aurelien. "The Digital Markets Act: European Precautionary Antitrust." *ITIF*, 24 May 2021, itif.org/publications/2021/05/24/digital-markets-act-european-precautionary-antitrust.

¹⁴ *European Union: Enactments of DMA and DSA Signal Dawn of a New Era for Tech Regulation*. globalcompetitionreview.com/review/the-european-middle-east-and-african-antitrust-review/2024/article/european-union-enactments-of-dma-and-dsa-signal-dawn-of-new-era-tech-regulation.

¹⁵ Cini, Michelle, and Patryk Czulno. "Digital Single Market and the EU Competition Regime: An Explanation of Policy Change ." *Journal of European Integration* , vol. 44, no. 1, Feb. 2022, pp. 41–57. *Taylor & Francis Online*, <https://doi.org/10.1080/07036337.2021.2011260>.

respective platforms without consent.¹⁶ Finally, the Commission needs to be notified beforehand of any mergers involving Core Platform Services.¹⁷

In September 2023, the Commission took a groundbreaking step by designating six digital companies: Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft as gatekeepers under DMA. It further retains the right to appoint new gatekeepers and assess their compliance. It makes it obligatory for gatekeepers to submit annual compliance reports. Although enforcement lies exclusively with the commission, national authorities collaborate with it on investigations.¹⁸ Non-compliance with rules attracts penalties ranging from 5% to 20% of the annual turnover of companies. Along with monetary sanctions, the Act also enumerates non-financial remedies such as divestiture of a company, as a last resort option for repeated infringements.¹⁹

The DMA overcomes the regulatory fragmentation and increased compliance costs of national legislation

by giving digital platforms information about their obligations in advance.²⁰ It will also result in an increase in the use of alternative app stores as users will not be restricted to using only a specific platform forcing companies like Apple and Google to accommodate third-party app stores, which will potentially impact the advertising incomes of the big techs.²¹ The flexibility of the Act is evident through the amendment and delegation of powers of the

Commission to review and revise the regulations for CPSs.²² However, these stringent regulatory measures are also responsible for stifling innovation and hindering competitive fairness for small

¹⁶ “What Is the EU Digital Markets Act and What Does It Mean for Tech Companies and Consumers?” *World Economic Forum*, 20 Sept. 2023, www.weforum.org/agenda/2023/09/eu-digital-markets-act-big-tech.

¹⁷H.SE. Robertson, Viktoria. “The Future of Digital Mergers in a Post-DMA World.” *European Commission*, 17 Mar. 2023, commission.europa.eu/system/files/2023-05/Morning-4-5-Robertson.pdf.

¹⁸Ma, Aifang. “A Comparative Look at Antitrust Regulation of the Digital Economy in Europe and China.” *Robert Schuman*, 12 Dec. 2023, www.robert-schuman.eu/en/european-issues/730-a-comparative-look-at-antitrust-regulation-of-the-digital-economy-in-europe-and-china.

¹⁹“The Digital Markets Act: Ensuring Fair and Open Digital Markets.” *European Commission*, commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en.

²⁰“The Digital Markets Act: Ensuring Fair and Open Digital Markets.” *European Commission*, commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en.

²¹“What Is the EU Digital Markets Act and What Does It Mean for Tech Companies and Consumers?” *World Economic Forum*, 20 Sept. 2023, www.weforum.org/agenda/2023/09/eu-digital-markets-act-big-tech.

²²“Digital Markets Act – Overview.” *Competition Notes*, 13 Mar. 2024, hsfnotes.com/crt/2024/03/13/digital-markets-act-overview/#:~:text=How%20is%20the%20DMA%20%E2%80%9Cfuture,to%20the%20list%20of%20CPSs.

and medium-sized firms. Another issue these small firms could potentially face is the relative increase in costs of implementation under DMA.²³ These concerns need to be addressed as they will play a significant role in determining DMA’s influence on competition law dynamics across the globe.

Addressing Practical Implications of the Digital Markets Act Beyond EU Borders

While the effects of DMA on the European market are still unknown, its recognition by countries such as Turkey, Australia, Brazil, India, the United Kingdom, etc illustrates their confidence in DMA in eliminating competition concerns among digital platforms.²⁴ However, countries while formulating their regulatory framework based on DMA need to take into account certain limitations and implications surrounding DMA.

