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The Anatomy of the DMA Process: An Example of Responsive Regulation

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Abstract

This paper studies the DMA implementation process based on evidence obtained from 21 semi-structured interviews with DMA stakeholders. In the first section, we present the responses of these stakeholders: gatekeepers, business users, and other third parties– on the way they have interacted with the Commission and each other. We characterise this as a series of ongoing dialogues or repeated interactions with various feedback loops between the participants in order to arrive at a view of what compliance means. These dialogues may also be a way in which the Commission can exercise 'soft power 'by guiding or influencing the actions of gatekeepers without or before resorting to more formal legal measures. The second section considers the more formal legal measures and the various tools that were included in the DMA to allow the Commission to ensure effective implementation or sanction non-compliance. These include the compliance reports which gatekeepers are required to produce and publish, the compliance officer which gatekeepers are required to appoint, the process for obtaining or providing further guidance by way of specification decisions and the non-compliance decisions and fines. We examine stakeholder responses to these measures and integrate these with a discussion of the emerging decisional practice. The last section concludes with key messages to improve the DMA implementation process and trust among stakeholders.

Key points

A series of semi-structured interviews with the main stakeholders involved in DMA enforcement show the complex interplay between formal legal instruments and informal regulatory dialogue and highlight the indispensable role of informal interactions between the Commission, gatekeepers, and business users for addressing information asymmetries, interpreting ambiguous provisions, and adapting compliance measures to rapidly evolving digital markets.

Looking forward, the DMA enforcement requires a recalibrated balance between flexibility and predictability. Informal dialogue must be supported by greater transparency, clearer guidance on objectives, and structured multilateral engagement to avoid reliance on bilateral negotiations alone. At the same time, the Commission should be willing to escalate to formal instruments where necessary, coupled with transparent prioritisation criteria and more standardised compliance reporting.

The biggest challenge is to increase trust in the regulatory process among all stakeholders; this is something that is developed over time and through repeated interactions and may involve parties being more prepared to take risks from time to time.

Keywords

Tech platforms, digital regulation, Digital Markets Act, Responsive regulation

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I. Introduction

Under the Digital Markets Acts (DMA),[1] the designated gatekeepers[2] were expected to comply with the list of 'dos and don'ts' within six months of designation. For most of them, this date was 7 March 2024. However, debate continues as to whether all gatekeepers are complying with all their obligations. This should not be surprising: the DMA creates obligations that require some fundamental changes in the ways gatekeepers operate and opens many digital markets to competition.[3] In order to steer gatekeepers into compliance, the DMA has created a series of formal enforcement pathways. These are complemented by informal regulatory dialogues which are not provided for expressly in the law but which, as we show in this paper, form an essential component of DMA enforcement. This paper seeks to shed light on the practice of regulatory dialogue, what outcomes can be achieved in this manner and how this links to the formal enforcement mechanisms in the DMA.

The existence of informal regulatory dialogues between gatekeepers and the Commission is mentioned regularly, including in Commission reports,[4] decisions and public enforcement workshops.[5] . In addition, the Commission has encouraged gatekeepers to engage directly with firms, emphasising that this is part of demonstrating compliance.[6] In order to shed further light on these kinds of informal interactions, we interviewed 21 entities between September 2024 and February 2025: three designated gatekeepers, 14 business users, two civil society organisations and two regulatory bodies.[7] This is a fairly small sample[8] but many views expressed were consistent across interviewees. Moreover, the picture we formed is also, in certain respects, confirmed by tracing the process of DMA enforcement as reported in the four enforcement decisions that the Commission has adopted since the interviews.[9]

The paper is structured in this manner. Section 1 reports our findings on the interactions between the Commission, the gatekeepers, the business users and other interested parties. Section 2 reports on the use of more formal enforcement tools by the Commission. Section 3 briefly concludes.

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[1] Regulation 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives 2019/1937 and 2020/1828 (Digital Markets Act), OJ [2022] L 265/1.

[2] At the time of writing, seven companies were designated as *gatekeepers* for 23 core platform services and are subject to DMA obligations: *Alphabet* for 8 services (Android, Chrome, Google Play, Google Search, YouTube, Google Maps, Google Shopping, Google Ads), *Amazon* for 2 services (Amazon Marketplace and Amazon ads), *Apple* for 4 services (iOS, iPadOS, Safari and Apple App store), *Booking* for 1 service (Booking.com), *Byte Dance* for 1 service (Tiktok), *Meta* for 5 services (Facebook, Instagram, WhatsApp, Messenger and Meta Ads) and *Microsoft* for 2 services (Window PC OS and LinkedIn): https://digital-markets-act.ec.europa.eu/gatekeepers_en. For an analysis of the Commission designation decisions: . F. Bostoen and G. Monti, The rhyme and reason of gatekeeper designation under the Digital Markets Act, *Jour. of Antitrust Enforcement* (2025) Journal of Antitrust Enforcement, https://doi.org/10.1093/jaenfo/jnae054 .

[3] K. Bania and D. Geradin, *The Digital Markets Act: A Guide to the Regulation of Big Tech in the EU* (Bloomsbury Publishing, 2024).

[4] Second Annual Report of the Commission of 24 April 2025 on DMA Activity, COM(2025)166.

[5] E.g. Case DMA.100185, *Apple – Operating Systems – iOS – Art 6(3)* para 5, explaining 'intense regulatory dialogue' led to new measures to comply, Case *DMA 1000.204, SP – Apple - Article 6(7) – Process* para 8, noting eight dialogues before the Commission decided to initiate the specification process, Case DMA.100203 *Apple – Features for Connected Physical Devices*, para 44 explaining that dialogue has been ongoing since designation.

[6] Second Annual Report (above n 4) para 25.

[7] An anonymised summary of the interviews and the questionnaire is available in R. Feasey G. Monti and A. de Streel, *DMA@1: Looking Back and Ahead* (CERRE, 2025) 41. We held a semi-structured interview with each stakeholder, lasting approximately one hour.

