### Central ideas of the DMA

#### Fair and contestable digital markets

| Gatekeepers, the most powerful actors in the digital ecosystem – Designation based on quantitative and qualitative criteria | Directly applicable and clearly defined **ex ante obligations** – Internal Market harmonisation | Comprehensive **remedies**, including structural measures – Exclusive **EU-level enforcement** by the Commission | **Complementarity** alongside competition law, P2B Regulation and DSA |
Core platform services (CPS)

- Online intermediation services
- Online search engines
- Operating systems
- Cloud computing
- Video sharing platforms
- Social networks
- Online Advertising
- Web browsers
- Virtual assistants

Number independent interpersonal communication
Focus on gatekeepers and the core platform services

• Highly concentrated platform services

• One or very few large digital platforms set the commercial conditions irrespective of their competitors, customers or consumers

• Few large digital platforms act as gateways for business users to reach their consumers and vice-versa

• Gatekeeper power often misused by means of unfair behaviour
Criteria for the designation of gatekeepers

**Quantitative criteria (rebuttable presumption)**

- **Significant impact on the internal market**
  - Annual turnover of ≥ €7.5 billion in each of last 3 financial years
  - Average market capitalisation or equivalent fair market value ≥ €75 billion in the last financial year
  - At least 3 Member States

- **Important gateway for business users to reach end users**
  - >45 million monthly active end users (MAU) in the Union
  - >10,000 yearly active business users in the EU in the last financial year

- **Entrenched and durable position**
  - Gateway thresholds (see above, ie >45mn MAU plus >10k business users) met in the last three financial years

**Qualitative criteria**

- *Qualitative criteria – e.g. turnover and market capitalisation, number of business and end users, network effects, scale and scope effects, user lock-in, conglomerate, corporate structure or vertical integration, etc*
Entry into force of the Regulation
Entry into application of the Regulation
Notification of user numbers
Designation of gatekeepers + market investigations
Application of the obligations

1 Nov 2022
2 May 2023
3 July 2023
5 Sep 2023
7 March 2024
Summary of designations

Gatekeeper Designations

Gatekeeper
- Alphabet
- Amazon
- Apple
- ByteDance
- Meta
- Microsoft

Core Platform Service
- SOCIAL NETWORK
  - Tiktok
  - Facebook
  - Instagram
  - LinkedIn

- INTERMEDIATION
  - Google Maps
  - Google Play
  - Google Shopping
  - Amazon Marketplace
  - App Store
  - Meta Marketplace

- ADS
  - Google
  - Amazon
  - Meta

- BROWSER
  - Chrome
  - Safari

- VIDEO SHARING
  - Youtube

- SEARCH
  - Google Search

- OPERATING SYSTEM
  - Google Android
  - iOS
  - Windows PC OS
Timeline for quantitative designations

Existing designations

- Notification: July 2023
- Designation of gatekeepers: September 2023
- Deadline to comply: January 2024

Potential new designations

- New notifications: Feb. 2024
- New designations: March 2024
- New deadlines to comply: Apr. 2024
Rebuttal – exceptional mechanism

Rebuttal mechanism

Exceptional tool

High burden of proof ("sufficiently substantiated + manifestly putting presumption into question")

Three scenarios

Market investigation

May lead to rejection or acceptance

- Microsoft Bing
- Microsoft Edge
- Microsoft Ads
- Apple iMessage

Upfront Rejection

Designated as gatekeeper

- TikTok
- Facebook Messenger
- Facebook Marketplace

Acceptance

Where evidence overwhelmingly supports that no gatekeeper

- Samsung Browser
- Alphabet Gmail
- Microsoft Outlook
Timeline for market investigations

Qualitative Market Investigation on iPad OS

- Opening of market investigations: September 2023
- Potential new designations: February 2024
- Deadline to comply: August 2024
- Potential new designations: September 2024
- Deadline to comply: March 2025

Market investigation on rebuttals
<table>
<thead>
<tr>
<th>Platform</th>
<th>CPS category</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Google Search</td>
<td>Search</td>
<td>Delineation clarified based on Recital 51 DMA</td>
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<tr>
<td>Google Shopping</td>
<td>Intermediation</td>
<td></td>
</tr>
<tr>
<td>Google Maps</td>
<td>Intermediation</td>
<td></td>
</tr>
<tr>
<td>Play Store</td>
<td>Intermediation</td>
<td>Designated irrespective of the device on which it is accessed</td>
</tr>
<tr>
<td>YouTube</td>
<td>Video sharing</td>
<td></td>
</tr>
<tr>
<td>Android</td>
<td>Operating system</td>
<td>Delineation clarified re. the middleware</td>
</tr>
<tr>
<td>Google Chrome</td>
<td>Web browser</td>
<td></td>
</tr>
<tr>
<td>Online Ads Services</td>
<td>Advertising</td>
<td>All the advertising services, tools, features, and functionalities that interact with each other</td>
</tr>
<tr>
<td>Gmail</td>
<td>NIICS</td>
<td>Rebuttal accepted</td>
</tr>
</tbody>
</table>
Online intermediation service **Amazon marketplace** provided through Amazon Store

