REGULATION OF DIGITAL MARKETS: A COMPARATIVE ANALYSIS OF THE EU DIGITAL MARKETS ACT AND ITS IMPLICATIONS FOR COMPETITION LAW IN TÜRKİYE

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ABSTRACT

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A COMPARATIVE ANALYSIS OF THE EU DIGITAL MARKETS ACT
AND ITS IMPLICATIONS FOR COMPETITION LAW IN TÜRKİYE

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The central research question of the thesis is "*To what extent does the European Union's Digital Markets Act (DMA) serve as a regulatory model for digital competition and how can it influence the proposed reforms to Turkish competition law?*" In line with this question, the study examines the DMA, its function as a pioneering ex ante regulatory model for digital platforms and its influence on Turkish competition law. Prompted by the limits of traditional, ex post enforcement in tackling anti-competitive behaviors in digital markets, the study investigates how both frameworks aim to ensure fair and contestable markets. In the first chapter, the developments in the field of competition policy in Türkiye and Türkiye's obligations to align with the European Union (EU) acquis within the context of EU–Türkiye relations are examined. Second chapter situates the DMA within its historical and institutional context, examining the emergence of digital gatekeepers and the EU's regulatory response, including stakeholder input from the European Commission's public consultation. Third chapter explores the legal structure and practical enforcement of the DMA, identifying key innovations and challenges such as static

obligations, procedural asymmetries and potential overreach. Forth chapter presents a comparative analysis, showing that while Türkiye's Draft Amendment draws heavily on the DMA's logic, it introduces greater flexibility and wider discretionary powers. The thesis concludes that the DMA is a significant reference point globally, but its adoption in Türkiye takes the form of a hybrid framework shaped by local dynamics. The policy steps Türkiye takes will determine not only the effectiveness of its national competition law, but also its level of regulatory convergence with the European Union and its position in global digital governance, despite its formal obligations for legal alignment.

Keywords: competition law; competition policy; digital markets; ex ante regulation; European Union

ÖZ

DİJİTAL PİYASALARIN DÜZENLENMESİ: AB DİJİTAL PİYASALAR YASASI VE TÜRK REKABET HUKUKU ÜZERİNDEKİ ETKİLERİNE İLİŞKİN KARŞILAŞTIRMALI BİR ANALİZ

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Bu tez, "*Avrupa Birliği'nin Dijital Piyasalar Yasası (DMA), dijital rekabet alanında ne ölçüde bir düzenleyici model işlevi görmekte ve Türk rekabet hukuku reformlarını nasıl etkilemektedir?*" sorusu çerçevesinde şekillenmektedir. Bu çerçevede çalışma, DMA'yı; dijital platformlara yönelik önleyici (ex ante) düzenleyici yaklaşımların öncüsü olarak konumlandırmakta ve bunun Türk rekabet hukuku üzerindeki etkilerini incelemektedir. Geleneksel ardıl müdahaleye dayalı (ex post) rekabet hukukunun dijital piyasalardaki rekabet karşıtı davranışlara müdahalede yetersiz kalması, her iki rejimin de adil ve erişilebilir piyasa koşullarını sağlamaya dönük çözümler üretme gereğini doğurmuştur. Bu bağlamda birinci bölümde, Avrupa Birliği (AB) ve Türkiye ilişkileri bağlamında Türkiye'de rekabet politikası alanındaki gelişmeler ve Türkiye'nin AB mevzuatına uyum yükümlülükleri ele alınmaktadır. İkinci bölümde, DMA tarihsel ve kurumsal bağlamı içerisinde ele alınmakta; dijital geçit bekçileri kavramının ortaya çıkışı ile AB'nin düzenleyici yanıtı ve Avrupa Komisyonunun kamu istişare sürecinde alınan paydaş görüşleri değerlendirilmektedir. Üçüncü bölüm, düzenlemenin hukuki yapısını ve

uygulamadaki mekanizmalarını analiz ederken; statik yükümlülükler, usule ilişkin dengesizlikler ve aşırı müdahale riskleri gibi temel tartışmalara odaklanmaktadır. Dördüncü bölüm ise karşılaştırmalı bir analiz sunmakta ve Türkiye'de hazırlanan Taslak Düzenleme'nin DMA'dan önemli ölçüde esinlendiğini, ancak niteliksel eşikler ve Rekabet Kurumuna tanınan geniş takdir yetkileriyle daha esnek ve bağlamsal bir yapı sunduğunu ortaya koymaktadır. Sonuç olarak, DMA küresel ölçekte önemli bir referans noktası haline gelmiştir; ancak Türkiye'deki yansıması, yerel dinamiklere göre şekillenen hibrit bir çerçeve olarak ortaya çıkmaktadır. Türkiye'nin atacağı politika adımları, yalnızca ulusal rekabet hukukunun etkinliğini değil, hukuki uyum yükümlülüğüne rağmen Avrupa Birliği ile düzenleyici yakınlaşma düzeyini ve dijital yönetişimdeki konumunu da belirleyecektir.

Anahtar Kelimeler: rekabet hukuku; rekabet politikası; dijital piyasalar; önleyici düzenleme; Avrupa Birliği

DEDICATION

Dedicated to the revered memory of Pilot Captain Cengiz Topel and Brigadier General (M.D.) Nihat İlhan with his martyred family, heroic martyrs of Cyprus whose sacrifice for the homeland will never be forgotten.