[8] To give an idea of the number of DMA stakeholders, some 500 people attended Apple's 2025 compliance workshop.

[9] In March 2025, the Commission adopted two specification decisions concerning Apple's interoperability obligations (above n 5) One month later, the Commission adopted two non-compliance decisions: Commission Decision of 23 April 2025, DMA.100109 – *Apple – Online Intermediation Services – app stores – AppStore – Art. 5(4)*, Commission Decision of 23 April 2025, DMA.100055 – *Meta - Article 5(2)*.

II. Informal interactions between stakeholders

In this section, we consider first the bilateral dialogues between the Commission and gatekeepers and between the Commission and the business users and other interested parties (such as consumer or civil society groups) and then the multilateral dialogues.

A. Bilateral dialogues between the Commission and the gatekeepers

Different forms of dialogue

Although the DMA does not provide for any regulatory dialogue outside of the formal specification decision process found in Article 8 of the DMA, the interviews show that there has been extensive interaction between the gatekeepers and the Commission both prior to and after the compliance deadline of 6 March 2024.[10] This partly reflects the realisation on both sides that many aspects of the DMA are not self-enforcing in the way that some have claimed or hoped. The gatekeepers had sought clarification as to how different actions which they were contemplating would be viewed by the regulator while the Commission was keen to understand the actions which gatekeepers proposed to take or were taking prior to March 2024.

As the DMA does not require gatekeepers to engage with the Commission nor does it prescribe how any such dialogue should be conducted, different gatekeepers have adopted different engagement strategies following their best corporate interests. Similarly, the Commission too can decide whether and how to engage in informal dialogues. The interviews suggest that there were some differences in the approach taken by different Commission staff. This is perhaps not surprising as the teams which the Commission has assembled to oversee the implementation of the DMA are drawn from two different Directorates-General (COMP and CNECT), that the internal organisation had only been established a few months prior the compliance deadline and that the workload during this initial engagement phase was, by all accounts, very demanding. DG COMP has a well-established and clearly defined approach to engagement with external parties that are suspected of having infringed competition law or are engaged in a merger. Some gatekeepers see this approach replicated in the DMA while this approach is very different from the more regulatory dialogues which sectoral regulators engage in.[11]

DG COMP's approach to engagement has tended to dominate at the beginning, with some complains about very formalistic reliance upon lengthy Requests for Information (RFIs) from the Commission to gather information and a very legalistic approach in general.[12] This may also to some extent reflect the approach to engagement being taken by the gatekeepers themselves as they are also likely to be more familiar with antitrust proceedings in Europe, particularly in recent years, and may lack experience in engaging in regulatory dialogues. That said, we would expect that a greater degree of consistency and predictability in the engagement between gatekeepers and Commission will develop over time[13] and which is more based on a regulatory mode than an antitrust mode.[14] This may occur as the DMA units develop their own internal culture and approach distinctive from the parent Directorates-General from

[10] Cf. G. Monti 'The Digital Markets Act: Improving Its Institutional Design' (2021) 5)2 European Competition and Regulatory Review 90, pp.93-5.
[11] https://cerre.eu/publications/implementing-the-dma-substantive-and-procedural-principles/
[12] Confirmed by e.g. Case DMA 100.203 (above n 5) para 24, noting that RFIs were sent before proceedings are initiated.
[13] It has also been suggested by some interviewees that the Commission may have been consciously experimenting with different engagement models in order to assess which was most effective and that, at some point, it will consolidate around a particular model.
[14] This regulatory nature of the DMA has been clearly underlined in the *Tik-Tok designation* case by the EU General Court which decided that the implementation of the DMA could not be based on antitrust methodologies and economics, such as market definition, dominance assessment or theory of harm identification: T-1077/23 *Bytedance (Tik-Tok gatekeeper designation)*, paras 237 and 298, ECLI:EU:T:2024:478.

which the staff have been drawn. Indeed, it would be preferable if the DMA Unit were to become, *de jure*, an independent entity within the Commission with separate premises, budget and identity of its own. This team should also have close links to (or co-exist with) those staff implementing the Digital Services Act (DSA),[15] since there are likely to be some synergies between the two and it is important to avoid conflicts.

Another issue raised is the perennial problem in regulation: information asymmetry,[16] which is particularly acute in sectors like digital which are complex and constantly evolving. Although individual gatekeepers often hold substantial information advantages over the Commission, the Commission can reduce this asymmetry if it is engaging with a number of gatekeepers on implementation of the same obligation. This is why, as we learned from stakeholders, the Commission adopted a matrix organisation so that, in addition to staff dedicated to particular gatekeepers, staff also have horizontal visibility of the actions being taken or proposed by different gatekeepers in relation to the same obligation. Although most business user interviewees had not seen evidence that the Commission is comparing or benchmarking different gatekeepers, one gatekeeper reported that its compliance on certain obligations had been benchmarked against other gatekeepers. The capacity to benchmark performance across gatekeepers should however not come at the expense of affording gatekeepers the liberty to design and differentiate their products in the way they feel is most appealing for consumers, and therefore to compete on the digital markets.[17]

Guidance on compliance acceptability and enforcement strategies

While the bilateral interactions between the gatekeepers and the Commission have been extensive,[18] the gatekeepers complained that the Commission was sometimes reluctant to provide clear guidance on substantive issues on Article 5 and 6 obligations in order to help them self-assess whether their proposed actions were compliant.[19] In particular, contrary to the Japanese FTC which has adopted guidelines on the enforcement of the Mobile Software Competition Act (which is similar to the DMA) before the compliance deadline,[20] the Commission has refused to do so. Various explanations have been offered for the absence of guidance. First, the Commission considers that some obligations are self-executing and therefore do not need further guidance. Second, as already indicated, the Commission may be influenced by its antitrust mindset where assessing and providing feedback on remedies does not generally require a detailed specification of what a compliant remedy might be. A competition authority tends to proceed instead by rejecting proposals which it considers would be insufficient to address concerns until it arrives at something acceptable.[21] Third, the Commission may lack a clear assessment framework against which to judge proposals that are being put to it. In other words, Commission staff are not sufficiently clear about how to weigh up different considerations or trade-offs when assessing proposals and different staff may have divergent approaches or arrive at different conclusions. Fourth and more subtly, there may be an asymmetry in risk appetite as the Commission is concerned that any guidance could be exploited by the gatekeeper (or possibly a business user or other aggrieved party) in

