

Digital Services Act and Digital Markets Act

A GUIDE TO THE KEY PROPOSALS &
IDEAS FOR IMPROVEMENT

Policy Paper

DECEMBER 15, 2020 marked both the end of a long process and the beginning of a new phase of political debate regarding the Internet economy, as European Commissioners Margrethe Vestager and Thierry Breton presented the Digital Services Act (DSA) and the Digital Markets Act (DMA).

The proposed regulations will affect everyone on the Internet, from large online services to startups and the average consumer. Strengthening Europe's digital sovereignty, protecting democracy, enabling competition, harmonizing national regulations, fighting crime, empowering users – with the DSA and DMA, the Commission has set out to address so many issues that one German commentator deemed the plan an “*eierlegende Wollmilchsau*,”ⁱ an egg-laying pig that also gives wool and milk. It is a beloved German expression that hints at the impossibility of achieving all goals with just a single solution.

Yet the scope of the regulations is understandable. We ourselves have detailed in our studies Fair Play in the Digital Arena. How Europe Can Set the Right Framework for Platforms (2016) and Democracy and Digital Disinformation (2020) the various problems that have arisen from largely unregulated online services. The 2000 E-commerce Directive, the last major legal framework established by the EU in this context, introduced many positive principles regarding liability as well as notice and takedown – which are carried forward in the new DSA proposal. But the E-commerce Directive did not anticipate the rise of large online platforms and its enormous consequences for competition and democracy. Thus, the EU has found itself ill-equipped to address the issue for years. The DSA and the DMA contain provisions that the Commission hopes will protect the Acts from becoming unsuitable in the way that the E-commerce Directive is. France's Secretary of State for the Digital Economy, Cédric O, emphasized that the DSA and DMA would have to provide the regulatory framework for the next twenty years.ⁱⁱ



**Prof. Dr.
Friedbert Pflüger**
Chairman
Internet Economy
Foundation



Clark Parsons
Managing Director
Internet Economy
Foundation



Jennifer Bode

Director of Policy &
Communications,
Internet Economy
Foundation

The DSA and the DMA still require the input and agreement of the European Parliament and the Council. Consequently, the Commission is hoping for the Acts to become law in 2022, with a start-up period suggested for 2023 to 2026. Until then, the fight about the exact content of the law continues. Commissioner Breton himself has described the Acts as the EU’s “opening move”ⁱⁱⁱ.

This policy paper is meant to be a helpful guide in the coming discussions. It offers a summary of both the DSA and the DMA as well as an overview of the positions taken by selected countries and companies. In addition, drawing on our years of work regarding how to rein in large, dominant platforms and strengthen the European Internet economy as well as European democracies, we offer our judgment on the key proposals in the DSA and DMA. From this, we formulate six demands: Which core ideas of the Acts should be kept and not watered down? Which proposals need changes? And what issues need to be added in order for the regulation to truly be successful, especially in its key goal of ensuring free and fair competition in the digital age?

Contents

1	THE DIGITAL SERVICES ACT	7
2	THE DIGITAL MARKETS ACT	13
3	WHERE THEY STAND – POSITIONS IN THE UPCOMING BATTLE ABOUT DSA & DMA	21
4	THE TAKEAWAY: 6 KEY DEMANDS	26

“The two proposals serve one purpose: to make sure that we, as users, as customers, as businesses, have access to a wide choice of safe products and services online, just as well as we do in the physical world. And that all businesses operating in Europe, that can be big ones, that can be small ones, that they can freely and fairly compete online, just as they do offline.”^{iv}

Margrethe Vestager

Executive Vice-President for a Europe fit for the Digital Age

1 THE DIGITAL SERVICES ACT^v

Reining in Very Large Online Platforms

While the Digital Services Act proposes some regulation with regard to intermediary services and hosting services, it contains numerous obligations for online platforms in general and even more for very large online platforms specifically.¹ Small enterprises and micro-enterprises remain exempt. The approach thus accounts for the vastly higher impact that very large platforms have on both markets and societies.

Ideally, the Act would create a fair and contestable market. Currently, the Commission has defined very large platforms as having at least **45 million average monthly active users in the European Union**. (The number may be adjusted in coming years as it is meant to correspond to 10 % of the EU's population.)

Fighting Illegal Content

The Commission puts a focus on the fight against illegal content. Providers of hosting services as well as online platforms now have to have in place **notice-and-action procedures**, which ensure that illegal content can be reported and taken down or blocked swiftly. The exact procedures will have to follow EU guidelines that have yet to be determined.

One detail that has already been outlined is the role of so-called **trusted flaggers**. If content is reported by a trusted flagger, platforms have to respond to it in a timely manner and before addressing concerns from regular users. Organizations that are independent from the platforms can apply to become trusted flaggers with one of the digital services coordinators.

Persons who repeatedly upload or spread illegal content will temporarily be banned from the online platform.

¹ Since there are no obligations that apply to online platforms, but not at the same time to very large online platforms, the term online platforms will refer to online platforms *plus* very large online platforms for the sake of brevity.

... And Protecting Free Speech

A step forward in the fight against illegal content always brings with it fears of censorship, of attacks against free speech. In order to ensure that legal content is not blocked or deleted, be it due to a mistake or discrimination, hosting services and online platforms will have to inform users whose content was deleted or blocked and list their reasons for the action. In addition, they will have to give users the opportunity to **contest the decision**.