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LIST OF ABBREVIATIONS

BEUC	European Consumer Organisation
CEO	Corporate Europe Observatory
CCIA	Computer & Communications Industry Association
CERRE	Centre on Regulation in Europe
CMA	UK Competition and Markets Authority
CNMC	Comisión Nacional de los Mercados y la Competencia (Spanish Competition Authority)
CoJ	Court of Justice of the EU
CPS	Core Platform Service
CUJC	Customs Union Joint Committee
DCMS	UK Department for Digital, Culture, Media and Sport
DG COMP	Directorate-General for Competition of the EU
DMA	Digital Markets Act
DMAC	Digital Markets Advisory Committee
DMCC	Digital Markets Competition and Consumers Act
Draft Amendment	Draft Amendment to the Act No 4054 on the Protection of Competition
DSA	Digital Services Act
DSM	Digital Single Market
EEC	European Economic Community
EC	European Commission
ECHR	European Convention on Human Rights
ECN	European Competition Network
EDRi	European Digital Rights
EU	European Union
EP	European Parliament
FRIT	Facility for Refugees in Türkiye
FTAs	Free Trade Agreements

GDPR	General Data Protection Regulation
GWB	German Act Against Restraints of Competition
HLG	The High-Level Group for the DMA
IMCO	Internal Market and Consumer Protection
MFN	Most-Favored Nation
MSs	Member States
NATO	North Atlantic Treaty Organization
NCAs	National Competition Authorities
NCT	New Competition Tool
NGO	Non-Governmental Organization
NPAA	National Programme for the Adoption of the Acquis
OECD	Organization for Economic Cooperation and Development
P2B	Platform-to-Business
RAG	Reform Action Group
SAMSA	State Aid Monitoring and Supervision Authority
SEM	Single Economic Market
SMEs	Small and Medium Enterprises
SMP	Significant Market Power
TCA	Turkish Competition Authority
TFEU	Treaty on the Functioning of the European Union
TTC	Trade and Technology Council
UNCTAD	United Nations Conferencet on Trade and Development
U.S.	United States of America

CHAPTER 1

INTRODUCTION

The digital revolution of recent decades has profoundly reshaped global markets, introducing a new economic paradigm driven by digital platforms. These platforms, encompassing online marketplaces, social networking sites, intermediation services, app stores, search engines and video-sharing services have become central to economic and social interactions. Their ability to facilitate cross-border transactions, lower operational costs and foster innovation has significantly contributed to economic growth and consumer welfare. However, these benefits have been accompanied by significant concerns regarding market concentration, anti-competitive practices and regulatory inadequacies in addressing the dominance of a few large firms (Cini & Czulno, 2022, p. 41).

Online platforms operate within multi-sided markets, enabling them to mediate interactions between vast numbers of consumers and business users while simultaneously providing their own services.[1] This dual role places them in a unique position of power, allowing them to function as gatekeepers. They can monitor and analyze end-user behavior through extensive data collection and profiling. For business users, reliance on these platforms often becomes indispensable. However, these same platforms may also engage in practices that hinder competition, notably by controlling access to essential digital markets (European Commission, 2020b, p. 1).

Numerous studies have underscored the outsized economic influence wielded by large online platforms that function as gatekeepers for both businesses and

[1] For further discussion of this point, see Wismer and Rasek (2017) "Market definition in multi-sided markets - Note by Sebastian Wismer and Arno Rasek", OECD DAF/COMP/WD(2017)33/FINAL, https://one.oecd.org/document/DAF/COMP/WD(2017)33/FINAL/en/pdf .

seeking to participate in the digital economy.[2] These platforms operate as online intermediaries, connecting a wide spectrum of users (including consumers, sellers, advertisers, software developers and providers of ancillary services) who engage in the exchange of information, goods, services and social interaction. Their operational model diverges significantly from that of conventional firms, thanks to a set of distinctive economic features.[3]

Three features stand out as particularly significant in this new environment. Firstly, digital platforms collect, process and monetize vast quantities of user data, which enables them to refine their services, target advertising with precision, and erect barriers to entry for potential competitors by accumulating proprietary datasets. Second, increasing returns to scale and network effects further entrench the market power of leading platforms. As user numbers grow, the utility of a platform increases, making it increasingly difficult for new entrants to gain traction, thereby facilitating a *'winner-takes-most'* market dynamic. Third, economies of scope have enabled the evolution of digital ecosystems, wherein platforms leverage their infrastructure and data across a diverse range of services (from e-commerce and cloud computing to social media and digital payments) creating interconnected services that reinforce user dependency and reduce multi-homing. These three features (data centrality, scale-based advantages and ecosystem expansion) not only define the structure of digital markets but also challenge the adequacy of traditional competition policy, which historically relied on models of fragmented markets with multiple competing firms. In this context, ensuring market contestability and fair competition demands a recalibration of regulatory instruments to reflect the unique mechanics of digital markets (Crémer et al., 2019, p. 15).

Driven by big data, undertakings operating in multi-sided markets generate network effects through the user and monetization feedback loops described above. These network effects, in turn, make such markets inherently prone to monopolization,

[2] To review the studies, please see Crémer et al, 2019; Furman et al, 2019; Stigler Committee, 2019; US House of Representatives Sub-Committee on Antitrust, 2020.

[3] For further discussion on this topic, please see Caillaud and Jullien, 2003; Parker and Alystyne, 2005; Rochet and Tirole, 2006. For a useful glossary on this topic, please see Parker, G., M. van Alstyne and S. P. Choudary (2016).

reinforced by dynamics such as the snowball effect, lock-in effects, path dependency and first-mover advantages. Once an undertaking is able to leverage these dynamics, consumer choice becomes increasingly constrained, leading ultimately to a restriction of competition (Okkaoğlu, 2020, p. 31).