[15] Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31, OJ [2022] L 277/1.
[16] J.J. Laffont and J. Tirole, *A Theory of Incentives in Procurement and Regulation* (MIT Press, 1993).
[17] C. Cennamo and F. Zhu**,** *Toward a Better Understanding of Open Ecosystems: Implications for Policymakers* (2023) caution against regulatory interventions that may undermine the flexible and evolving nature of digital ecosystems**,** warning that excessive standardization could transform diverse, innovative platforms into rigid, commoditized networks.
[18] Confirmed by the case-law, e.g. Case DMA.100185 (above n 5) and Case DMA.100203 (above n 5), (para 17).
[19] However while they complained about the lack of legal guidance, no gatekeeper so far requested that the Commission formally specify the detail of an obligation while they can do so, see section 2(B) below.
[20] Japan Fair Trade Commission Guidelines of July 2025 on Mobile Software Competition Act.
[21] This may also be the case for business users which have difficulty in determining what actions the gatekeeper should take (as opposed to what they should not do) or the lack of agreement amongst different business users as to what that should be.

subsequent litigation. The Commission may think that gatekeepers are seeking guidance not in order to improve their compliance but for other strategic purposes, e.g. the Commission provides guidance whilst it is still subject to an information disadvantage and is unable to change its position later.

This perceived reluctance on the part of the Commission to provide informal guidance to gatekeepers may incentivise them to pursue an incrementalist approach to compliance, in which some actions were taken prior to March 2024 and others at different times since.[22] This is to some extent unavoidable when complex changes have to be made and as gatekeepers change their existing products. However, this is a concern to the extent that this contributes to delays in compliance or undermines the effectiveness of the changes being implemented (e.g. repeated changes to choice screens could lead to consumer fatigue and so undermine their effectiveness as a measure to improve contestability).

Therefore, the Commission should be willing to give more precise indications on the specific or concrete objectives to be achieved for each core platform service and their related obligations as well as more feedback on whether potential measures proposedly the gatekeepers would be accepted by the Commission as being compliant. However, in order to provide greater reassurance to business users, the Commission may require the gatekeeper to provide evidence of performance in trials against output indicators (i.e. conducts that arise from users engaging with gatekeepers) or outcome indicators (i.e., consequence of those users conducts for market structure) and gatekeepers should be prepared and willing to provide such evidence when requesting guidance on specific proposals.[23] This is because it is for gatekeepers to demonstrate compliance and efforts to do so may allow the Commission to be more confident about providing guidance.[24]

The gatekeepers also complained that the Commission was reluctant to signal when it would escalate its enforcement activity by moving to a more formal mode of interaction, either through opening a specification proceeding or a non-compliance proceeding. Here, there is a delicate balance to be struck between, on the one hand, providing gatekeepers with an opportunity to address the Commission's concerns as part of the informal regulatory dialogue and without that dialogue breaking down and, on the other hand, preventing gatekeepers to engage in strategic behaviour by delaying actions until the last minute in the knowledge that no sanctions would follow from this.

B. Bilateral dialogues between the Commission and business users or other parties

As with gatekeepers, the DMA does not expressly require informal engagement or dialogue between the Commission and business users or other third parties, like consumer representatives or civil society organisations. Yet, such engagements have occurred even though they have been less intense than those with the gatekeepers. The majority of those interactions with Commission were initiated by the business users, sometimes before the compliance deadline of March 2024, and all stakeholders we spoke to indicated that interactions increased significantly since then.[25]

While business users welcomed the Commission's open door policy, they thought that the uncertainty about how the information they provided was used makes it difficult to plan their engagement or allocate resources, and means that they often can only guess at the context within which a particular question is being asked if clarifications are sought. Once they have responded to the Commission request, they

[22] Examples of this are Meta's pay or consent model, which was then revised to include a non-personalised option in Case DMA 100.055 (above n 9) and the changes Apple initiated after proceedings were initiated in Case DMA.100185 (above n 5).
[23] On the differences on those types of indicators, R. Feasey and A. de Streel, *DMA Output Indicators* (CERRE, 2024).
[24] DMA, Article 8(1), requiring gatekeepers to ensure and demonstrate compliance.
[25] One civil society organisation was also active in providing detailed information to the Commission explaining what it saw as compliant and non-compliant behaviour: https://www.beuc.eu/position-papers/implementation-meta-apple-google-amazon-bytedance-and-microsoft-their-obligations

generally have no insight into what happens next or what the impact or consequences of their engagement might be. Some even described their interactions with the Commission as occurring within a 'black box 'in which it is difficult to determine what the Commission does with the information it has received, what it thinks of it, or what effect it has on the conduct of the gatekeeper. Most business users felt that better visibility (including of gatekeeper responses to points which they had made to the Commission) would allow them to engage more effectively with the Commission and that this, in turn, should enable the Commission to engage more effectively with the gatekeepers.

One major concern is that business users and other third parties may become discouraged and disillusioned with the DMA if they perceive that their engagement is not having any demonstrable impact. Some interviewees say they could see the effect of their input on changes in the conduct of some gatekeepers, but others were less sure and almost all expressed frustration about the extent of compliance achieved by the gatekeepers. There is a question as to whether the expectations of some business users about what the DMA will achieve and how it will operate have been realistic (and whether the Commission ought now to reset expectations) but even if that were so, the active engagement and participation by business users remains critical for the success of the DMA for two reasons: on the one hand, the Commission depends on input from business users and other parties to reduce information asymmetry and, on the other hand, the effectiveness of the measures in the DMA depends upon business users and consumers actively engaging with the opportunities that the DMA is intended to create for them.

