

# Rethinking the DMA:



## Innovation, Competition, and the Risks of Overregulation

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### Summary

- The Digital Markets Act (DMA) aims to curtail the power of Big Tech ‘gatekeepers’, but its rigid, one-size-fits-all approach risks undermining innovation, raising barriers to entry, and reinforcing incumbency.
- By imposing uniform obligations without considering market dynamics or economies of scale, the DMA may *suppress the competition it seeks to protect*, particularly harming small and medium-sized enterprises (SMEs) through indirect effects such as platform fragmentation and compliance spillovers.
- The regulation’s *broad mandates* – such as interoperability requirements, restrictions on self-preferencing, and obligations to provide access to third parties to key platform services such as app stores, payment systems, or user data – may erode user trust, compromise security, and hinder efficient integration, especially when technical feasibility and user experience are not adequately considered.
- SMEs are not gatekeepers, yet they could be potentially affected by the DMA’s impact on the platforms they depend on for distribution, discovery, and monetisation. The complex obligations placed on gatekeepers risk creating downstream uncertainty and additional costs for smaller players.
- The DMA’s implementation has yielded *limited competitive gains*, with major firms absorbing the fines as routine business expenses. Meanwhile, vague rules and ambiguous concepts – such as contestability and fairness – have encouraged superficial compliance rather than driving meaningful structural change.
- As the principles underling the DMA spread globally through the Brussels Effect, the EU risks exporting overregulation to jurisdictions with limited enforcement capacity, potentially suppressing innovation and distorting digital ecosystems beyond Europe.
- The enforcement of the DMA has led to unintended consequences for European consumers, including delayed access to innovative digital services. Major tech companies have postponed or limited the introduction of new features due to regulatory uncertainties, resulting in European consumers and businesses receiving access to these advancements later than their global counterparts. This situation underscores the need for a balanced regulatory approach that safeguards consumer interests without impeding innovation and competitiveness.

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## Introduction

Effective regulation should serve as a catalyst – not a constraint – for innovation and long-term competitiveness. In digital markets, where business models evolve rapidly, fixed regulatory benchmarks – such as market share or price levels – can unintentionally stifle the dynamism that drives progress. The European Union's (EU's) Digital Markets Act (DMA), though ambitious in its objective of curbing the dominance of Big Tech gatekeepers, risks locking digital markets into rigid structures by imposing one-size-fits-all obligations that are ill-suited to the iterative and experimental nature of innovation.

The DMA targets *gatekeepers* – defined as large online platforms that act as critical intermediaries between businesses and users, based on criteria such as annual turnover, user base, and entrenched market position (European Commission, 2020). The legislation aims to enhance *contestability* – the ability of new firms to enter and compete in digital markets – and ensure *fairness*, meaning that gatekeepers must not privilege their own services or impose unequal conditions on business users (Crémer, de Montjoye, & Schweitzer, 2019).

Good regulation must be outcome-oriented, proportionate, and adaptive, particularly in fast-evolving sectors. International institutions such as the Organisation for Economic Co-operation and Development (OECD) and the World Economic Forum (WEF) have emphasised the need to set clear objectives, undertake stakeholder engagement, and conduct impact assessments to anticipate the effects of new rules on innovation and market entry (OECD 2021; WEF 2021). The DMA's broad mandates – which feature vaguely defined by terms such as 'contestability' or 'fairness' – illustrate the risks of regulatory overreach.

While the DMA formally targets large platforms, its effects cascade through the entire digital ecosystem, acutely affecting small and medium-sized enterprises (SMEs) that rely on gatekeepers for market access, distribution, and consumer trust. SMEs are not passive bystanders; they are deeply embedded in platform economies and subject to the second-order effects of the DMA. New obligations imposed on gatekeepers – such as interoperability requirements, obligations to provide access to alternative payment systems, and mandates to permit sideloading – have increased compliance complexity, fragmented app distribution, and eroded user trust in digital marketplaces. As a result, many SMEs now face higher operational costs, uncertain launch timelines, and even app removals due to technical compliance issues, despite not being the DMA's primary regulatory target (The App Association 2025).