Repeatedly reporting a user's legal content as illegal can be a way of harassing that user and makes an enterprise's fight against illegal content more difficult. Consequently, the Commission wants platforms to temporarily **ban users** that have repeatedly reported content that is obviously legal.

Will Transparency Be Enough?

Once a year, online intermediaries that are not classified as small or micro-enterprises will have to present a report detailing how they have moderated content. Yet this is only one small part of the EU's push for more transparency from the enterprises. The DSA grants public **access to repositories of advertisement**, which the Commission hopes will offer more insights into manipulative advertisements that threaten equality or democracy.

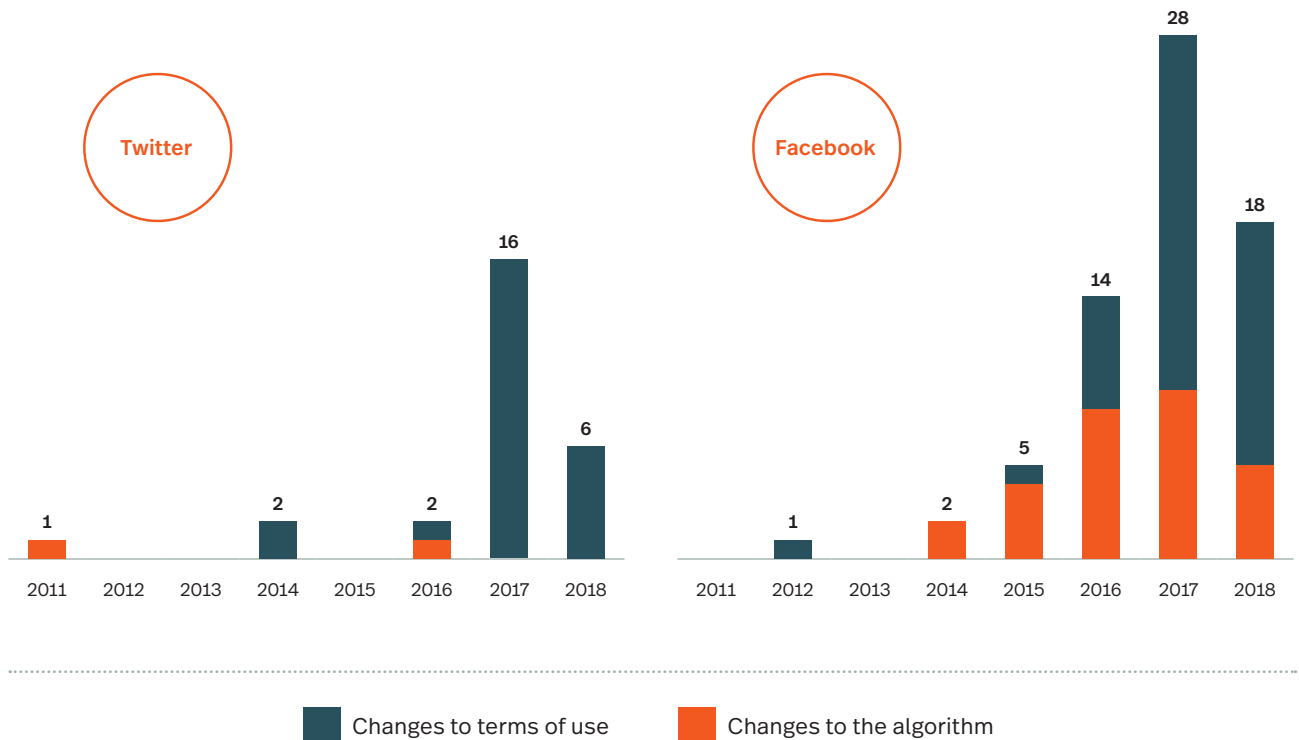
Online advertisements must be marked as such, and users will see who is behind the ad. In addition, users can learn which factors have led to a certain ad appearing on their screen.

As the past years have shown, it is not just targeted ads that have contributed to a rise in extremism, but also regular content that is presented to users based on algorithms. In the future, very large online platforms will have to explain in their terms of use the main characteristics of their algorithms. Users can then decide for themselves how much they want to rely on algorithms and they will have the option of opting out completely.

More control for users over their feed was one important demand that we formulated in our study *Democracy and Digital Disinformation*.^{vi}

Twitter and Facebook have been changing their terms of use and their news feed algorithms with increasing frequency, but the DSA would set standards for the terms of use and allow users to opt out of relying on algorithms.

Number of changes to terms of use and news feed algorithms



Source: Tow Center for Digital Journalism (Columbia University), Roland Berger; originally in I.E.F and Roland Berger. *Democracy and Digital Disinformation. How Europe can protect its people without endangering free speech.* p. 40

Although the Commission's proposals are pointing in the right direction, much criticism has already been directed at this part of the DSA. Enterprises can deny access to their data citing for example security concerns or the wish to protect trade secrets, so that the desired transparency might not be achieved after all.