Firstly, countries need to realize that regulation is not the only reasonable approach while dealing with competition concerns. But, when it does consider a regulatory approach, an evidence-based approach

must be prioritized, which is not possible at a time when digital markets are still at a nascent stage. Secondly, the DMA's universal application is untested as it principally affects the European region. Digital markets are fairly new and unique to every country. A uniform application of rigid legislation such as the DMA could potentially negatively affect the economy, especially in developing nations. For instance, in India, big tech companies have played a major part in integrating MSMEs within the digital market space through social media and e-commerce.²⁵ Thirdly, it ignores the benefits of pro-competitive practices such as self-preferencing, which makes it more convenient for consumers by integrating complementary products. Fourthly, aiming for fair distribution of benefits can backfire as it could lead to reduced profits and consequently lesser innovation. Instead, the focus should be on establishing and developing innovative technology, before determining the distribution of benefits.²⁶ Lastly, the

²³ Portuese, Aurelien. "The Digital Markets Act: European Precautionary Antitrust." *ITIF*, 24 May 2021, itif.org/publications/2021/05/24/digital-markets-act-european-precautionary-antitrust.

²⁴ Nóra Kiss, Lilla. "One Import Nations Do Not Need: The EU's Digital Markets Act." *ITIF*, 7 Dec. 2023, itif.org/publications/2023/12/07/nations-do-not-need-eu-digital-markets-act.

²⁵ Suri, Shreya. "Is The To-be EU's Digital Markets Act the Right Way Forward for India?" *Times of India Blog*, 24 Dec. 2022, timesofindia.indiatimes.com/blogs/voices/is-the-to-be-eus-digital-markets-act-the-right-way-forward-for-india.

²⁶ Manne, Geoffrey A. "European Union's Digital Markets Act Not Suitable for Developing Economies, Including India." *Times of India Blog*, 14 Feb. 2023,

ex-ante approach of setting quantitative standards for industries that are still in the developing stage imposes preventive measures on digital companies, which do not take into account possible efficiencies that benefit consumers.

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While implementing strict antitrust legislation like DMA, countries need to examine the possible impact such measures can have on markets and consumers. Severe measures against digital companies taken earlier by the EU have backfired. It has led to reduced investor interest in European startups, benefited competitor countries like China, limited European users' access to larger networks, and created uncertainties for companies providing digital services to the EU.²⁸

Modern legislations like DMA are bound to dominate discussions on antitrust policies worldwide. However, the way they are enforced in different territories may differ.²⁹ Giving the EU legislation a transnational character demands integration of certain key aspects such as embracing a hybrid model incorporating both hard and soft law and a regulatory approach that encourages stakeholder contribution. Policymakers need to incorporate inter-agency cooperation in antitrust regulations and keep in touch with the latest advancements in technology.³⁰ Innovation and antitrust policies must go hand in hand.

Conclusion

The digital revolution has made platforms an indispensable player in households and global economies. They have become all pervasive owing to which the need to regulate them has become inevitable.

Antitrust policies in the digital space warrant examination of market dynamics and existing regulatory frameworks. They play a key role in international relations and require novel and personalized approaches. Legislations like the DMA which are influencing antitrust policies, not only in Europe but worldwide, are striving towards more transparent and

timesofindia.indiatimes.com/blogs/voices/european-unions-digital-markets-act-not-suitable-for-developing-economies-including-india.

²⁷ Nóra Kiss, Lilla. “One Import Nations Do Not Need: The EU’s Digital Markets Act.” *ITIF*, 7 Dec. 2023, itif.org/publications/2023/12/07/nations-do-not-need-eu-digital-markets-act.

²⁸ Suominen, Kati. *On The Rise: Europe’s Competition Policy Challenges to Technology Companies*. 21 Oct. 2022, www.csis.org/analysis/rise-europes-competition-policy-challenges-technology-companies.

²⁹ “Regulating Platforms the EU Way? The DSA and DMA in Transatlantic Context.” *Wilson Center*, www.wilsoncenter.org/article/regulating-platforms-eu-way-dsa-and-dma-transatlantic-context.

³⁰ Schrepel, Thibault. “Beatriz Kira: ‘Rethinking Regulation for Dynamic Digital Ecosystems’ - Network Law Review.” *Network Law Review*, 16 Feb. 2024, www.networklawreview.org/regulating-dynamic-ecosystems.

competitive digital ecosystems.³¹ However, turning a blind eye to the defects of DMA will risk innovation and the growth of digital markets. Being a relatively new legislation, countries while evaluating the applicability of DMA need to consider the national environment, and individual circumstances and prioritize alternative solutions.³² Antitrust initiatives should try to find a balance between stringent regulations on digital ecosystems and promoting innovation.

³¹ “Regulating Platforms the EU Way? The DSA and DMA in Transatlantic Context.” *Wilson Center*, www.wilsoncenter.org/article/regulating-platforms-eu-way-dsa-and-dma-transatlantic-context.

³² Nóra Kiss, Lilla. “One Import Nations Do Not Need: The EU’s Digital Markets Act.” *ITIF*, 7 Dec. 2023, itif.org/publications/2023/12/07/nations-do-not-need-eu-digital-markets-act.