Ex-ante regulations, such as the DMA, risk being too rigid to adequately govern rapidly evolving tech markets. By attempting to pre-empt harmful conduct, it assumes static conditions and overlooks how competition evolves in response to and in tandem with innovation (Information Technology and Innovation Foundation 2022). This can result in burdensome rules that restrict adaptability and stifle creativity, potentially undermining the competition the regulation seeks to protect.

Moreover, the significant performance gap between the EU's startup sector and that of the US – home to three times as many startups and more than three times as much venture capital investment – risks widening further under the weight of overregulation. Scholars such as Petit and Teece (2021) argue that dynamic competition – driven by creative destruction and the entry of new players – fuels digital innovation. Yet, by making it harder for SMEs to compete, adapt, and scale, the DMA may inadvertently entrench the incumbents it seeks to challenge.

This paper advocates for recalibrating the EU's digital competition policy to prioritise flexibility, specificity, and institutional learning. To keep digital markets open, competitive, and innovation-friendly, regulatory frameworks must evolve in step with the technologies they oversee. The following sections evaluate the implementation of the DMA to date, identify its unintended consequences, and present six targeted policy recommendations for EU and international regulators. These recommendations aim to restore a balance between market fairness and technological dynamism –

affirming that, in the digital economy, the rules of the game must constrain dominance and enable change.

## Background

The EU's DMA, in effect since November 2022, seeks to enhance competition by curbing the dominance of Big Tech 'gatekeepers'. It imposes ex-ante rules on platforms that act as intermediaries between businesses and consumers to foster a more dynamic digital ecosystem.<sup>1</sup> Companies are considered gatekeepers if they provide core platform services (CPS) – such as search engines, social networks, or app stores – and meet specific criteria: over €7.5 billion in annual turnover, €75 billion in market capitalisation, 45 million monthly EU end users, and 10,000 yearly business users. By mid-2025, seven gatekeepers – Alphabet (Google), Amazon, Apple, ByteDance (TikTok), Meta, Microsoft, and Booking.com – operating 24 CPS will be subject to DMA obligations.<sup>2</sup> Exemptions, such as Apple's iMessage and Microsoft's Bing, reflect a targeted approach focused on entrenched bottlenecks.

The DMA introduces extensive obligations, including prohibitions on self-preferencing, interoperability requirements, and mandates to enable third-party access to key platform functionalities such as app stores and payment systems. These rules aim to restore contestability and fairness in digital markets, reducing lock-in and enabling rivals to challenge incumbents more effectively.

However, the real-world implementation of these obligations reveals a more complex picture. While large gatekeepers are the formal targets of the regulation, SMEs – many of which rely on these platforms to reach customers – are experiencing significant regulatory fallout. Reports indicate (The App Association 2025) that SMEs now face increasing distribution uncertainties, delayed access to new technologies, and rising compliance costs across multiple app stores and legal frameworks. Far from being neutral observers, SMEs are navigating an increasingly fragmented digital landscape, where operational burdens are rising and trust in emerging distribution models is deteriorating.

## Implementation examples under the DMA

### Apple

Apple's iOS ecosystem has become a prime target for the DMA, which mandates that platforms should support alternative app stores and payment systems and remove anti-steering clauses (Kirkwood 2025). Apple's initial compliance was limited; it employed 'scare screens' to discourage external transactions and imposed a €0.50 fee per third-party app installation beyond 1 million, thereby stifling competition. In December 2024, Epic Games estimated that it would owe Apple 'millions' annually for Fortnite's EU installs, with CEO Tim Sweeney calling the arrangement an 'illegal anticompetitive scheme rife with new Junk Fees'.<sup>3</sup> In June 2024, the European Commission found Apple's anti-steering practices in breach of DMA Article 5(4) and imposed a €500 million fine in April 2025 (European Commission 2025).<sup>4</sup> Apple's resistance to third-party app stores also drew

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<sup>1</sup> 'Digital Markets Act', European Commission, n.d. ([https://digital-markets-act.ec.europa.eu/index\\_en](https://digital-markets-act.ec.europa.eu/index_en)).

<sup>2</sup> 'Gatekeepers', European Commission, n.d. ([https://digital-markets-act.ec.europa.eu/gatekeepers\\_en](https://digital-markets-act.ec.europa.eu/gatekeepers_en)).