Many parties in EU member states (e.g. the German Social Democrats (SPD) and the German Green party) argue that transparency will simply not suffice. The huge collection of data and the targeted advertisements based on it will remain a problem under the DSA, they claim, as they see "opt-out" solutions as inadequate. The concern is shared by, among others, EDRI, the biggest European network defending rights and freedoms online, consisting of 44 NGOs.^{vii} Clamping down on online advertising could however backfire if not done prudently, since Europe has a vast digital publishing ecosystem of its own that could be hit hardest by well-intentioned measures to rein in targeting.

Consumer Protection

Most of the changes that will affect consumers are included in the DMA, but the DSA proposes that online platforms have to store information about those offering or advertising services or goods with them and that they have to evaluate the seller's or advertiser's trustworthiness as well as can reasonably be expected. If platforms really do make an effort to increase the traceability of sellers and advertisers, consumers could be better protected from inadvertently buying counterfeit products and from financial harm. However, since the DSA does not declare platforms liable in this context, consumer protection associations have complained that it is not clear what consequences platforms would face if they failed to comply.

Crisis Protocol

The spread of disinformation is particularly harmful in times of crisis. In case of, for example, a natural disaster, the population needs reliable information and many trust social media to deliver. To better **stop the**

spread of lies and unfounded rumors, the Commission encourages very large online platforms to create crisis protocols. A crisis protocol should also help to **quickly bring factual information to the people**, which can save lives.

Enforcement

Member states will cooperate in the **European Board for Digital Services**, and additional oversight over very large online platforms will lay with the EU. On the national level, the DSA instates **Digital Services Coordinators** that are responsible for implementing the regulation. A point that has repeatedly drawn criticism is the fact that the member state in which a provider has its main establishment has jurisdiction to enforce the DSA. (Correspondingly, a provider without any establishment in the EU has to name a legal representative, and the member state in which this legal representative is named will have jurisdiction to enforce the Act.)

In the past, several platforms have engaged in “enforcement shopping”, making sure that they would fall under the jurisdiction of a more lenient authority, and states have shown themselves reluctant to “go against” large providers that contribute to their national economy.

Fines and Penalty Payments

Fines may not exceed 6% of the very large online platform’s total turnover in the preceding financial year. For “minor” failures to comply, e.g. a platform supplying incorrect or incomplete information, a fine not exceeding 1% of its total turnover (in the preceding financial year) will be imposed on the platform. In addition, the Commission can impose periodic penalty payments. These will not exceed 5% of the average daily turnover in the preceding financial year per day.

2 THE DIGITAL MARKETS ACT^{VIII}

With a handful of providers and their core platform services dominating the key online markets, real competition has become more than difficult. Business users find themselves dependent on large providers who do not shy away from unfair practices in order to uphold their monopoly position. End users suffer from such markets, too, as they are left with fewer choices, see less innovation, and face challenges when trying to protect their data.

The Digital Markets Act tries to right these wrongs and wants to establish contestable and fair markets by focusing solely on a number of core platform services and on the largest enterprises, the so-called gatekeepers.

Core Platform Services and Gatekeepers

The following are considered **core platform services**:

1. online intermediation services (e.g. marketplaces, app stores)
2. online search engines
3. social networking services
4. video sharing platform services
5. number-independent interpersonal electronic communication services
6. operating systems
7. cloud services
8. advertising services

Providers of core platform services are deemed **gatekeepers** if they fulfill the three criteria outlined below. Gatekeepers are legally obligated to inform the Commission within three months of reaching this status. To ensure competition and protect business users as well as end users, the Commission can also determine a provider to be a gatekeeper before it meets the three criteria through a market investigation, which determines if a provider has obviously begun to dominate the market or that it will soon start to do so. One possible indicator is the potential to monetize users.

Providers of core platform services are deemed **gatekeepers** if

1. they have a significant impact on the internal market. This is the case if they **offer a core platform service in at least three EU member states**

and either

the corresponding enterprise achieves an **annual EEA turnover of at least EUR 6.5 billion in the last three financial years**

or

its average **market capitalisation amounted to at least EUR 65 billion in the last financial year.**

2. **an especially high number of businesses uses the platform service to reach customers/end users.** A platform has to have **more than 10,000 yearly active business users** (established in the EU) in the last financial year and **more than 45 million monthly active end users** in the EU to fall into this category.
3. they have established a **durable dominant role in their field or are expected to soon hold such a role.** This is the case if the numbers mentioned under #2 above were met in each of the last three financial years (more than 10,000 yearly active business users, more than 45 million monthly active end users).

The status of gatekeepers is reviewed at least every two years. In addition, a report on the latest developments in the market will be presented every two years. This report shall be based on continuous monitoring, which might be conducted with the help of the EU Observatory of the Online Platform Economy.

Improving Conditions for Business Users

Business users are guaranteed **the right to complain**, meaning to point out unfair practices employed by gatekeepers, with any relevant public authority. Any attempts by gatekeepers to deny them this right, for example through a contract, are illegal.

Business users cannot be forced to offer their end users the identification service offered by the gatekeeper. They are **free in their choice of identification service**.

A gatekeeper cannot deny its business users the **right to sell products via other online services at a lower price**.

So far, startups and other companies developing apps and content have been dependent on gatekeepers. If an app is not available in the big app stores, it is essentially impossible to reach potential buyers/subscribers. This imbalance of power has given gatekeepers the opportunity to dictate conditions and prices. However, the DMA imposes new rules: Conditions and prices now have to be fair and appropriate. This part of the regulation also covers services similar to app stores.