In line with this, in recent years, online platform markets and digital service providers have come under growing global scrutiny due to a wide array of concerns related to their conduct and market influence. This heightened attention has sparked a discernible international movement toward the development of new ex ante regulatory measures, as well as the adaptation of existing legal regimes, particularly within the realm of competition law.[4] These efforts aim to address the unique challenges posed by the dominance and practices of major digital platforms across various segments of the digital economy. The emergence of gatekeeper platforms, firms with substantial market power controlling access to digital markets intensified discussions on regulatory reform. These firms, benefiting from their entrenched positions and vast user bases, were found to engage in practices such as self-preferencing, tying and leveraging data advantages to reinforce their dominance. Traditional ex post competition enforcement was deemed insufficient to address these concerns in a timely and effective manner, necessitating a shift toward ex ante regulatory interventions (OECD, 2021a, p. 9).

The European Commission (EC) has long recognized the need to balance the opportunities and risks posed by digital platforms. The Digital Single Market Strategy, launched in 2015, marked the European Union's (EU) first comprehensive policy initiative aimed at ensuring fair competition, consumer protection and innovation in digital markets. This strategy emphasized the importance of harmonized regulations across Member States (MSs), identifying the challenges posed by the dominance of a few large digital players and their impact on market contestability.[5] Despite existing competition law mechanisms under Articles 101 and

[4] The jurisdictions revising existing rules and/or adopting new rules include the European Union, United States, United Kingdom, Japan, Germany, Australia etc..

[5] For a detailed timeline of the Digital Single Market Strategy of the EU, please visit https://www.consilium.europa.eu/en/policies/digital-single-market/.

102 of the Treaty on the Functioning of the European Union (TFEU), concerns persisted over their effectiveness in addressing the unique characteristics of digital markets, such as extreme economies of scale, strong network effects and data-driven competitive advantages (Regulation (EU) 2022/1925, Recital 5).

In response to these challenges, in alignment with the EU's broader strategic framework titled "*A Europe fit for the digital age*", the EC proposed the Digital Markets Act (DMA) on 15 December 2020 as part of its broader European Digital Strategy (EC 2021a, p. 6). The proposal underwent extensive negotiations, culminating in a political agreement between the European Parliament (EP) and the Council on 24 March 2022, formally adopted on 14 September 2022. The DMA, formally enacted as Regulation (EU) 2022/1925,[6] entered into force in November 2022 and became largely applicable on 2 May 2023.[7] This legislative instrument is designed to enhance the functioning of the internal market by establishing conditions that promote contestability and fairness across digital sectors, thereby enabling both enterprises and consumers to fully harness the advantages offered by the digital economy (Bagnoli, 2021, p. 137; Streel and Larouche, 2021, p. 47).

The DMA is intended to complement EU and MSs competition rules[8] and it also accompanies and complements the Digital Services Act (DSA) (EC, 2020a). DMA's main purpose was to design and establish a regulatory framework imposing ex ante obligations on designated gatekeepers, ensuring that digital markets remain fair and contestable (Regulation (EU) 2022/1925, Recital 6).

As seen, the DMA is part of a broader trend of regulatory initiatives addressing digital competition concerns across major jurisdictions. These regulatory efforts reflect a global consensus on the need for stronger regulatory oversight of dominant

[6] Regulation (EU) 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 (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) OJ L 265, 12.10.2022, p. 1–66.

[7] For a detailed timeline, please visit: https://digital-markets-act.ec.europa.eu/about-dma_en#:~:text=The%20DMA%20entered%20into%20force,and%20provide%20all%20relevant%20information.

[8] DMA Explanatory Memorandum, p.3.

digital platforms (OECD, 2021a, p. 12-13). The EU's approach, however, stands out due to its comprehensive, ex ante framework targeting a broad range of anti-competitive behaviors specific to digital gatekeepers.

The EU has increasingly positioned itself as a global standard-setter in the regulation of digital markets. Building on a tradition of market regulation that began with competition law and expanded to include consumer protection, data privacy and now innovation policy, the EU has pursued a coherent regulatory vision aligned with its internal market objectives, which seeks to create a unified digital ecosystem across MSs. However, the legal and normative reach of these instruments has not remained confined to EU borders. Through what has been termed the *Brussels Effect*, EU regulations increasingly shape legal and policy responses in third countries, either through formal legal approximation or de facto regulatory emulation (Bradford, 2019, p. 26-27). This phenomenon is particularly visible in Türkiye, where a combination of association obligations, economic interdependence and institutional benchmarking has led to the internalisation of EU-inspired digital policy frameworks (Aşçıoğlu Öz, 2023, p. 443-444).

Despite its ambitious objectives, the DMA has generated significant debate regarding its scope, enforcement and potential economic impact. Key issues include its ability to adapt to rapidly evolving digital markets, the role of National Competition Authorities (NCAs) in its implementation and its interaction with existing competition law mechanisms (Crémer et al., 2019, p. 15).

In line with this background, this thesis examines the DMA, the EU's most comprehensive ex ante regulatory framework for digital markets and compares it with the Draft Amendment to Act No. 4054 on the Protection of Competition (Draft Amendment) prepared in Türkiye.