<sup>3</sup> 'Apple's plan to thwart Europe's new Digital Markets Act law is a devious new instance of Malicious Compliance', Tim Sweeney, X, 26 January 2025 (<https://x.com/TimSweeneyEpic/status/1750589570880516402>).

<sup>4</sup> Digital Markets Act: Commission imposes fines on Apple and Meta following proceedings for non-compliance', European Commission, 24 February 2025 ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_1085](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085)).

scrutiny under Article 6(4), and investigations are ongoing. A further critical consequence warrants attention: less-curated app stores increase the risk of piracy and malware, undermining user trust. Without the safeguards embedded in Apple's native ecosystem, startups and SMEs are now more vulnerable to content theft, fraud, and reputational harm – particularly as smaller app stores often lack robust security systems. Thus, although the DMA seeks to expand distribution access, the resulting erosion of trust can paradoxically raise barriers for lesser-known developers. Furthermore, income distribution is far more dynamic than many assume. Comparing today's *Forbes* list of the world's richest individuals with its first edition from the 1980s reveals that more than 80% of those at the top have been replaced. Similarly, in Spain, only 9 of the 50 wealthiest people or families from 1978 remain on the list today, highlighting significant economic mobility.

## Google

Google's Search and Play services are subject to the DMA, which aims to prevent self-preferencing and anti-steering practices to ensure fair competition. Google's adjustments – such as enabling users to set other default search options on Android – were deemed insufficient. A March 2024 investigation, concluded in 2025, found that Google Search favoured its vertical services (e.g., Google Shopping), and that Google Play limited developers from directing users to alternative offers or payment options outside the Play Store, both in breach of the DMA. Google is currently negotiating remedies to avoid fines.

## Meta

Meta's data practices across Facebook, Instagram, and WhatsApp are under scrutiny under DMA Article 5(2), which requires user consent to combine personal data from different services. Meta's 'pay or consent' model – where users are offered a paid, ad-free experience or are assumed to consent to tracking – was deemed coercive and restrictive of user choice. In July 2024, the commission found Meta non-compliant, and in April 2025, it imposed a €200 million fine on the company,<sup>5</sup> mandating that it come up with a non-coercive, data-light alternative (European Commission 2025).

For smaller advertisers and platforms reliant on Meta's tools, this model introduces added complexity. Reduced ad personalisation, higher user acquisition costs, and shifting platform policies indirectly affect the broader innovation landscape. These changes can be especially detrimental to SMEs, which often depend on affordable, data-driven advertising to reach niche audiences.

## Other Gatekeepers

Amazon is under investigation for self-preferencing on its marketplace, which disadvantages third-party sellers. Microsoft, ByteDance, and Booking.com are also being monitored for fair access and data practices. The gatekeepers' limited compliance efforts suggest resistance, raising concerns that additional regulations could entrench their dominance by imposing complex compliance demands on smaller competitors. This highlights the need for targeted enforcement to support fair competition.

## Cost-benefit analysis

The DMA's theoretical strength lies in its objective to dismantle anti-competitive barriers to foster a dynamic digital market. Mandating interoperability, third-party access, and user choice empowers

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<sup>5</sup> 'The DMA's teeth: Meta and Apple fined by the European Commission', Kluwer Competition Law Blog, 28 April 2025 (<https://competitionlawblog.kluwercompetitionlaw.com/2025/04/28/the-dmas-teeth-meta-and-apple-fined-by-the-european-commission/>).

consumers to change defaults, uninstall apps, and use alternative stores, reducing lock-in and strengthening rival platforms. Promoting interoperability, such as cross-platform messaging, could weaken network effects, allowing smaller apps to compete on merit. Data portability facilitates user migration to innovative services, promoting competition based on quality and privacy. SMEs may benefit from lower entry barriers – avoiding high app store fees and unfair rankings – enabling innovation and market participation. Consumers could gain through lower prices, improved services, and reduced tracking.