Addressing the Problem of the Dual Role

The classic example of a gatekeeper in a dual role is of course Amazon, functioning both as a marketplace and as a business that is offering products on that very marketplace. Such gatekeepers hold an incredible advantage over their competitors. Until now, they could use the data that they were collecting as a marketplace to improve their own performance as a business competing on that marketplace. Under the new regulation, **gatekeepers must not use data that is not publicly available to offer services similar to those of their business users**. This also applies to data that is collected when a business user chooses to advertise with the help of the gatekeeper, and it applies to cloud services.

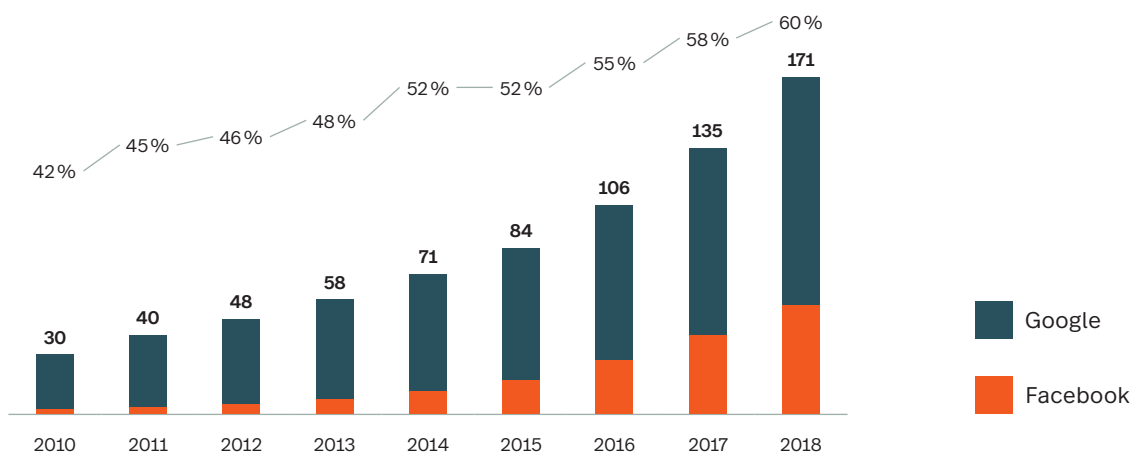
Previously, gatekeepers have also used their dual role to secure for themselves the prime spot on the marketplace, namely the top spots in the search. The DMA forbids this practice and calls for a **fair ranking of search results**.

More Transparency from Gatekeepers

Gatekeepers have to demonstrate more **transparency in three key areas: advertisement, user data, and search engine data**. If a gatekeeper offers advertisement services, it has to grant access to the corresponding performance measuring tools as well as related data to advertisers and publishers upon request.

The debate regarding online advertising has become especially heated, with enormous amounts of money on the line for firms like Facebook and Google.

Facebook and Google's online advertising revenues (absolute figures [USD bn] and as share of global online advertising market [%])



Source: Meeker 2019, eMarketer 2019, Roland Berger; originally in I.E.F and Roland Berger. *Democracy and Digital Disinformation. How Europe can protect its people without endangering free speech.* p. 30

Business users and end users will be able to immediately access the data that has been collected about them while they were using the platform service.

Gatekeepers are required to let other search engine providers see the data on ranking, click and view, and additional data that is the result of users' engagement with the search engine. Note that gatekeepers have to protect users' personal data and have a right to protect their own trade secrets, which is why this particular clause might not help smaller competitors as much as intended.

How End Users Will Benefit

The improved conditions for business users that we have described so far and the ensuing higher degree of competition benefit end users, too. In addition, there are a few instances in which the DMA focuses explicitly on end users. **They include sections on data control, profiling, and interoperability.**

Online services have to offer users more control regarding their own data. Users can learn about a platform's practice of consumer profiling and will be able to opt in or opt out when it comes to the use of their personal data on platforms, allowing for a less personalized version of the service.

Simply because someone uses a certain platform service, they must not be limited regarding the type of content and subscriptions they can buy. Platform services can no longer discriminate based on where, meaning from which provider, an app was bought – the app should now work in combination with the platform service regardless of whether it was bought from a provider associated with the platform or from a competing provider.

Gatekeepers are not allowed to use technical means to prevent end users from freely choosing and switching their software. Free choice in this instance relates to users being able to un-install pre-installed software, too. This regulation also explicitly targets gatekeepers who produce their own hardware, and, as described, aims to prevent lock-in effects.

Enforcement

The EU Commission itself is responsible for the enforcement of the DMA. It is supposed to consult the **Digital Markets Advisory Committee** – made up of representatives of member states – before, for example, deciding on fining an enterprise.

Fines and Penalty Payments

Fines and penalty payments under the DMA partly mirror those outlined in the DSA. However, one main difference is that the DMA has higher fines (10% in the DMA, 6% in the DSA) for certain failures to comply.

Fines may not exceed 10% of the gatekeeper's total turnover in the preceding financial year. For "minor" failures to comply, e.g. a gatekeeper supplying incorrect or incomplete information, a fine not exceeding 1% of its total turnover (in the preceding financial year) will be imposed. In addition, the Commission can impose periodic penalty payments. These will not exceed 5% of the average daily turnover in the preceding financial year per day. While the DMA allows for structural remedies, such as the divestiture of a business, they are clearly presented as a last resort.