On the need for more legal predictability through Commission guidance, many business users tended to take the opposite view to gatekeepers as they thought the actions required to comply with the DMA were relatively clear, or at least that it was clear that certain actions that had been taken by the gatekeepers were non-compliant. Some business users also thought that the Commission was more reluctant to provide guidance on economic and pricing issues (such as the level of access fees) than on technical issues. They attributed this partly to the Commission's reluctance to be seen to be dictating commercial terms between gatekeepers and business users.

C. Multilateral dialogues

From our sample of business users, the majority reported infrequent interactions with the gatekeepers and only a minority was able to engage frequently with gatekeepers. Where these interactions have occurred, business users explained that they often have involved gatekeeper account managers doing outbound communications rather than soliciting feedback from customers or being willing or able to enter into a meaningful dialogue about the approach being taken. Some business users reported useful bilateral engagement with specific gatekeepers, but overall, this has not been undertaken in a systematic way and has had relatively limited impact on the measures that gatekeepers have chosen to adopt.

Nevertheless, reliance on bilateral engagement with the Commission rather than direct bilateral engagement between gatekeepers and business users has a number of consequences. Most obviously it places the Commission in the position of intermediary between the gatekeeper and the business users. The effectiveness of the implementation is then entirely dependent on how effective the Commission is at fulfilling this role. It also means that the speed and scope of the process are, to a large degree, determined by the resources that are available to the Commission

Specifically, on the public DMA workshops organised by the Commission in March 2024,[26] there was a mixed response. About half of respondents felt that these were useful in forcing the gatekeeper to explain its position, while the other half felt there was not sufficient space for constructive discussion. Nobody suggested that these meetings had a significant impact on gatekeeper conduct or implementation. Most business users and one gatekeeper felt the Commission was uncertain about what it was seeking to achieve from these meetings and appeared reluctant to intervene or direct the meeting towards any particular objective.

Some interviewees felt there should be more - but selective - multilateral engagements involving the Commission, gatekeepers, business users and other relevant national authorities if necessary.[27] Most accepted that the precise configuration of the meeting (public or private) and the type of attendees (lawyers or engineers, one gatekeeper or several if the same obligation is discussed) would depend on the objectives being pursued. Most thought the Commission would need to take the lead to ensure these engagements were effective, both in terms of initiating the dialogue and specifying who is expected to contribute and in terms of chairing and refereeing the meeting itself (to a greater extent than it has appeared willing to do to date). In order to do this, the Commission would itself need to have a clear set of objectives for each meeting. After a series of these multilateral dialogues are concluded, the Commission should evaluate how to make this approach more effective and how best practices are identified across the various workshops. In the first instance, the key considerations should be about identifying relevant participants to these multilateral dialogues so as to ensure that all parties affected are represented, develop a process to facilitate exchanges of relevant information, and establish processes to structure the dialogue.

In our view, for those multi-lateral interactions, the Commission should consider how digital communications tools could be used to support the implementation of the DMA, and how the normal business processes which gatekeepers already use to interact with counterparties can be applied in a regulatory context. Instead of the traditional approach of face-to-face meetings and written documents favoured by the Commission and legal services, there may be opportunities to use the kinds of digital tools that are already employed by the gatekeepers and the business users in their ordinary course of business.

An example of where a multi-lateral dialogue might assist is the design and testing of choice screens.[28] Implementation has tended to proceed incrementally, with gatekeepers making a series of modifications, presumably in response to feedback from the Commission and others that the existing measures were not judged to be effective.[29] An alternative approach would have been for the Commission to convene a series of meetings for all parties to agree an A/B testing programme and research methodology for testing different choice screen formats which could be undertaken either by the gatekeeper itself or by some mutually agreed third party. The results of these tests could be used by the gatekeeper to inform their implementation programme before introducing it into a live environment and would provide business users and third parties with an understanding of why the gatekeeper had chosen one approach

[26] https://digital-markets-act.ec.europa.eu/events/workshops_en. Since the interviews took place, the Commission organised a second round of DMA workshops in June/July 2025 on which we could not gather feedback.
[27] We understand that these multilateral meetings have been set up by the Commission for certain obligations.
[28] A. Fletcher, Choice Architecture for end users in the DMA (CERRE, 2024).
[29] DMA Second Annual Report (2025) (above n 4) where it is noted that the Commission 'continues to engage in regulatory dialogue with Alphabet regarding the roll-out of choice screens (para 36), it is "keeping Microsoft's compliance plan under review" (para 37) and Apple has announced a series of changes in 2024 with further updates planned in Spring 2025 which will be closely monitored for compliance (para 35).

rather than another. This might have allowed all parties to arrive at a consensus on what changes to be made, either more quickly or even at all.

Some were concerned that multilateral engagement would expose conflicts between business users which the gatekeepers would then seek to exploit in order to delay compliance. But if multilateral engagements were to become more common, business users might have incentives to resolve some of these disputes before engaging with the Commission, rather than leaving it to the Commission to do so. Another issue is the concern on the part of some business users over the threat of retaliation by some gatekeepers from which they depend if they complained or otherwise engaged with the Commission on the DMA, the so-called fear factor.[30] Trade bodies or other representative organisations can go some way towards aggregating and reconciling views and shielding individual members but, there are also benefits in regulators dealing directly with individual companies rather than representative organisations that are constrained in what they can say.