However, recent research increasingly challenges the assumption that the DMA is fostering net-positive outcomes for Europe's real economy. Some authors (Boscheck, 2024) warn that the DMA could result in billions of euros in negative economic impact, primarily due to increased compliance costs for platforms and reduced innovation. Additionally the DMA risks confusing legitimate economies of scale with anti-competitive conduct<sup>6</sup>. A geopolitical angle is offered by the Center for Strategic and International Studies (Broadbent, 2021), which warns that excessive regulatory burdens in Europe could ultimately weaken transatlantic alignment and empower Chinese platforms like Alibaba and Tencent, which operate with fewer restrictions at home. The unintended result could be a diminished global competitive position for both EU and U.S. firms.

In practice, costs are often passed on to businesses and consumers. Gatekeepers incur significant expenses, ranging from re-engineering costs (e.g., Apple's EU-specific iOS) to audits and interface maintenance costs, which they argue divert resources from innovation. Apple cites security risks<sup>7</sup> associated with sideloading, while Meta shifts costs to users through paid tiers (Apple 2024). The DMA's interoperability requirements for messaging services have raised concerns about end-to-end encryption. Experts warn that integrating different messaging platforms could weaken encryption standards and potentially compromise user privacy.<sup>8</sup>

Secondly, there is the issue of rising enforcement costs. The European Commission enforces the DMA, which entails complex investigations into major tech companies. However, there are legitimate concerns that the Commission may be overwhelmed by the volume of investigations and proceedings related to potential violations. Notably, only 80 additional staff members have been allocated to enforcing the DMA, which may be insufficient given the scale of the task.<sup>9</sup>

These frictions have broader implications for the digital innovation ecosystem. The potential proliferation of new app stores and distribution channels can increase development complexity and coordination burdens (e.g., Apple's 'scare screens') (Kirkwood 2025). This could lead to increased testing needs, fragmented marketing, and greater customer support challenges for smaller developers and mid-sized firms. While these firms are not the intended targets of the DMA, their ability to operate effectively within newly fragmented digital environments is diminished – raising the risk that regulatory changes may consolidate dominance rather than disperse it.

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<sup>6</sup> 'EU Crackdown on Big Tech: What are the Economic Consequences of the Digital Markets Act?', The St Andrews Economist, 19 December 2024 (<https://standrewseconomist.com/2024/12/19/eu-crackdown-on-big-tech-what-are-the-economic-consequences-of-the-digital-markets-act/>)

<sup>7</sup> 'Does the DMA let gatekeepers protect data privacy and security?', Truth on the Market, 4 April 2024 (<https://truthonthemarket.com/2024/04/04/does-the-dma-let-gatekeepers-protect-data-privacy-and-security/>).

<sup>8</sup> 'Navigating uncharted waters: The EU's Digital Markets Act and its impact on security', Cybersecurity Advisors Network, 20 March 2025 (<https://cybersecurityadvisors.network/2025/03/20/navigating-uncharted-waters-the-eus-digital-markets-act-and-its-impact-on-security/>).

<sup>9</sup> 'Private enforcement of the Digital Markets Act: What to expect under German law', Hausfeld, 25 July 2024 (<https://hausfeld.com/en-us/what-we-think/competition-bulletin/private-enforcement-of-the-digital-markets-act-what-to-expect-under-german-law/>).



## Over-regulation and entrenched dominance

The DMA's expansive scope exemplifies a regulatory approach that conflates scale with market failure. By mid-2025, it has yielded limited competitive gains while adding significant complexity to digital ecosystems. Although intended to level the playing field, the regulation risks entrenching gatekeepers' dominance by imposing rigid compliance structures that only the most resource-rich actors can navigate efficiently.

The fines imposed so far – €500 million for Apple and €200 million for Meta – are modest relative to these firms' global revenues. Consequently, they are largely seen as a cost of doing business rather than meaningful deterrents. Meanwhile, enforcement has remained cautious, possibly due to geopolitical factors such as the threat of US trade retaliation. This has enabled dominant firms to comply in form but not in substance – as illustrated by Apple's use of 'scare screens' to discourage sideloading or Meta's coercive 'pay-or-consent' model to obtain user data. Such tactics exploit regulatory ambiguities and shift institutional focus from promoting genuine competition to managing protracted compliance disputes (Bauer, Pandya, & 2024).