“There are going to be different products and services and a different development of ecosystems and innovation in Europe if this regulation goes forward”^{ix}

Fiona M. Scott Morton

Theodore Nierenberg Professor of Economics
at the Yale University School of Management

3

WHERE THEY STAND – POSITIONS IN THE UPCOMING BATTLE ABOUT DSA & DMA

While the DSA and DMA have generally seen a positive reaction, member states differ in their takes on the proposed regulation.

Germany

The DSA and DMA seem to automatically be associated with Germany, partly due to the President of the European Commission von der Leyen presenting them as important parts of her agenda and partly due to Germany's holding the Presidency of the Council during the second half of 2020. Members of the governing party CDU/CSU (in a coalition with SPD) have proudly emphasized that German laws served as blueprints for the Acts.^x

Current and Upcoming EU Presidencies: Portugal, Slovenia, and France

Digital Counsellor at the Portuguese Permanent Representation to the EU, Ricardo Castanheira described that member states were in alignment, perceiving a need to update the rules.^{xi} Portugal, which at the time of writing holds the presidency of the Council of the EU, had issued a joint paper on consumer protection with its presidency predecessor, Germany, and the third country belonging to this presidency trio, Slovenia (which will begin its term in July 2021), even before the Acts were published. All three countries supported points that were later included in the DSA, demanding that platforms carry more responsibility regarding fraudulent products and deceitful vendors.^{xii}

French President Emmanuel Macron has been outspoken about the need for European digital sovereignty and the important role that DSA and DMA could play in protecting citizens, consumers, and European democratic values.^{xiii} Consequently, France is determined to get the regulation over the finish line: **“The French Presidency of the European Union in the first half of 2022 will be an opportunity to bring these much-needed rules to fruition,”** said Secretary of State for European Affairs Clément Beaune.^{xiv} Creating a fair market with better chances for European compa-

nies as well as more protections and choice for consumers is a goal that should tie in nicely with Macron's bid for reelection in 2022.

Among the Potential Troublemakers: The Czech Republic and Ireland

The Czech Republic is among those member states that stand to be the most affected by the DSA and DMA, since the sectors that are being targeted by the regulation play a comparatively greater role in its economy.^{xv} Not surprisingly, the Czech government is not a fan of the proposed regulation – they warn of overregulation, do not want to hold providers liable, and want power in this matter to remain with the individual states, not the EU.^{xvi} (The Czech Republic will hold the EU presidency for the second half of 2022.)

Criticism has also come from Ireland, famously the country in which big players such as Google, Facebook, and Apple have their European headquarters.^{xvii} As part of the public consultation preceding the presentation of the Acts, **Ireland attacked the very base of the proposals**: In opposition to the Commission who aims to create fair and contestable markets, acknowledging that the markets are currently unfavorable to smaller companies and marked by unfair practices from monopolists, **Ireland holds that there is no proof that these markets are not contestable and no proof that large platforms have a negative impact on innovation.**^{xviii} In one of its latest clashes with the Commission in 2020, Ireland walked away the winner, with the EU's General Court ruling that there was not enough evidence to prove that Apple had benefited from illegal tax breaks in Ireland.^{xix} Commissioner Margrethe Vestager has announced that the Commission will appeal the judgment, criticizing that Ireland's behavior "harms fair competition"^{xx}.

Large Companies

Unsurprisingly, the large companies that would be more affected by the Acts are not pleased. Here is how they have publicly reacted and what they are lobbying for behind closed doors:^{xxi}

Google – The Biggest Lobbying Effort

Google publicly complained about the Acts targeting very large platforms and providers.^{xxii} While only a few of the lobby meetings with members of the Commission, the Parliament, and the Council regarding DSA and DMA are disclosed, the available numbers show that Google, out of all the tech companies, met with them most often.^{xxiii xxiv}

Google’s lobbying plans leaked in October 2020 and explicitly list the **mobilization of think tanks, academics, and the US government** in the fight against the proposed Acts.^{xxv} Through studies, events, and lobby meetings, **the company seeks to establish the narrative that the DSA and DMA would be detrimental to the EU economy and to consumers.**^{xxvi}

Amazon – Fighting to Continue to Benefit from its Dual Role

Like Google, Amazon has, in its reaction, been open about its belief that **“the same rules [should] apply to all companies.”**^{xxvii} About one month before details of the DSA and DMA were presented to the public, the Commission announced that it had launched a second antitrust investigation into Amazon’s business practices.^{xxviii} Both investigations – the first was opened in 2019 – focus on practices that are only made possible by Amazon’s dual role as marketplace and seller on that marketplace and that would be outlawed under the DSA and DMA. The company is accused of using business user data – the data it collects as a marketplace – to gain unfair business advantages and giving preferential treatment to its own retail offers as well as to business users that agree to e.g. use Amazon’s delivery services. By contrast, in its statement on the Acts, **Amazon tries to paint a different picture of itself: as a company that does not need regulation because it is already supportive of small businesses and highly engaged in the fight against fraudulent products and dubious sellers.**