II. Formal instruments

Informal interactions occur both because it would be impossible to implement the DMA without some dialogue of this kind and because such informal dialogues and the exercise of soft power and persuasion can often be faster, more flexible, and require fewer resources than the application of the formal legal instruments which are contained in the legislation. However, regulated firms are more likely to be susceptible to the influence of soft power if formal instruments and sanctions represent effective deterrents and provide for effective remedies. [31] The DMA envisages that there will be both internal and external mechanisms to ensure implementation and compliance by a gatekeeper. Internally, the gatekeeper is required to appoint a compliance officer with duties to inform and advise the management of the company as to its level of compliance and to organise, monitor and supervise the actions being taken by the gatekeeper to implement the DMA.[32] Externally, the gatekeeper is required to produce a compliance report, a public version of which is available to business users and other third parties who are expected to scrutinize it and draw the Commission's attention to those areas where they consider the actions taken by the gatekeeper have fallen short.[33]

Whether as a result of this feedback or on the basis of its own assessment, the Commission can at any time commence proceedings to assess whether the actions taken by the gatekeeper are or are not compliant and may adopt a decision if it concludes they are non-compliant.[34] This decision will require the gatekeeper to cease the non-complaint actions and inform the Commission of the actions it plans to take to comply with the decision. The Commission may (but is not required to) consult with business users and third parties prior to coming to a non-compliance decision. It is then for the gatekeeper to report to the Commission with the measures it has taken to ensure compliance. In addition (or perhaps alternatively), the Commission can at any time initiate proceedings to specify the actions a gatekeeper should take to ensure compliance.[35]

[30] Ecorys, *Business-to-Business relations in the online platform environment* (Study for the European Commission, 2017).
[31] I. Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992).
[32] DMA, Article 28.
[33] DMA, Article 11 and https://digital-markets-act-cases.ec.europa.eu/reports/compliance-reports.
[34] DMA, Article 29.
[35] DMA, Article 8(6).

A. Gatekeepers compliance formal tools

Compliance officers

Business user interviewees had very little to say about compliance officers, who do not appear to be very visible outside of the gatekeeper organisations. It is not clear, to them for example, if the formally designated compliance officers are leading or are responsible overall for the informal engagements between that gatekeeper and the Commission over the DMA. Most business users were not even aware as to who the individual was and had had no contact with them and some thought the Commission had not paid much attention or attached much priority to this aspect of the DMA. In our modest sample of gatekeepers, two of them considered that the role of the compliance officer was clear and one explained that the role of the compliance officer was not useful when there is compliance and the right communication lines with the Commission already exist.

The compliance officer's function can be viewed in two ways: a minimalist' approach, which is what is the case today, and a potentially more expansive role. The minimalist view is that the compliance officer serves as an adviser to the senior management of the gatekeeper and performs a pseudo-independent audit function to assess implementation of a set of specified actions. On this view, the compliance officer may not have a role in deciding what the actions to be taken actually are or what their consequences might be (but only to assess and report on whether or not they have been taken). Management may confer such responsibilities on the compliance officer but this is not required under the DMA. However, a more expansive approach would be for the compliance officer to provide a focal point for external engagement – for example as someone to whom business users could appeal (rather than going to their account manager) if they consider that the gatekeeper organisation is failing to implement appropriately. The compliance officer could be required to certify not only that the contents of the compliance report were factually accurate, as required by the Commission's template,[36] but also to provide an opinion (akin to a solvency report in a financial audit) as to whether or not the actions thereby described meant that the gatekeeper was in compliance with the DMA. The officer would then be concerned not only with whether actions were being taken with but with assessing whether or not they are actually having that effect.[37]

Compliance reports

Notwithstanding the Commission's Template,[38] gatekeepers have taken different approaches to the compliance report. This may reflect different views on the intended audiences or purpose of the report, or other strategic considerations. The general view was that the reports of March 2024 have fallen some way short of expectations.[39] Both gatekeepers and business users were supportive of the idea of a document that presents in one place the various actions and measures which a gatekeeper has taken and which it may otherwise be communicating to a range of different audiences with multiple channels. Business users thought that the Commission would need to be more prescriptive in defining the contents and format of the compliance report, including specifying KPIs and that it would need to enforce these

[36] Commission Template of 9 October 2023 on the Compliance report: https://digital-markets-act.ec.europa.eu/legislation_en#templates.
[37] This degree of personal accountability would be closer to the function of Senior Management Functions in financial services regulation and Senior Managers under digital content regulation in the UK: https://www.fca.org.uk/firms/approved-persons and https://www.legislation.gov.uk/ukpga/2023/50/section/110.
[38] Above, note 38.
[39] Since the interviews took place, the gatekeepers adopted a second version of their compliance reports in March 2025 on which we could not gather feedback.

requirements.[40] Moreover, compliance reports could be more standardised regarding their content and their indicators in order to facilitate comparison and compliance benchmarking across gatekeepers.

Some stakeholders noted that despite most (public) compliance reports not meeting the requirements of the Commission template, no action had been taken as a result. Most accepted that the Commission has limited resources and may have decided to prioritise other issues, but at some point, it will need to take action to ensure that the compliance reports better perform the role that was envisaged in the DMA, or that gatekeepers find other and better ways to enable business users and third parties to understand the actions that have been taken and whether and why the gatekeeper considers that they ensure compliance with the DMA. However, the limitation is that enforcement may only be linked to non-compliance with the substantive obligations, so a non-compliance decision cannot rest solely on a defective compliance report.

This point links to another, which is that both gatekeepers and business users criticised the existing arrangements as being a series of 'set piece' or snapshot events including the annual publication of a compliance report and an annual meeting to discuss its contents. This sits uncomfortably alongside the continuous process of regulatory dialogue in which the various participants are otherwise engaged and normal gatekeeper commercial practice, which is to release software updates on a regular basis and to explain them in their developer blogs. One consequence of this is that gatekeepers can be expected to make changes to implement the DMA much more frequently than once a year, which will mean the compliance report is out of date until the next version is published. Therefore, it would be better if the compliance report was regarded and managed as a 'live' document which would be updated as soon (or before) substantial changes were made.