Yet, these outcomes are not necessarily indicative of platform abuse. Rather, they reflect how economies of scale function in open markets. Large digital platforms offer integrated services – such as payment infrastructure, app vetting, and global reach – that would be prohibitively expensive for smaller firms to replicate. Their scale enables efficiency, fosters trust, and enhances accessibility, particularly for SMEs that depend on these ecosystems to access markets without building distribution networks, identity verification systems, or compliance frameworks from scratch. Far from stifling innovation, this integration lowers entry barriers and reduces transaction costs across the board.

The unintended consequence of the DMA is that the additional compliance layers now favour incumbents, not because of their dominance, but because they are better equipped to manage the complexity. Obligations such as establishing interoperability APIs, meeting transparency requirements, and redesigning consent flows demand sustained legal and technical expertise. Gatekeepers can absorb these costs; SMEs cannot. As a result, new features such as alternative app stores or payment systems – designed to support challenger firms – often prove unviable in practice. The DMA burdens the actors it aims to empower, further entrenching those already able to comply.

Moreover, the DMA assumes that markets will respond swiftly to structural change – a view that underestimates the power of network effects and consumer inertia, both of which continue to reinforce incumbent usage patterns. Alternative search engines and app stores have gained little traction, as consumers tend to default to the familiar, particularly in security-sensitive contexts. Apple's claim that sideloading could increase malware exposure has found a receptive audience, while concerns about weakened encryption due to messaging interoperability have further dampened enthusiasm for change. Where rules are vague – such as in defining 'security' or 'effective interoperability' – they become sites for strategic resistance, often reinforcing the dominance of large firms.

From a geopolitical perspective, the DMA's focus on US-based firms is seen as a protectionist move by some parties. The Trump administration, in particular, has characterised the regulation as anti-American, complicating efforts at transatlantic digital policy coordination. This may undermine the EU's resolve to pursue stricter enforcement, while encouraging major platforms to shift towards unregulated domains such as AI – potentially entrenching their dominance in areas beyond the DMA's scope.

Finally, the DMA's slow and centralised designation process has failed to keep pace with market developments. By the time gatekeepers are formally designated and obligations come into effect, many of the conditions that initially warranted intervention may have shifted – technologically or



competitively. This timing mismatch risks rendering the regulation both overreaching and obsolete, potentially stifling innovation rather than promoting it.

In sum, scale is not the problem; rigid, one-size-fits-all regulation is. Large platforms succeed not through coercion, but by offering services with a level of reliability and integration that benefits millions of users, including SMEs. A genuinely liberal digital policy would recognise this reality, focusing not on penalising size but on promoting open access, lowering artificial barriers to entry, and avoiding regulatory frameworks that entrench incumbency through complexity. We have already seen this dynamic play out with the GDPR, where compliance burdens fell disproportionately on small firms and startups, while large platforms adapted quickly, leveraging regulatory complexity as a competitive advantage. Without safeguards to ensure proportionality and flexibility, the DMA risks repeating this pattern: reinforcing existing hierarchies not through market dynamics but through the regulation structure itself.

## Creating a second-class digital experience for Europeans

The Digital Markets Act (DMA) was introduced to foster competition and rein in the dominance of large digital platforms. But in practice, it is also contributing to a growing digital divide – with European users increasingly treated as second-tier consumers in the global tech ecosystem. Due to regulatory uncertainty and compliance burdens introduced by the DMA, major tech firms have either withheld or delayed the rollout of cutting-edge features in the EU, especially in the rapidly evolving field of artificial intelligence.

For example, Meta delayed the launch of its AI assistant, Meta AI, in the EU by 9 months, citing regulatory complexity. When it was finally released in March 2025, European users received a stripped-down version, missing features like image generation that were available in the U.S. since mid-2024<sup>10</sup>. Moreover, Apple announced in June 2024 that its new Apple Intelligence suite (including Genmoji, Writing Tools, and ChatGPT-integrated Siri) would not be available in the EU in 2024 due to concerns about interoperability mandates under the DMA<sup>11</sup>. The features were eventually introduced in March 2025, nearly a nine-month delay.

These delays are not just technical or legal hiccups – they create a real consumer disadvantage. European users are the last to access breakthrough innovations, undermining their digital experience. At the same time, small and medium-sized businesses in the EU are deprived of early access to tools that could enhance competitiveness, creativity, and productivity.