Facebook – Pointing a Finger at Apple

Facebook's Public Policy Director, Head of EU Affairs Aura Salla praised the proposals on Twitter: "We believe the #DigitalServicesAct and the #DigitalMarketsAct are on the right track to help preserve what is good about the internet"^{xxxix}. **The Digital Services Act is in large part a response to an uncontrolled spread of fake news and radicalization online that was best observed on Facebook.**^{xxx} While the company claims to want to improve, reports of violence and extremism tied to Facebook's algorithms and to what the company might call its embrace of free speech have only led to small changes, each one the result of extreme public pressure.^{xxxi} Understandably then, **Facebook prefers to direct attention away from the Digital Services Act to the Digital Markets Act, which it hopes will rein in competitor Apple**^{xxxii}: "We hope the DMA will also set boundaries for Apple [...] Apple controls an entire ecosystem from device to app store and apps, and uses this power to harm developers and consumers, as well as large platforms like Facebook."^{xxxiii}

Apple – Pretending to Have Less Market Power

Throughout 2020, Apple has tried to downplay the market power it holds. "Apple does not have a dominant position in any market," Daniel Matray, head of Apple's App Store and Apple Media Services, said in June during an online event on the Digital Services Act.^{xxxiv} Like Amazon, the company is also trying to present itself as supportive of smaller companies.^{xxxv} In June 2020, the Commission opened antitrust investigations focusing on Apple's App Store and its mobile payment solution Apple Pay. The issues at the center of the investigations are of course those later addressed in the DSA and DMA. Under the new regulations, the App Store would have to offer fair conditions to its business users, and Apple Pay would have to be changed so that interoperability and more choice for users would be guaranteed.

4 THE TAKEAWAY: 6 KEY DEMANDS

ENFORCE

1. Ensure Competition

The EU has had to learn the hard way that contestable markets in a field that is changing quickly and constantly are only possible if ex ante regulation is established. This is a crucial and welcome new basis for enforcement included in the DMA and stands apart from existing antitrust regimes. Besides quantitative criteria that determine which platforms and providers will have the most obligations under the DSA and DMA, the Acts contain qualitative criteria that ensure that a platform or service can be subject to the regulation based on its demonstrable market power and impact in member states, even if it has not yet met the quantitative thresholds. Only by making good use of the Acts' qualitative criteria can the EU act quickly and prevent both the formation of monopolies and the use of unfair practices.

2. Empower Users

The DSA gives users more control over what they see on platforms, allowing them to weaken the influence of algorithms on their feed or even opt out altogether. However, a lot will depend on whether the information that users receive about algorithms and their options is indeed kept short, truthful, and easy to understand by the platforms. This part of the regulation is deemed crucial to the prevention of online radicalization.

CHANGE

1. More Power for EU Authorities

The member state in which a digital service has its main establishment has jurisdiction to enforce the DSA. In the past, member states have shown themselves reluctant to act "against" a service in their own state. While DSA and DMA increase oversight by authorities on the EU level, it is therefore still advisable to further increase these powers to ensure that companies will really have to face the consequences outlined in the Acts, from high fines to a potential breakup.

2. More Opportunities for Single Sign-On

Users gain a lot of power over their own feeds and data under the Acts, and they could benefit even more if gatekeepers had to enable decentralized and interoperable Single Sign-On regimes. These would make it easier for users to prevent data collection or to share their data at their own will.

ADD

1. Educate Users

The EU should ensure that digital literacy is taught in schools and that older users are educated via campaigns. Educated users can identify fake news and illegal content and can stop their spread, using the notice-and-action procedures that the DSA calls for. Digital education is an important key to reducing extremism and weakening anti-democratic forces.

2. Keep an Eye on Startups and Scaleups: Regulation & Fostering

Regulation is of course only one part of the strategy to create a contestable market. With initiatives such as Startup Europe, the Commission at the same time seeks to improve conditions for startups and scaleups, which should also lead to more competition. The EU's reports on the markets in the coming years should detail how DSA, DMA and such supporting initiatives go hand in hand affecting the markets. While the EU has provided a lot of funding to benefit its startup and scaleup landscape, we see opportunities for more action, e.g. the introduction of a European directive that makes it easier and more attractive to grant employee stock options.



Annex

- i** Stefan Krempel. „Rechtliches Betriebssystem gegen das wilde Netz.“ *heise online*, 16.12.2020, <https://www.heise.de/news/Digital-Services-Act-Rechtliches-Betriebssystem-gegen-das-wilde-Netz-4991003.html>. Accessed 18.01.2021. Statement originally from Matthias Kettemann, expert for internet law at the Leibniz Institute for Media Research, Hamburg.
- ii** Ministère de l'Économie et de la Relance. “Grandes plateformes du numérique : vers le Digital Services Act et Digital Markets Act.”, 16.12.2020, <https://www.economie.gouv.fr/digital-services-act-et-digital-markets-act#>. Accessed 11.01.2021.
- iii** Florian Eder. “POLITICO Brussels Playbook: Filling Merkel’s Shoes – Regulating Facebook – Shaming the Scrooges.” *POLITICO*, 04.02.2021, <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-filling-merkels-shoes-regulating-facebook-shaming-the-scrooges/>. Accessed 18.01.2021.
- iv** European Commission. “Statement by Executive Vice-President Vestager on the Commission proposal on new rules for digital platforms.” 15.12.2020, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_2450. Accessed 09.02.2021.
- v** This summary contains the key aspects of the Act. The original proposal can be accessed here: <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN>. Accessed 02.02.2021.
- vi** IE.F and Roland Berger. *Democracy and Digital Disinformation. How Europe can protect its people without endangering free speech*. 15.11.2019, https://www.ie.foundation/content/4-publications/digitaldisinformation_ief_rb_en.pdf. Accessed 02.02.2021.