If gatekeepers regularly change the way in which they implement measures to comply with the DMA, then this is likely to have implications for those business users who are seeking to benefit from the opportunities which those changes give rise to. The current arrangements, as interpreted by gatekeepers, envisage that business users will be informed after the event of the actions which the gatekeeper has taken and, there is no requirement in the DMA for the gatekeeper to provide advance notice to business users of changes it plans to make.[41] This leaves business users with uncertainty, not only because they do not know what changes are likely to be made in future but also because they do not know when they might be made. This may affect the launch plans of services which a business user intends to offer and other related commercial activities which it wishes to undertake. Indeed, business users reported that they expected greater ex ante engagement by gatekeepers to facilitate quick entry by business users. Many regulated access regimes require the regulated firm to provide advance notice of changes to arrangements with third parties and there is a change management process that is approved by the regulator.[42] This may result in some delay in implementation of those changes, but this cost is likely to be more than offset by the benefits to the intended beneficiaries of the DMA. In requiring gatekeepers to update live' versions of compliance reports, the Commission could also require gatekeepers to give notice of changes well in advance of implementing them. Commission enforcement tools

B. Commission enforcement tools

Most interviewees accepted that implementation is an iterative process rather than a single shot game but there are different views about how quickly the process should move. Of the business users who

[40] For a possible list of such indicators, see note 17.
[41] Some platforms have such duties on the basis of other EU laws: Article 3(2) of the Platform to Business (P2B) Regulation 2019/1150 provides that the providers of online intermediation services shall notify, on a durable medium, to the business users concerned any proposed changes of their terms and conditions at least 15 days in advance of the change.
[42] For instance, this is the case in the telecommunications regulation:

contacted the gatekeepers, all indicated that further discussion with a gatekeeper was necessary to ensure they could benefit from the DMA. Business users who contacted the Commission likewise did this in order to ensure there was compliance. The question for these interviewees was how long it would now take to achieve substantial compliance with the DMA given that any expectation of achieving full compliance in March 2024 had been abandoned. The experience to date suggests that setting arbitrary deadlines is not likely to be helpful and that what is reasonable to expect will depend on the nature of the obligation and the business model to which it is being applied. Some are clearly more straightforward than others. The Commission may have its own milestones and deadlines, and may share these with gatekeepers, but business users and others remain unaware of these. The Commission has two main formal enforcement tools: specification decisions, which may be triggered at the request of a gatekeeper or ex-officio, and the non-compliance decisions.

Specification proceedings

No gatekeeper has yet requested the Commission to specify the actions it is expected to take in order to comply with the DMA. At the same time, gatekeepers complained that the Commission had not always provided sufficient guidance on compliance acceptability. This suggests that this aspect of the specification decision regime is not working as intended. It may be that gatekeepers assume the Commission would reject such a request if it were made, since if the Commission is unable or unwilling to provide more specific guidance under the informal regulatory dialogue, there may be no reason to think the Commission would be any more willing to do so because it has received a formal request. In addition, gatekeepers may feel that moving to a formal request will be interpreted by the Commission as a breakdown in the informal dialogue, or may in any event precipitate that. Gatekeepers may consider that they are more likely to obtain a favourable interpretation of their actions under the informal process than in a specification decision (e.g. because the Commission is subject to inflexible timelines once it initiates formal proceedings) and/or that the publication of specification decision may have consequences for the Commission's subsequent approach to enforcement (e.g. by recording its expectations in a decision which is published, the Commission may consider that it must take enforcement action if the gatekeeper subsequently fails to comply, whereas any expectations set in an informal dialogue between the Gatekeeper and the Commission will remain between them). All gatekeepers favoured informal dialogue to the specification process. Taken together, this means that gatekeepers currently face uncertainty about how the specification process will work and what the consequences might be relative to alternative courses of action. Although the Commission might develop guidance on how it would approach such requests were it to receive them, the only way these uncertainties will really get resolved is if gatekeepers do request more specification decisions.

The situation is different for the ex officio specification as two decisions have already been adopted by the Commission in relation to various interoperability matters regarding Apple.[43] However, there is uncertainty as to the Commission's thinking in deciding to initiate such proceedings and, indeed, what the purpose of specification decisions might actually be. From the two specification decisions to date, we can infer that informal regulatory dialogue is a first step, indicating a preference for this route over formal decisions. The informal dialogue preceding specification is described as 'extensive' with more than ten meetings and requests for monthly reports prior to the Commission deciding to specify compliance.[44] One might infer, from the decisions to date, that the economic significance of the relevant obligation and the prospects of prolonged informal dialogue may inform the decision to move to

[43] Commission Decisions of 19 March 2025 (above n 5).
[44] Case DMA100204, paras 8 and 9.

specification.[45] In one decision the Commission mentioned speed as well as the possibility of the specification decision being helpful for other interoperability obligations of the gatekeeper.[46] However, it is too soon to tell what features will lead the Commission to specify.

One question is what purpose specification decisions might serve which could not be achieved by guidelines. An important difference is that specification decisions are addressed to a particular gatekeeper and so the decision cannot, as a matter of law, have general applicability to other gatekeepers or be enforceable against them. Nonetheless, it seems likely that specification decisions directed at one gatekeeper will be closely read by others and that at least some aspects of the decision will have wider relevance. Based on the two specification to date, both of which address interoperability under Article 6(7), we can observe that the Commission provides a detailed explanation of what it understands the obligations to be as well as a reasoned explanation for the specified measures. These decisions also shed light on the manner in which the Commission examines the proportionality of the measures it sets out.