The central research question of the thesis is "*To what extent does the European Union's Digital Markets Act (DMA) serve as a regulatory model for digital competition and how can it influence the proposed reforms to Turkish competition law?*"

The study is pursued through four core chapters. The first chapter offers a historical overview of Türkiye's competition policy and competition law framework, particularly in relation to its alignment obligations with the EU acquis under the EU–Türkiye relationship. The second chapter sets out the evolution and rationale of the DMA, tracing the emergence of digital gatekeepers, the EU's strategic agenda for digital governance, and the theoretical underpinnings of the shift from ex post antitrust enforcement to a proactive, ex ante regulatory model. The third chapter delves into the operational framework of the DMA, analyzing its legal nature, the gatekeeper designation process, the substance and form of its obligations and the enforcement architecture. It also critically engages with key criticisms of the DMA, including concerns about legal indeterminacy, regulatory overreach, procedural asymmetry, and the challenges posed by static obligations in highly dynamic digital environments. The fourth chapter offers a comparative legal analysis of the DMA and the Draft Amendment, with particular attention to their respective designation criteria, institutional mandates, enforcement mechanisms and extraterritorial implications.

Methodologically, the study is based exclusively on secondary sources, including legislative texts, non-public draft materials, academic publications and policy papers. As a former competition law expert, I approach this research not only with legal-technical proficiency but also with a contextual understanding of both public and private sector perspectives. My analytical lens is thus interdisciplinary and comparative, informed by doctrinal, institutional and policy-oriented considerations.

The thesis also acknowledges key limitations. Most notably, the Draft Amendment under examination is not publicly available. The draft analyzed herein is a version circulated within Türkiye's competition law community as of February 2025, and while not officially published, it is accessible to a wide circle of legal practitioners and scholars due to informal distribution through consultation channels. Consequently, in this study, the references to the Draft Amendment have been articulated with a higher degree of transparency and detail to ensure that the analysis remains accessible to readers without direct access to the text.

A further limitation is the inherent risk associated with the fluid status of the Draft Amendment. Should the draft be significantly altered or withdrawn, the relevance of this comparative assessment could be called into question. Nevertheless, this study argues that such an analysis remains valuable, as it documents and evaluates a significant moment in Türkiye's regulatory trajectory. It also serves to highlight the importance of procedural transparency and stakeholder consultation in legislative processes, a dimension where the Turkish experience remains opaque. The Turkish Competition Authority (TCA) has not made the Draft Amendment public, nor has it disclosed the views collected from various institutions during the informal consultation phase, thus falling short of the standards of transparency observed in EU regulatory practice.

As seen, despite Türkiye's longstanding and multilayered legal commitments to align its competition policy with the EU acquis, especially under Decision No. 1/95 of the EC–Türkiye Association Council establishing the Customs Union, this thesis is being written in a moment marked by regulatory hesitation. While Türkiye has made considerable progress in aligning with EU antitrust and merger control norms, its broader commitment to adopting ex ante digital market regulation akin to the EU's DMA remains deferred. This deferral is not merely technical but also deeply political, shaped by a complex constellation of international considerations, domestic policy priorities and regulatory discretion. As a result, it is critical to note that the Draft Amendment, which forms the basis for this thesis's comparative analysis, has remained idle before the legislature for over two years[9], although it is the product of a highly intensive effort by the TCA, utilising substantial institutional capacity, legal expertise and alignment with global best practices. The paradox is thus striking: a legislative initiative reflecting international regulatory convergence and domestic technical excellence exists, but its implementation is suspended, symbolically and materially.

[9] The Draft Amendment was shared with various stakeholders on 14 October 2022 for the purpose of obtaining their views. However, this consultation process was not conducted publicly, the Draft Amendment was not published on the TCA's website, nor were the opinions submitted on the draft made publicly available. It is further understood that the draft circulated among stakeholders in October 2022 has since been revised several times throughout 2024, with certain additions and deletions and that the most recent version is currently under consideration by members of parliament who are expected to submit it to the relevant parliamentary commission.

This inertia is not without broader implications. The Turkish government's cautious stance toward adopting the DMA or similar regimes was recently confirmed by the Minister of Treasury and Finance, who noted in an October 2025 interview with Anadolu Agency that Türkiye "*has not joined the DMA*" and is "*waiting to see what works*" emphasising a preference for regulatory restraint in order to attract global tech investments. [10] While this reflects a strategic positioning within the global digital economy, it also underscores a deeper tension between Türkiye's obligations under the EU acquis and its evolving political economy. The sidelining of DMA-like regulation could impair Türkiye's long-term regulatory credibility within the EU accession process. It further raises questions about the sustainability of dynamic alignment when reform trajectories are politically discretionary rather than rule-bound.

This study, therefore, offers more than a comparative legal analysis. It documents a critical juncture in Türkiye's regulatory evolution where the imperative of EU approximation coexists with the political choice of strategic delay. It seeks to contribute to the scholarly and policy discourse by preserving the analytical value of a legislative text that, while not yet adopted, represents a serious attempt at regulatory convergence. In doing so, the thesis aspires to remain relevant beyond the immediate legislative cycle, providing a foundation for future engagement should Türkiye decide to revive its digital market reform agenda.

[10] https://www.aa.com.tr/tr/ekonomi/hazine-ve-maliye-bakani-simsek-bolgesel-ve-kuresel-entegrasyonun-oneminin-farkindayiz/3728762 , Available only in Turkish. Date of Access: 30.10.2025.

CHAPTER 2

COMPETITION POLICY WITHIN THE CONTEXT OF EUROPEAN UNION-TÜRKİYE RELATIONS

Türkiye's relationship with the EU has long been marked by a unique mix of strategic ambition, political complexity and institutional persistence. Since the signing of the Ankara Agreement in 1963, which laid the foundation for Türkiye's association with the then-European Economic Community (EEC), the partnership has evolved in response to major shifts in both the European integration process and the broader international system.[11] Despite setbacks and periods of tension, Türkiye has consistently upheld EU membership as a key foreign policy objective.