Even more concerning is that newly announced AI tools like Google's Veo 3 (for video generation), Flow (for cinematic control), and AI Mode (conversational search) are still not available in the EU – with no clear timeline for future access. This suggests a pattern rather than isolated incidents.

In effect, Europe's regulatory approach – while well-intentioned – may be reinforcing the very problem it sought to solve: limiting European users' and innovators' ability to participate fully and equally in the global digital economy. To avoid entrenching this "second-class digital citizenship," enforcement of the DMA must be made more predictable and innovation-friendly, allowing new technologies to reach European markets without undue delay or dilution.

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<sup>10</sup> 'Meta AI lands in Europe after year-long regulatory delay', The Indian Express, 10 March 2025 (<https://indianexpress.com/article/technology/artificial-intelligence/meta-ai-lands-in-europe-after-regulatory-delay-9896312/>)

<sup>11</sup> 'When will Apple Intelligence be available in Europe?', Apple Community, 15 September 2024 (<https://discussions.apple.com/thread/255757900?sortBy=rank>)

## The Brussels Effect

The DMA has become a textbook example of the Brussels Effect (Bradford 2019) – the phenomenon by which EU regulations exert influence beyond Europe's borders by shaping global market standards. As the EU imposes sweeping ex-ante obligations on major digital platforms, many jurisdictions worldwide have either adopted similar measures or are actively considering them, effectively using the DMA as a regulatory blueprint.<sup>12</sup>

Countries such as India, Brazil, South Africa, and Indonesia have introduced or proposed regulations inspired by the DMA, including prohibitions on self-preferencing and bundling and restrictions on data use – mirroring key elements of the EU framework (CSIS 2024). However, this global diffusion raises a fundamental concern: while such one-size-fits-all rules may be well-suited for the EU's mature regulatory institutions and digital economy, they may not align with the economic realities or enforcement capacities of developing and emerging markets.

For instance, India's draft Digital Competition Act introduces sweeping obligations for firms with over \$30 billion in global turnover, including mandatory data sharing requirements and restrictions on bundling (ICLE 2024). South Africa has required dominant platforms to redesign their services to promote competition, including steps to support rival firms through greater interoperability, fairer rankings, and reduced platform bias (Bauer, Pandya, & Sharma 2024), while Indonesia has begun aligning its digital governance with EU standards and has fined Google \$12.4 million for unfair Play Store practices.<sup>13, 14</sup>

This growing regulatory convergence may also have unintended consequences. Overly prescriptive frameworks – especially in countries with limited institutional capacity – risk fostering a compliance-centric ecosystem, where companies prioritise bureaucratic box-ticking over disruptive innovation (Suominen 2024). In India, past rules such as the 2018 data localisation mandate have already led firms such as Paytm to deprioritise innovation in favour of safer, incremental adaptations (Levine et al 2020).

Finally, these copycat regulations – while often framed as promoting fairness – may inadvertently entrench global incumbents or empower rival authoritarian ecosystems. For example, several analysts warn that excessive restrictions on US tech firms, under frameworks such as the DMA, could unintentionally benefit Chinese competitors such as Tencent, Alibaba, or Huawei which do not have to contend with a similar level of scrutiny in their home country (Souminen 2024).

## Comparative approaches in other countries

Finally, these copycat regulations – while often framed as promoting fairness – may inadvertently entrench global incumbents or empower rival authoritarian ecosystems. For example, several analysts warn that excessive restrictions on US tech firms, under frameworks such as the DMA, could unintentionally benefit Chinese competitors such as Tencent, Alibaba, or Huawei which do not have to contend with a similar level of scrutiny in their home country (Souminen 2024).

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<sup>12</sup> 'Gatekeepers', European Commission, n.d. ([https://digital-markets-act.ec.europa.eu/gatekeepers\\_en](https://digital-markets-act.ec.europa.eu/gatekeepers_en)).

<sup>13</sup> 'Digital governance: Indonesia considers EU's regulatory framework', Open Gov, 10 October 2024 (<https://opengovasia.com/2024/10/10/digital-governance-indonesia-considers-eus-regulatory-framework/>).

<sup>14</sup> 'Indonesia fines Google \$12 million for unfair business practices', Reuters, 22 January 2025 (<https://www.reuters.com/technology/indonesia-fines-google-12-million-unfair-business-practices-2025-01-21>).