Even from the modest sample of decisions to date, differences between specification and non-compliance decisions are stark: the two non-compliance decisions provide a high-level explanation of what is expected of the gatekeeper,[47] while the specification decisions consist of detailed substantive and procedural obligations imposed on gatekeepers. In specifying certain technological changes, the Commission imposes a reporting obligation, which allows it to monitor the manner of compliance.[48] They suggest that specification is not necessarily the end of dialogue and that the gatekeeper's conduct will be supervised.[49] It also suggests that compliance may be modified and improved as the gatekeeper gains experience with interoperability requests.[50] Conversely, the gatekeeper may also seek a waiver of some of the obligations if it is unable to implement these measures.[51]

Finally, it is worth noting three elements of these specification decisions which confirm some of the observations from stakeholders. The first is that there is more than one way of achieving compliance. In examining the manner in which Apple decided to comply with interoperability by creating a request-based process for developers. The Commission would have preferred a compliance-by-design approach which would have reduced transaction costs.[52] However, it decided to accept Apple's approach and to shape so as to make in 'fast, transparent and predictable.'[53] This helps reveal that the Commission may at times have an idea of compliance but that it also accepts that gatekeepers may provide alternative, equally effective approaches. This may account for the Commission's reluctance to provide guidance on what is compliance. Second, the timing provided for Apple to make technical changes is not always immediate. Even though the Commission notes that 'Apple could have and should have started working on the implementation of the iOS notifications feature earlier'[54] it then allows Apple some time to comply.[55] This confirms the concerns of business users about delays in compliance. At the same time it reveals that compliance is a work-in progress which can improve and change over time. Third, the decisions require that Apple engage with business users; at one stage indicating that Apple 'should

[45] E.g. the Commission observed the 'substantial economic importance' or interoperability with connected physical devices and the many requests received by the gatekeeper (Case DMA.100203, para 12).
[46] Case DMA.100203, para 19.
[47] DMA.100109, para 313 and DMA.100055 para 367.
[48] Case DMA.100203 paras 643-649
[49] As far as procedures for interoperability are concerned (Case DMA.100204), audits are expected (para 140) and a report with key performance indicators is expected (Annex 1, section 5.3).
[50] DMA.100204, para 174.
[51] Case DMA.100203, para 650.
[52] Case DMA.100204, paras 103-107
[53] Case DMA.100204, para 108
[54] DMA.100203 (above n 5), para 176
[55] DMA.100203 (above n 5), para 185: on the notification feature under discussion, Apple is expected to have a beta version for developers by the end of 2025 and the new feature should be implemented by 1 June 2026.

engage in good faith with a developer to understand and address their interoperability request.'[56] This underscores the Commission's emphasis on dialogue between users and gatekeepers as an important element to achieve compliance.

From the perspective of gatekeepers, it may be suggested that the granular design of compliance combined with the reporting obligations might deter some from requesting specification. From the perspective of the Commission, however, one might see these as one way for the Commission to explain what it deems to be the right stance towards compliance: gatekeepers engaging with business users to find quick solutions, recording and benchmarking how compliance solutions work, and remaining ready to change compliance methods as more knowledge is gathered.

Non-compliance proceedings

Views on non-compliance proceedings have been influenced by the Commission's decision to initiate a number of such proceedings in March 2024, the same month as the first set of designated gatekeepers were required to comply with the DMA.[57] Most business users are unsure why the Commission had chosen to initiate them in relation to some matters but not others. Several stakeholders felt the Commission prioritised cases which are easy or the most visible to the consumer, such as choice screens. Some felt that the volume of complaints or lobbying activity from business users also affected enforcement choices. We also noted earlier that the Commission's understanding and position on different issues and in relation to different gatekeepers will have depended to some degree on whether DG Competition had engaged on the issue with a particular gatekeeper under a previous antitrust proceeding.[58] In such cases, the Commission may have started with a better-defined view of what compliance means than for those cases where the gatekeeper's business model and services are unfamiliar to the Commission. To the extent that the DMA allows the Commission to resolve concerns which it had previously been unable to address adequately using competition law, it seems reasonable that the Commission would focus on these issues first before moving on to less familiar territory. Everyone recognises that the Commission has limited resources and will need to prioritise how it allocates them, but most want more clarity from the Commission to enable them to understand how it does this but there is a reflection of a general uncertainty about how the Commission is prioritising its cases.

This led to concerns amongst gatekeepers that some might be being unfairly targeted as compared to others and concerns amongst business users that the issues of others were being prioritised over theirs. This is to some extent inevitable in any regulatory regime, but concerning if the Commission were thought to be acting in an arbitrary or politically-motivated manner. Without guidance on how the Commission will prioritise its work, concerns about unfair conduct or political influence are likely to remain, especially because the Commission is a political body and not an independent authority.

To address such concern, the Commission could develop guidance on how it will prioritise implementation and enforcement of the DMA (and the associated evidence and data collection) while recognising the constraints which the Commission is subject to. Priority principles set by the National Competition Authorities are pitched at a high level of generality. For example, the British CMA takes five considerations into account before deciding to enforce the law: strategic significance, impact of

[56] DMA.100204 (above n 5), para 171. See also para 227.
[57] https://digital-markets-act-cases.ec.europa.eu/search.
[58] For a list of the antitrust cases at the origins of the DMA obligations: J. Cremer, D. Dinielli, P. Heidhues, G. Kimmelman, G. Monti, R. Podszun, M. Schnitzer, F. Scott-Morton and A. de Streel, Enforcing the Digital Markets Act: Institutional Choices, Compliance, and Antitrust, 11 *Journal of Antitrust Enforcement*, 2023, 315.

intervention, whether the CMA is best placed to act, resources required, risks.[59] Similar criteria are found in others, like the Belgian Competition Authority.[60] Other agencies set out priorities by focusing on certain markets, e.g. the Dutch competition authority in 2024 promised to focus on digital, energy and sustainability as focus areas.[61] Our preference is for DMA priorities to resemble those of the CMA and that these criteria are then utilised when individual enforcement action is taken.[62]

Whilst business users were concerned that some issues were being prioritised but others neglected, some gatekeepers were concerned that the Commission had initiated non-compliance proceedings so quickly. They linked this concern to what they perceived as the lack of clear guidance from the Commission as to what actions were required to comply during the informal engagement process that had preceded the start of the formal proceedings. The fact that the Commission has now adopted two specification decisions on the implementation of vertical interoperability may suggest that it draws a distinction between issues about which it considers there is a legitimate degree of uncertainty (for which specification decisions are an appropriate pathway) and issues on which it considers it is already clear what actions the gatekeeper must take (for which infringement proceedings are the appropriate choice). There may be legitimate disagreements about this but the gatekeepers also have the opportunity to request a specification decision; a gatekeeper that had had such a request rejected by the Commission and then been subject to a non-compliance proceeding might have stronger grounds to raise this concern.