During the Cold War, Türkiye's geostrategic role as a North Atlantic Treaty Organization (NATO) member situated between East and West naturally aligned with European interests. In the post-Cold War era, however, the focus of Türkiye–EU relations began to shift toward economic integration, regulatory alignment and democratic reforms. A major turning point came in December 1999, when the Helsinki European Council officially recognized Türkiye as a candidate country, placing it on a formal path toward full membership. This candidacy brought new momentum to reforms in areas such as public administration, the judiciary, human rights and market liberalization.

Following the 2015 refugee crisis, Türkiye–EU relations gained renewed momentum through the 2016 EU–Türkiye Statement, which facilitated cooperation on migration and reopened dialogue on key dossiers such as visa liberalisation and Customs Union modernisation. However, the failed coup attempt of July 2016 and the EU's critical

[11] https://ab.gov.tr/_117_en.html , Date of Access: 30.10.2025.

response created a sharp deterioration in mutual trust. Although initiatives like the 2018 Varna Summit and subsequent judicial reforms aimed to restore engagement, political tensions, including disputes over Eastern Mediterranean activities, led the EU to effectively freeze accession negotiations. Despite this, Türkiye continued to demonstrate technical progress, particularly in the Visa Liberalisation Dialogue and efforts to reform the Customs Union. Institutional mechanisms such as high-level sectoral dialogues and the Türkiye–EU Association Council have remained functional, reflecting the enduring, if strained, nature of the bilateral relationship.[12]

It is important to note that understanding the legal basis for Türkiye's alignment with the EU acquis, particularly in the domain of competition policy, requires tracing a complex, decades-long trajectory shaped by formal agreements, evolving obligations and political developments. This chapter introduces the layered legal framework that has governed Türkiye's progressive integration with the EU, focusing specifically on the foundational instruments that have given rise to alignment imperatives.

2.1. The Ankara Agreement (1963) and the Additional Protocol (1970)

The legal architecture underpinning Türkiye's alignment with the EU acquis, particularly in the field of competition policy, originates from the Agreement Establishing an Association between the EEC and Türkiye, widely known as the Ankara Agreement. Signed on 12 September 1963 and entering into force on 1 December 1964, the Ankara Agreement laid the foundational groundwork for Türkiye's progressive integration into the European common market.

The Agreement conceptualised this integration process through a three-phase structure: the preparatory stage, the transitional stage and the final stage. This staged approach was intended to enable Türkiye to align its legal, institutional and economic structures incrementally with those of the European Community. Crucially, Article 2(1) of the Ankara Agreement articulated the broader aim of promoting the continuous and balanced strengthening of trade and economic

[12] https://ab.gov.tr/4.html , Date of Access: 27.10.2025.

relations between the Contracting Parties and enhancing the well-being of the Turkish people, with the long-term goal of facilitating Türkiye's accession to the European Community.

The transition from intention to implementation was operationalised through the Additional Protocol, signed on 23 November 1970 and entering into force in 1973. The Protocol provided a legally binding roadmap for the realisation of the Customs Union, setting timetables for the removal of tariffs and quantitative restrictions and introducing rules on competition, public procurement, and harmonisation of commercial policies.

Of particular relevance to the alignment of Türkiye's competition policy with that of the EU is Article 36 of the Additional Protocol, which establishes a commitment by both parties to harmonise economic policies and gradually approximate legislation to ensure the effective functioning of the Customs Union. This provision implicitly recognises that achieving a common market necessitates more than tariff elimination; it also requires convergence in regulatory disciplines, including rules on competition, state aid control and market regulation.

The inclusion of such a clause reflects the Community's broader acquis-driven integration model, wherein market access and deeper economic cooperation are conditional upon domestic legal and institutional reforms. Thus, the Additional Protocol planted the seeds for Türkiye's long-term obligations to align its internal market rules, including competition law, with those of the EU.

Although the Ankara Agreement and its Additional Protocol did not confer candidate status or guarantee full membership, they framed Türkiye as a potential future member within a formalised association relationship. The agreements introduced institutional mechanisms such as the Association Council, which was tasked with interpreting and implementing the provisions and monitoring progress in approximation. Over time, these mechanisms would serve not only as vehicles for policy dialogue but also as enforcement platforms for Türkiye's commitments to harmonisation.

In this context, the early association framework, despite its modest and staged ambitions, can be understood as a proto-accession structure, aligning Türkiye's legal order with that of the EU in strategically critical areas. The emphasis on approximation in competition law from as early as the 1970s indicates that the alignment process was not merely aspirational, but legally embedded in the evolution of Türkiye–EU relations.

The relevance of these foundational documents remains substantial even today, especially in light of subsequent legal instruments, such as Decision No. 1/95 of the EC–Türkiye Association Council, that directly reference and build upon the Ankara Agreement and the Additional Protocol. These instruments cumulatively constitute the legal basis upon which Türkiye's alignment with the EU acquis in competition policy has developed and they continue to guide the scope and depth of this alignment in the contemporary phase of Türkiye's integration process.

2.2. Decision No. 1/95 of the Türkiye–European Union Association Council

The most concrete and operational legal instrument anchoring Türkiye's obligation to align its competition law with that of the EU is Decision No. 1/95 of the Türkiye–EU Association Council, adopted on 6 March 1995. This decision marked the formal establishment of the EU–Türkiye Customs Union, which entered into force on 1 January 1996, and represents a turning point in Türkiye–EU legal and economic integration. While the Ankara Agreement and Additional Protocol provided the association's constitutional foundation, Decision No. 1/95 effectively implemented its key economic provisions, moving the bilateral relationship into a new phase of rules-based convergence.