Online advertising service **Amazon Advertising**

- Constitutes a distinct CPS from the Amazon marketplace;
- Comprises all the advertising services, tools, features, interfaces, and functionalities that interact with each other.
Designation of the **AppStore** and **Safari browser** each as **one CPS across devices**
- One and the same purpose irrespective of the device (intermediation of app sales and offering / accessing web content)

Designation of the **iOS operating system** (for iPhones)
- The operating system is intrinsincally linked to the device it enables
- iOS for iPhones serves a distinct purpose
- Launch of qualitative market investigation into iPadOS

**Launch of a rebuttal market investigation for iMessage (NIICS)**
- Rebuttal sufficiently substantiated, in particular the relative scale of iMessage
- But need to further assess the arguments through a market investigation
Designation of TikTok as an Online Social Networking Service

- TikTok is an Online Social Networking Service
- ByteDance’s rebuttal arguments did not meet the threshold for opening a market investigation.
Meta notified the NIICS Whatsapp and a single “ad-supported OSN” including Facebook, Instagram, Meta Ads, Messenger, Marketplace

Commission disagreed with this all-encompassing approach and considered each of these services to be a distinct CPS based on the DMA Annex

In particular:

- **Facebook** and **Instagram** are provided as clearly distinct services & are not used for the same purpose
- **Messenger** distinct from Facebook as it meets the definition of “NIICS” and is a self-standing service

Rejection of *rebuttal arguments* re. **Messenger** and **Marketplace** as insufficiently substantiated
Designation of the operating system **Windows PC OS**
- Processor neutral
- It includes OS installed on PCs and those delivered as DaaS solution

Designation of the online social networking service **LinkedIn**
- With particular analysis of certain integrated services within the social network

Non-designation of the NIICS **Outlook.com**
- Sufficiently substantiated arguments demonstrating Outlook.com does not meet the criteria in Article 3(1) DMA (i.e., being an important gateway)

Sufficiently substantiated rebuttal arguments but need for a market investigations to further assess them for **Microsoft Edge**, **Microsoft Bing**, and the online advertising service **Microsoft Advertising**
Non-Designation of the Samsung Web Browser

• **High rebuttal threshold**: sufficiently substantiated arguments to manifestly call into question the quantitative presumptions

• Samsung’s arguments **meet this threshold**
  • Samsung Web Browser overall scale of activity in the CPS category very small
  • Very specific operational circumstances
And now what?

<table>
<thead>
<tr>
<th>On-going process</th>
<th>Possible new notifications and designations</th>
<th>On-going and possible new market investigations</th>
<th>Possible legal challenges?</th>
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<td>Intensified compliance discussions – all-inclusive process</td>
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</table>
Gatekeepers have to:

- Allow third parties to **inter-operate with the gatekeeper’s own services** in certain specific situations
- Allow their business users to **access the data that they generate** in their use of the gatekeeper’s platform
- Provide companies advertising on their platform with the **tools and information** necessary for advertisers and publishers to carry out their own **independent verification** of their advertisements hosted by the gatekeeper
- Allow their business users to **promote their offer and conclude contracts** with their customers **outside the gatekeeper’s platform**
Gatekeepers may not:

- Treat their own services and products more favourably in ranking than similar services or products offered by third parties on the gatekeeper's platform.
- Prevent consumers from linking to businesses outside their platforms.
- Prevent users from un-installing any pre-installed software or app.
- Track end users outside of the gatekeepers' core platform service for targeted advertising, without having been granted consent.
Governance and enforcement

**Governance**
- Commission sole enforcer
- Close cooperation and coordination with national competition authorities
- Pre-investigation into DMA infringements

**Investigatory powers**
- Known toolbox, such as:
  - Compliance reports
  - Requests for information
  - On-site inspections
  - Ability to take interviews

**Enforcement powers**
- Fines up to 20% of annual turnover in case of repeated infringements
- Systematic non-compliance can lead to structural measures and a “merger moratorium”