## Japan

Japan's Special Digital Platform Competition Act (2024) targets gatekeeping behaviours in app stores and mobile operating systems to enhance competition, with a focus on Google and Apple. Narrower in scope than the DMA, it prohibits self-preferencing and requires platforms to provide fair access to alternative payment systems, relying on dialogue-based enforcement to reduce the burden on SMEs and mitigate security risks.<sup>15</sup> By mid-2025, Google and Apple had revised their payment policies, enabling app developers and third-party payment providers to offer alternative options, though market changes remain limited. Japan's focused approach avoids over-regulation, promotes competition without reinforcing dominance, and offers a potential model for streamlining the DMA in the EU.

## The United States

The US lacks a DMA equivalent, relying on antitrust lawsuits against Google and Meta to promote competition. These proceedings are slow, and legislative efforts – such as the American Innovation and Choice Online Act – remain stalled. A 2024 court ruling on Google's ad tech monopolisation<sup>16</sup> aligns with the DMA's objectives, but no federal ex-ante rules exist as of mid-2025. The techno-libertarian approach of the US, reinforced by Trump's deregulatory agenda, reduces costs for SMEs and mitigates security risks but struggles to address entrenched gatekeeper power. The current administration's political rhetoric portrays the DMA as anti-American, raising the risk of trade tensions that could constrain the Brussels Effect's pro-competitive influence.<sup>17</sup> While the US favours market-driven competition, it lacks the DMA's proactive scope.

## Unintended Consequences

Beyond the headline obligations and enforcement cases, the DMA has caused systemic effects that risk undermining its original intent. Chief among these is growing regulatory uncertainty, which affects not only gatekeepers but the broader innovation ecosystem. When rules are broad, dynamic, and lacking in operational clarity, firms are less likely to take risks by entering new markets, launching new services, or adopting emerging technologies.

In this environment, compliance has become a dominant corporate function, increasingly taking precedence over experimentation and user-driven development. For smaller actors in particular, the signal is discouraging: entering the European market is now perceived to involve navigating shifting obligations, fragmented user interfaces, and potentially incompatible standards across jurisdictions. This risks deterring the kind of disruptive innovation the regulation aimed to encourage.

At the same time, platform incentives are shifting. Rather than investing in deeper integration, platform providers may opt for minimalist compliance, limit service offerings, or exclude regulated regions from product rollouts. Over time, this could make the European digital economy less attractive as a launchpad for global-scale innovation. The delay in rolling out advanced AI features

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<sup>15</sup> 'The Japanese Smartphone Act: Teaching competition law new tricks?', Kluwer Competition Law Blog, 2 July 2024 (<https://competitionlawblog.kluwercompetitionlaw.com/2024/07/02/the-japanese-smartphone-act-teaching-competition-law-new-tricks/>).

<sup>16</sup> 'Apple, Meta fined as EU presses ahead with tech probes,' Reuters, 24 February 2025 (<https://www.reuters.com/sustainability/boards-policy-regulation/apple-fined-570-million-meta-228-million-breaching-eu-law-2025-04-23/>).

<sup>17</sup> 'Europe's Digital Markets Act is anti-American: Why is the DOJ following its playbook?', NetChoice, 2024 (<https://netchoice.org/europes-digital-markets-act-is-anti-american-why-is-the-doj-following-its-playbook/>).

in the EU is not merely a failure of policy coordination; it signals a broader concern that regulatory risk is beginning to shape product timelines and priorities.

The DMA may also create new cybersecurity vulnerabilities. Obligations such as sideloading and mandatory interoperability – especially in messaging services – can weaken user protections by bypassing platform-level vetting or encryption safeguards. Security experts have warned that these changes increase the attack surface for malware, phishing, and data breaches, particularly affecting SMEs that lack the infrastructure to manage such risks. In trying to foster openness, the DMA risks eroding digital trust – thereby undermining adoption and disadvantaging smaller players who depend on secure, credible distribution channels.

Internationally, the DMA's influence – driven by the Brussels Effect – is accelerating, albeit unevenly. Countries with limited institutional or technical capacity are beginning to replicate its provisions, often without the mechanisms necessary for effective implementation. In such cases, regulatory imitation may entrench – rather than reduce – market concentration while legitimising more politicised forms of platform control.