Decision No. 1/95 comprises a comprehensive regulatory framework governing the free movement of industrial goods, customs procedures, intellectual property rights, technical regulations, State aid and most crucially for internal market governance, competition rules. The EU's insistence on embedding competition policy within the core structure of the Customs Union is a reflection of its internal market philosophy, which holds that economic integration cannot function without a common set of competition disciplines to prevent distortions.

This is clearly reflected in Section V (Articles 32–42) of the Decision, which is entirely dedicated to competition policy. Here, the Decision articulates binding commitments that go far beyond earlier general obligations under the Ankara Agreement and Additional Protocol. In particular, Article 39 establishes Türkiye's duty to approximate its national competition regime to EU law, especially the principles set out in Articles 101 and 102 of the TFEU. These provisions prohibit anti-competitive agreements and the abuse of dominant market positions, respectively.

Article 39(1) mandates that Türkiye shall adopt a law which renders anti-competitive conduct by undertakings illegal and establishes a competition authority with adequate resources to implement and enforce the competition rules. This clause establishes a dual obligation: first, to legislate against anti-competitive practices, and second, to ensure institutional capacity through the creation of an independent and functional competition authority.

Article 39(2) further requires that Türkiye shall adopt and implement block exemption regulations and guidelines equivalent to those of the EC, and shall take into account the case-law of the Court of Justice of the European Union.

This reflects the EU's holistic approach to competition enforcement, which includes not only substantive norms but also secondary legislation (block exemptions, notices, guidelines) and a coherent jurisprudential corpus developed by the Court of Justice of the European Union (CJEU). Thus, Türkiye is expected to align not merely in legislative content, but in enforcement philosophy, procedural frameworks and interpretive standards.

Türkiye's response to these obligations materialised with the adoption of Law No. 4054 on the Protection of Competition in 1994, which entered into force shortly before the Customs Union became operational. This law laid the legislative foundation for a modern competition regime aligned with EU norms. However, the TCA, the institution mandated to enforce this law, only became operational in 1997, creating an initial delay in the effective application of competition policy.

The TCA was designed as an independent administrative authority with investigatory, decision-making and sanctioning powers, modeled closely on the EC's Directorate-General for Competition (DG COMP). Since its inception, the TCA has progressively expanded its enforcement capacity, adopted secondary legislation mirroring EU block exemption regulations, and built a track record of decisions reflecting the substantive principles and economic analyses prevalent in EU practice.

Nevertheless, alignment is not static. The evolving nature of EU competition law, through legislative updates, EC practice and CJEU case-law, requires ongoing adaptation on the part of Türkiye. The challenge, therefore, is one of dynamic harmonisation, wherein Türkiye must continuously revise and modernise its competition law and practice to remain aligned with the acquis.

The institutional framework for supervising Türkiye's compliance with these obligations is the Customs Union Joint Committee (CUJC). Although it lacks formal law-making powers, the CUJC serves as a technical and political forum for addressing issues of divergence, promoting dialogue on legislative updates, and fostering administrative cooperation. Importantly, it also provides a platform for regulatory anticipation, allowing Türkiye to be informed in advance of forthcoming changes in EU competition policy that may require domestic adaptation.

In addition to formal oversight, Annual EU Progress Reports have served as a key tool for monitoring Türkiye's progress in competition policy alignment. In recent years, particularly within the last decade, these reports have repeatedly emphasized Türkiye's need to enhance enforcement independence, ensure transparency in State aid control, and align more consistently with the evolving EU secondary legislation and jurisprudence.

Beyond its technical provisions, Decision No. 1/95 functions as a political instrument of integration. It illustrates the EU's strategy of sectoral approximation as a precursor to full membership, using the Customs Union not merely as an economic arrangement but as a vehicle for normative convergence. In this context, Türkiye's alignment with EU competition rules is not simply a trade requirement; it represents

a litmus test for Türkiye's willingness and capacity to internalise the legal and institutional logic of the EU internal market.

Ultimately, Decision No. 1/95 reveals a layered legal framework: it is simultaneously a binding obligation, a platform for approximation, and a political signal of Türkiye's European orientation. The scope and depth of Türkiye's compliance with this Decision continue to serve as a benchmark for evaluating its broader integration trajectory and credibility as an EU candidate country.

2.3. Türkiye's European Union Accession and Negotiation Framework

Following decades of institutional engagement under the Ankara Agreement and the subsequent establishment of the Customs Union, Türkiye's relationship with the European Union entered a qualitatively new phase with the official recognition of its candidate status at the Helsinki European Council in December 1999. This historic decision signified not only political endorsement but also the initiation of a comprehensive and structured accession process. It marked the transformation of Türkiye's association into a formal accession trajectory, thereby anchoring its long-term strategic objective of full EU membership in an operational legal and institutional framework.

The Helsinki decision ensured that Türkiye would be evaluated on an equal footing with other candidate countries, entitling it to participate in pre-accession strategies, community programmes, and financial assistance mechanisms. To support this trajectory, the EU established eight subcommittees under the Türkiye–EU Association Council in April 2000, each tasked with evaluating Türkiye's readiness across various chapters of the EU acquis. Additionally, the first Accession Partnership Document, adopted on 8 March 2001, laid out short- and medium-term priorities, particularly emphasizing areas such as competition, State aid control, public procurement, and the creation of regulatory agencies aligned with EU norms.