vii Alice Tidey, Ana Lazaro and Jack Parrock. “Digital Services Act: Brussels vows to ‘put order into chaos’ of digital world with new tech laws.” *euronews*, 15.12.2020, <https://www.euronews.com/2020/12/15/digital-services-act-brussels-unveils-landmark-plans-to-regulate-tech-companies>. Accessed 09.02.2021.

viii This summary contains the key aspects of the Act. The original proposal can be accessed here: <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>. Accessed 02.02.2021.

ix The German Marshall Fund of the United States. “Transatlantic Perspectives on the Digital Services Act & Digital Markets Act.” *youtube.com*, 16.12.2020, <https://www.youtube.com/watch?v=EFZwIFeYtO4>. 18:00-18:11. Accessed 09.02.2021.

x “Fachgespräch digital | Digital Services Act und Digital Markets Act der EU – Erwartungen zur Verantwortung und Regulierung digitaler Plattformen“ held on 16.12.2020.

xi Samuel Stolton. “Digital Brief, powered by Google: DSA and DMA – member states respond.” *EURACTIV*, 02.01.2021, <https://www.euractiv.com/section/digital/news/digital-brief-powered-by-google-dsa-and-dma-member-states-respond/>. Accessed 03.02.2021.

xii Germany, Portugal, and Slovenia (represented by Christian Kastrop, João Torres und Simon Zajc). “Joint Paper of the Trio Partners Germany, Portugal and Slovenia. Consumer Protection in Europe. Lessons learned from the Covid-19-pandemic.” 12.10.2020, https://www.bmjv.de/SharedDocs/Downloads/DE/News/PM/161020_Joint_Trio_Paper.pdf?__blob=publicationFile&v=1. Accessed 03.02.2021.

xiii “Il est temps pour l’Europe d’avoir sa propre souveraineté technologique!”, *elysee.fr* (site officiel de la Présidence de la République), 09.12.2020, <https://www.elysee.fr/emmanuel-macron/2020/12/09/il-est-temps-pour-leurope-davoir-sa-propre-souverainete-technologique>. Accessed 03.02.2021.

xiv <https://www.euractiv.com/section/digital/news/digital-brief-powered-by-google-dsa-and-dma-member-states-respond/>. Accessed 03.02.2021.

xv Niombo Lomba and Tatjana Evas. “Digital services act. European added value assessment.” *European Parliamentary Research Service*, 15.10.2020, [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654180/EPRS_STU\(2020\)654180_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654180/EPRS_STU(2020)654180_EN.pdf). Accessed 03.02.2021.

xvi <https://www.euractiv.com/section/digital/news/digital-brief-powered-by-google-dsa-and-dma-member-states-respond/>. Accessed 03.02.2021.

xvii Sebastian Shehadi. “Dublin tops European HQ location rankings.” *fDi Intelligence*, 16.04.2021, <https://www.fdiintelligence.com/article/77217>. Accessed 03.02.2021.

xviii Government of Ireland. “The Irish position on the EU Commission’s proposed Digital Services Act package – Submission to the Public Consultation.” 08.09.2020, <https://enterprise.gov.ie/en/Publications/Publication-files/National-submission-to-EU-consultation-on-DSA-package.pdf>. Accessed 03.02.2021.

xix Andrew Walker. “Apple has €13bn Irish tax bill overturned.” *BBC*, 15.07.2020, <https://www.bbc.com/news/business-53416206>. Accessed 03.02.2021.

xx European Commission. “Statement by Executive Vice-President Margrethe Vestager on the Commission’s decision to appeal the General Court’s judgment on the Apple tax State aid case in Ireland.” 25.09.2020, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1746. Accessed 03.02.2021.

xxi “The monopolistic US Internet firms are now as big and powerful as states, and their self-confidence is even bigger.” Paul-Bernhard Kallen, CEO of Hubert Burda Media, gave a German interview about the problems caused by gatekeepers and his hopes for EU regulation. *Süddeutsche Zeitung*, 14.03.2021, <https://www.sueddeutsche.de/wirtschaft/medien-burda-interview-1.5234630?reduced=true>. Accessed 06.04.2021.

xxii Sam Shead. “Facebook criticizes Apple as it welcomes Europe’s new tech rules.” *CNBC*, 17.12.2020, <https://www.cNBC.com/2020/12/16/facebook-criticizes-apple-as-it-welcomes-europes-new-tech-rules.html>. Accessed 03.02.2021.

xxiii “Big Tech brings out the big guns in fight for future of EU tech regulation.” *Corporate Europe Observatory*, 11.12.2020, <https://corporateeurope.org/en/2020/12/big-tech-brings-out-big-guns-fight-future-eu-tech-regulation>. 11.12.2020. Accessed 03.02.2021.