In short, when regulation outpaces what is necessary to address market failures, unintended distortions emerge: entry is discouraged, innovation is delayed, and institutional trust is strained. The challenge lies not in the ambition of the DMA but in its architecture – a framework that risks turning scale, adaptability, and global reach into liabilities rather than levers for progress.

## **Conclusions and recommendations**

To ensure that digital markets remain both competitive and innovation-friendly, regulatory frameworks must adapt to the true structure and dynamics of digital economies. Instead of viewing scale as inherently problematic, regulation should prioritise outcomes such as openness, consumer choice, and the capacity of new firms to enter and succeed.

### **1. Clarify and narrow the gatekeeper designation criteria**

The DMA's designation thresholds – based primarily on size and user numbers – risk conflating scale with market dominance. This approach may inadvertently cover firms that compete effectively, particularly in multisided or rapidly evolving markets. To prevent regulatory overreach, the gatekeeper designation criteria should be refined to target demonstrably entrenched positions that create systemic bottlenecks. The criteria could be expanded to incorporate additional qualitative indicators such as the absence of viable alternatives, high switching costs, or sustained market share. Clarifying key terms such as 'active end user' and 'core platform service' would reduce legal uncertainty and discourage firms from prematurely altering their operations to avoid or pre-empt designation.

### **2. Embed proportionality and evidence-based enforcement mechanisms**

The DMA should not prohibit practices that promote economic efficiency rather than dominance. Integration across services, self-preferencing, and bundling can often reduce costs and enhance functionality for users and SMEs. Including an efficiency defence clause would allow platforms to justify such practices when they demonstrably enhance consumer welfare, in line with principles accepted in offline markets.

### **3. Recognise the role of economies of scale and integration in promoting innovation and efficiency**

Many obligations under the DMA treat platform integration, bundling, and self-preferencing as inherently anti-competitive. However, these practices often reflect economies of scale and scope that reduce transaction costs, foster innovation, and benefit both consumers and SMEs. Rather than imposing structural separation, regulators should permit companies to cite efficiency as a reason for gatekeeping behaviors that enhance product functionality or reduce user friction. A formal 'efficiency defence' would enable gatekeepers to demonstrate when integration creates value, aligning digital market regulations with long-standing principles of competition law.

#### **4. Narrow overly broad obligations to prevent unintended consequences**

Several DMA provisions – such as mandatory interoperability for messaging apps or non-discriminatory access to operating systems – are drafted so broadly that they risk causing unintended harms such as reduced cybersecurity, weakened encryption, consumer confusion, and operational fragmentation. Overly general obligations may compel technical changes that undermine reliability or reduce usability for both developers and users. To prevent this, enforcement should incorporate feasibility assessments, security impact reviews, and clearly defined exceptions where strict application of the rules would cause disproportionate harm to the ecosystem.

#### **5. Minimise collateral regulatory burdens on non-gatekeepers, especially SMEs**

Although the DMA targets gatekeepers, its effects ripple can across the digital ecosystem. While not directly subject to its obligations, SMEs often bear the costs of shifting compliance frameworks, fragmented distribution, and service instability. For instance, small developers have reported app removals, reduced access to integrated tools, or delayed availability of platform features due to regulatory uncertainty. To safeguard innovation, policymakers should ensure that DMA obligations are not implemented in ways that inadvertently burden non-gatekeepers. Impact assessments should consider the effects on dependent business users, and platforms should retain the ability to offer optional, bundled services when these benefit smaller firms.

#### **6. Promote the DMA's global influence through principle-based convergence, not rigid replication**

The DMA is increasingly viewed as a global model, but replicating its highly prescriptive framework in jurisdictions with weak institutional capacity may prove counterproductive. When adopted without local adaptation, complex regulatory structures risk encouraging superficial compliance, deterring investment or enabling politically driven interventions. The EU should advance the DMA's core principles – contestability, transparency, and user choice – through international dialogue, while cautioning against the wholesale application of these principles in contexts where enforcement or legal safeguards are lacking. A principle-based approach can foster regulatory convergence without compromising market dynamism or global interoperability.

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