In response, Türkiye published its first National Programme for the Adoption of the Acquis (NPAA) in March 2001, a detailed roadmap outlining the legislative,

institutional and administrative reforms necessary to fulfil its accession obligations. This was later revised and updated in line with progress assessments and evolving EU benchmarks, demonstrating Türkiye's commitment to structured alignment and capacity-building.

Türkiye's accession momentum was further accelerated by the European Council's decision of 17 December 2004, which concluded that Türkiye had sufficiently fulfilled the Copenhagen political criteria, thereby enabling the formal opening of accession negotiations on 3 October 2005. This development was accompanied by the adoption of the Negotiation Framework Document, which stipulated that the accession process would be open-ended, merit-based and contingent upon Türkiye's continued fulfilment of both political and acquis-related obligations.[13]

The negotiations are structured around 35 acquis chapters, each representing a substantive policy domain requiring alignment. Among these, Chapter 8: Competition Policy holds particular strategic significance for Türkiye's economic governance, internal market integration, and institutional reform. The chapter encompasses four critical pillars: i) antitrust policy (prohibition of restrictive agreements and concerted practices), ii) control of abuses of dominant positions, iii) merger control and iv) state aid regulation, including the establishment of an independent authority to monitor public subsidies and oversee undertakings with exclusive rights.[14]

Before opening negotiations on each chapter, candidate countries undergo a screening process to assess their level of alignment with the acquis. For Chapter 8, the explanatory screening was held on 8–9 November 2005, followed by the bilateral screening on 1–2 December 2005. During this period, the EC assessed Türkiye's legal, administrative and enforcement structures, while Türkiye outlined its reform efforts, particularly highlighting Law No. 4054 on the Protection of Competition and the role of the TCA.

[13] https://ab.gov.tr/accession-negotitations_37_en.html , Date of Access: 28.10.2025.

[14] https://ab.gov.tr/chapters_62_en.html , Date of Access: 28.10.2025.

The screening concluded that Türkiye had made significant progress in antitrust enforcement and merger control, benefiting from an active TCA and a legal framework modeled after EU competition rules. However, the assessment identified serious deficiencies in the area of State aid control, primarily due to the absence of a specific State aid law and a functioning independent authority to oversee its implementation.

This shortcoming became the central impediment to opening Chapter 8. Unlike other areas where transitional arrangements may be accepted, State aid enforcement is considered a non-negotiable prerequisite for ensuring the proper functioning of the internal market. Consequently, the EC issued a benchmark condition requiring Türkiye to establish a fully operational and independent State aid control system before negotiations could proceed.

In response, Türkiye enacted Law No. 6015 on the Monitoring and Supervision of State Aids in 2010, establishing the legal basis for a national State Aid Monitoring and Supervision Authority (SAMSA). Despite this legislative step, progress stalled due to delays in adopting the necessary secondary legislation, coupled with institutional capacity constraints and ambiguities regarding the authority's independence and mandate. As a result, Chapter 8 remains neither opened nor closed, and the issue continues to feature prominently in EC Progress Reports, which, particularly in the last decade, have consistently urged Türkiye to fully implement an effective State aid control regime.

To facilitate accession, the EU employs several pre-accession monitoring tools, most notably the Annual Progress Reports. These documents provide a detailed assessment of Türkiye's compliance with the acquis, the independence of regulatory institutions, and the robustness of enforcement mechanisms. In recent years, reports have increasingly highlighted the need for predictable rule enforcement, non-politicised competition oversight, and full alignment with EU secondary legislation.
Parallel to this, Türkiye has developed and periodically revised national planning tools, such as the EU Harmonisation Strategy (2014–2023) and its successor covering 2021–2023 and beyond, which reaffirm Türkiye's intention to

autonomously pursue alignment with EU standards. These strategies are reinforced by inter-ministerial coordination structures and technical assistance mechanisms, including cooperation with TAIEX and Twinning projects, facilitating knowledge transfer and administrative capacity-building.

Despite political headwinds and the formal stagnation of the negotiation process, the alignment with EU competition law remains a legally binding obligation under the Customs Union framework and a strategic objective under the accession agenda. The structured engagement through screening, monitoring and national programmes underscores Türkiye's continued commitment, albeit with notable gaps in implementation.

2.4. Progress in Competition Policy: Implementation and EU Monitoring

The alignment of Türkiye's competition policy with the EU acquis has been subject to regular and detailed scrutiny through the EC's Annual Progress Reports, which serve as a central mechanism for tracking institutional reform and acquis compliance throughout the accession process. These reports offer a longitudinal perspective, not only on legislative harmonisation but also on the operational effectiveness of regulatory institutions and the sustainability of reform efforts. This section draws specifically on Progress Reports issued between 2014 and 2024, allowing for a contemporary, evidence-based assessment of Türkiye's alignment trajectory in a context marked by both internal political transformations and evolving EU regulatory standards.

Throughout the past decade, Türkiye has been consistently assessed as moderately prepared in the field of competition policy, with the TCA often singled out as a relatively mature and technically competent regulatory body. Established under Law No. 4054 on the Protection of Competition (1994) and operational since 1997, the TCA has gained international recognition for its enforcement record and active engagement in global competition fora, including the Organization for Economic Cooperation and Development (OECD), International Competition Network (ICN) and United Nations Conferencet on Trade and Development (UNCTAD).

The EC has acknowledged the TCA's capacity to conduct complex antitrust investigations, apply EU-equivalent methodologies for market definition and dominance assessment, and issue decisions that reference both EC practice and CJEU jurisprudence. Furthermore, the TCA has adopted a series of block exemption regulations, including on vertical agreements, R&D cooperation and technology transfer, that mirror EU frameworks, reinforcing its reputation as an institution that blends domestic autonomy with European legal convergence.