There is a perhaps an even more fundamental question about what the non-compliance procedure is intended to achieve, given that the DMA also includes the option of a specification procedure. Is it primarily intended to penalise gatekeepers for non-compliance when it is already clear what actions should be taken or is it intended to be a mechanism for obtaining compliance when there may be some uncertainty about what actions are required? The DMA requires the Commission to issue a 'cease and desist 'order in relation to existing actions and places the onus on the gatekeeper to decide what actions it will take 'to comply with the decision'. However, the issue may not be that the actions already being taken by the gatekeeper cause it to be non-compliant but that the gatekeeper needs to take additional actions alongside those that it is already taking (i.e. compliance is not just about removing barriers but also about taking steps to enable). The question is whether the Commission will specify what those additional actions are in the decision or whether it will simply state that the existing actions are insufficient to ensure compliance. The specification of those additional actions might be something we would expect to be in a specification decision, making the interaction between non-compliance procedures and specification procedures an important issue, but one which remains unclear at this stage. The approach in Article 29 for non-compliance is different from that envisaged in Article 18 for systematic non-compliance, whereby the Commission can specify and impose specific structural or behavioural remedies on the gatekeeper. In such a case, the Commission is clearly expected to define the actions which the gatekeeper is required to take in order to bring itself into compliance.

The position may be more straightforward in circumstances where compliance is achieved by simply removing barriers or ceasing a particular form of conduct. In these situations, the DMA envisages the Commission being able to apply interim measures to stop problematic conduct[63] in the same way that it can do (but has rarely done in practice) under competition law. This provision has yet to be tested but

[59] CMA, Prioritisation Principles (CMA 188) (30 Octobre 2023)
[60] https://www.abc-bma.be/sites/default/files/content/download/files/2024_politique_priorit%C3%A9s_ABC.pdf
https://www.abc-bma.be/sites/default/files/content/download/files/2024_politique_priorit%C3%A9s_ABC.pdf
[61] https://www.acm.nl/system/files/documents/focus-acm-2024.pdf
[62] J. Cremer, D. Dinielli, P. Heidhues, G. Kimmelman, G. Monti, R. Podszun, M. Schnitzer, F. Scott-Morton and A. de Streel, Enforcing the Digital Markets Act: Institutional Choices, Compliance, and Antitrust (with), *Journal of Antitrust Enforcement*, 2023.
[63] DMA, Article 24.

may be difficult to apply when, in many cases, the damage to business users and consumers is not the removal of some choice or opportunity which previously existed or on which firms were previously relying but a failure to introduce new choices or opportunities which have never previously been a feature of the market. The Commission has not adopted interim measures yet, to the frustration of some business users.

Finally, gatekeepers would like greater clarity on when the Commission is likely to initiate non-compliance proceedings and how and when opportunities to resolve them might then be available. There are clear provisions in a market investigation into systematic non-compliance for commitments to be offered by the gatekeeper and accepted by the Commission.[64] There is no such explicit provision in relation to a non-compliance procedure, but we do not consider this would exclude a gatekeeper from offering to change its conduct to remedy the non-compliance concern or the Commission accepting such that the gatekeeper has now complied and there is no reason to continue proceedings, as happened with Apple's changes to comply with Article 6(3).[65]

On the other hand, the deterrent effect of the enforcement regime is weakened if the regulated firms can always predict the regulator's response and calibrate their actions so as to do the minimum necessary to avoid escalation or fines and delay full compliance for as long as possible. Some reasonable degree of unpredictability about the way the Commission will act is an important part of the deterrence function of an effective enforcement regime that should be retained. [66]

IV. Conclusions

The enforcement of the Digital Markets Act illustrates the complex interplay between formal legal instruments and informal regulatory dialogue at the core of a responsive regulation approach. While the DMA provides for a structured framework of compliance obligations and enforcement mechanisms, the experience since its implementation highlights the indispensable role of informal interactions between the Commission, gatekeepers, and business users. These dialogues, though not explicitly mandated by the legislation, have been essential for addressing information asymmetries, interpreting ambiguous provisions, and adapting compliance measures to rapidly evolving digital markets. However, their ad-hoc and opaque nature raises concerns about consistency, legal certainty, and the potential for perceived inequities among stakeholders.

Looking forward, an effective DMA enforcement regime requires a recalibrated balance between flexibility and predictability. Informal dialogue should remain central to fostering cooperation and timely compliance, but it must be supported by greater transparency, clearer guidance on objectives, and structured multilateral engagement to avoid reliance on bilateral negotiations alone. At the same time, the credibility of the enforcement system depends on the Commission's willingness to escalate to formal instruments where necessary, coupled with transparent prioritisation criteria and more standardised compliance reporting.

In the end, the biggest challenge is likely to be that any resetting of the engagement model (away from what some see as a more adversarial posture which might also reflect a strategy on the part of gatekeepers to test the limits of the regime and the Commission's reaction at an early stage) will require change on both sides. This may be difficult if one party changes and the other does not as a dialogue

[64] DMA, Article 25.
[65] Case DMA.100185 (above n 5).
[66] J. Cremer, D. Dinielli, P. Heidhues, G. Kimmelman, G. Monti, R. Podszun, M. Schnitzer, F. Scott-Morton and A. de Streel, Enforcing the Digital Markets Act: Institutional Choices, Compliance, and Antitrust, 11 *Jour. of Antitrust Enforcement*, 2023, 315.

requires constructive engagement by both sides. In our view, a key requirement for effective dialogue is a degree of trust between those involved. This is something that is developed over time and through repeated interactions and may involve parties being more prepared to take risks from time to time.