xxiv DSA & DMA are far from the only worry on Google’s list, as the company is currently facing several antitrust challenges in Europe, in the US, as well as in other parts of the world. For an overview, see: Lauren Feiner. “Google’s antitrust mess: Here are all the major cases it’s facing in the US and Europe.” *CNBC*, 18.12.2020, <https://www.cNBC.com/2020/12/18/google-antitrust-cases-in-us-and-europe-overview.html>. Accessed 03.02.2021

xxv Emmanuel Berretta and Guillaume Grallet. “Comment Google veut faire plier Bruxelles.” *Le Point*, 29.11.2020, https://www.lepoint.fr/high-tech-internet/exclusif-comment-google-veut-faire-plier-bruxelles-28-10-2020-2398468_47.php#. Accessed 03.02.2021.

xxvi <https://corporateeurope.org/en/2020/12/big-tech-brings-out-big-guns-fight-future-eu-tech-regulation>. Accessed 03.02.2021.

xxvii “Supporting consumers and small businesses.” *The Amazon Blog Day One*, 03.12.2020, <https://blog.aboutamazon.eu/policy/supporting-consumers-and-small-businesses>. Accessed 03.02.2021.

xxviii “Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices.” *European Commission*, 10.11.2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077. Accessed 02.02.2021.

xxix @AuraSalla (Aura Salla). “We believe the #DigitalServices and the #DigitalMarketsAct are on the right track [...]” *Twitter*, 15.12.2020, <https://twitter.com/aurasalla/status/1338874973356756993>. Accessed 02.02.2021.

xxx Facebook’s own research has shown that 64 % of the time someone joins an extremist group on the platform, the person discovered that group because Facebook specifically recommended it. Jeff Horwitz and Deepa Seetharaman. “Facebook Executives Shut Down Efforts to Make the Site Less Divisive.” *The Wall Street Journal*, 26.05.2020, <https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499>. Accessed 03.02.2021.

We have written in-depth about platform algorithms and radicalization on platforms in our study *Democracy and Digital Disinformation*, see Chapter 4 „A Threat to Democracy? The Influence of Digital Platforms on Politics“, pp. 36–47. For examples of cases in which a link between

Facebook and violent actions was detected, s. pp. 46–47.
https://www.ie.foundation/content/4-publications/digitaldisinformation_ief_rb_en.pdf. Accessed 02.02.2021.

xxxii While this article dates from 2017, it gives insights into problems, mechanisms, and reactions that still characterize Facebook today: Julia Angwin and Hannes Grassegger. “Facebook’s Secret Censorship Rules Protect White Men From Hate Speech But Not Black Children.” *ProPublica*, 28.06.2017, <https://www.propublica.org/article/facebook-hate-speech-censorship-internal-documents-algorithms>. Accessed 03.02.2021.

xxxiii Some of Facebook’s criticism has targeted practices by Apple that the Commission also considers unfair, yet Facebook in recent months has criticized Apple mainly for a planned change that would allow targeted advertising on iPhones only once a user has opted in, a move that aligns with the Commission’s calls for more user control over their own data. Alex Hern. “Facebook’s attempt to vilify Apple looks like sour grapes.” *The Guardian*, 16.12.2020, <https://www.theguardian.com/technology/2020/dec/16/facebooks-attempt-to-vilify-apple-tastes-like-sour-grapes>. Accessed 03.02.2021.

xxxiiii <https://www.cnbc.com/2020/12/16/facebook-criticizes-apple-as-it-welcomes-europes-new-tech-rules.html>. Accessed 03.02.2021.

xxxv Foo Yun Chee. “Apple not dominant in any market, plenty of rivals, senior executive says.” *Reuters*, 30.06.2020, <https://www.reuters.com/article/us-eu-antitrust-apple-idUSKBN24126C>. Accessed 03.02.2021.

xxxvi Natalia Drozdiak. “Apple Executive Defends App Store Rules Scrutinized by EU, U.S.” *Bloomberg*, 30.06.2020, <https://www.bloomberg.com/news/articles/2020-06-30/apple-executive-defends-app-store-rules-scrutinized-by-eu-u-s>. Accessed 03.02.2021.

Publisher

Internet Economy Foundation (IE.F)

Uhlandstraße 175
10719 Berlin
www.ie.foundation

Prof. Dr. Friedbert Pflüger
Chairman

Authors

Jennifer Bode
j.bode@ie.foundation

Clark Parsons
c.parsons@ie.foundation

Editor

Alexandra Magaard
magaard@iconomy.partners

Contact

Clark Parsons
Managing Director
Internet Economy Foundation (IE.F)
c.parsons@ie.foundation
+49 30 8877 429 400

Publication date

April 2021

List of Figures

1. Photo Prof. Dr. Friedbert Pflüger, source IE.F
2. Photo Clark Parsons, source IE.F
3. Photo Jennifer Bode, source IE.F
4. Illustration Tending the Tree of Europe by Carolin Löbber, originally in IE.F and Roland Berger. *Fair Play in the Digital Arena. How Europe Can Set the Right Framework for Platforms.*

Disclaimer

This study is intended to provide general guidance only. Readers should not act exclusively according to any content of this study, particularly without obtaining prior professional advice tailored to their individual circumstances. IE.F does not accept any liability for losses arising from actions taken on the basis of this study.