The TCA's increased attention to digital markets and platform regulation has been noted with approval in recent EC Progress Reports. Specifically, the 2022 Türkiye Progress Report explicitly acknowledges that the TCA has intensified its focus on digital markets through sector inquiries into e-commerce, digital advertising, and online food delivery. The report highlights that these efforts align closely with the EU's regulatory agenda, particularly under the DMA and the DSA frameworks.

The report states that the TCA launched a series of sector inquiries into the e-commerce sector, digital advertising and online food delivery. The authority also initiated competition investigations against some global digital players operating in Türkiye. These efforts are broadly aligned with the EU's new regulatory initiatives in the digital domain, such as the DMA and DSA. The EC encourages further strengthening of the TCA's capacity in these areas.

This official evaluation not only confirms Türkiye's regulatory responsiveness but also situates the TCA's digital enforcement strategy within the broader trajectory of EU legal evolution. It underscores the strategic importance of maintaining regulatory convergence in emerging areas such as data-driven competition, digital gatekeepers, and online platforms, which are now central pillars of EU competition and digital policy.

Thus, the TCA's proactive engagement in digital competition enforcement is not only recognized but encouraged by the EU, reinforcing its institutional credibility and technical alignment with the EU's evolving acquis. In stark contrast to the TCA's relative success, State aid control remains the most significant deficiency in

Türkiye's competition policy architecture. Despite the adoption of Law No. 6015 on the Monitoring and Supervision of State Aids (2010), Türkiye has failed to fully operationalize a functioning State aid enforcement regime that meets EU standards.

The EC has repeatedly identified the absence of an independent and adequately staffed State Aid Authority, the lack of sectoral implementation mechanisms, and the non-adoption of key secondary legislation, including procedural rules, notification requirements, and de minimis regulations, as fundamental obstacles to further progress. As a result, Chapter 8 of the accession negotiations (Competition Policy) has not been opened, despite sufficient alignment in the fields of antitrust and merger control.

Beyond sector-specific shortcomings, the Progress Reports have increasingly linked the performance of Türkiye's competition policy regime to broader concerns about rule of law, judicial independence, and regulatory predictability. In several reports since 2016, the EC has warned that political interference, centralisation of executive power, and the erosion of judicial checks and balances have created an uncertain institutional environment, which risks compromising the independence of regulatory agencies, including the TCA.

These governance concerns cast a shadow over otherwise strong technical performance, particularly when enforcement decisions intersect with politically sensitive sectors (e.g., telecommunications, media or public procurement). The EC has emphasized that genuine alignment requires not only legal transposition but also the effective, impartial and transparent application of competition rules in practice.

Despite political headwinds, technical cooperation between Türkiye and the EU continues, notably through the Customs Union Joint Committee, EU-funded twinning projects and TAIEX workshops. These initiatives aim to support regulatory harmonisation and institutional learning, with particular focus on State aid capacity-building and judicial training. The TCA's continued participation in EU ECN discussions, even as a third country observer, further reinforces its role as a bridge between domestic practice and European standards.

The state of Türkiye's alignment in competition policy can best be described as dual-speed. On the one hand, antitrust and merger control regimes are functionally aligned with EU norms, supported by a technically competent and internationally engaged competition authority. On the other hand, the lack of an operational State aid system and broader rule-of-law concerns hinder full alignment and prevent the formal opening of Chapter 8.

In this light, Türkiye's competition policy trajectory remains emblematic of the broader accession process: marked by technical potential, institutional asymmetry, and political conditionality. Moving forward, the completion of State aid reforms and the strengthening of governance safeguards will be essential to restoring momentum in the accession dialogue and for the market integration with the EU.

2.5. Modernisation of the Customs Union and Its Legal-Structural Implications

The Customs Union between Türkiye and the EU, which entered into force on 1 January 1996, has represented far more than a mere framework for trade liberalisation. It constitutes a fundamental pillar of Türkiye's broader integration process with the EU, building upon the legal foundation laid by the 1963 Ankara Agreement and further elaborated through the 1970 Additional Protocol. In this context, Decision No. 1/95 of the Türkiye–EU Association Council not only established the basis for the free movement of industrial goods but also imposed far-reaching obligations on Türkiye in areas such as competition law, intellectual property, public procurement and technical legislation, core elements of the EU's internal market acquis.

Over the past decades, however, the global trade environment has undergone a profound transformation. The EU has increasingly pursued comprehensive new generation Free Trade Agreements (FTAs) with third countries, encompassing not only goods but also services, investment, public procurement, digital trade, and sustainable development. In contrast, the scope of the existing Customs Union remains limited to industrial goods and processed agricultural products, with significant gaps in coverage and mechanisms for participation. Furthermore,

structural asymmetries have emerged in the functioning of the Customs Union, particularly due to Türkiye's exclusion from the EU's decision-making processes in trade policy. While Türkiye is expected to align with the EU's Common Commercial Policy, including the adoption of the Common External Tariff and participation in FTAs, it is not granted a formal seat at the negotiating table nor is it automatically included in those agreements. This misalignment has resulted in substantial trade diversion risks and economic disadvantages for Türkiye. Additional issues such as the imposition of visa requirements on Turkish businesspeople, the continued application of road transport quotas, and the lack of effective dispute resolution mechanisms further contradict the principles of a fully integrated customs framework. These persistent problems have reinforced the consensus that the current structure of the Customs Union no longer corresponds to the economic and political realities of EU–Türkiye relations, nor to the demands of 21st-century trade governance.

In this regard, the proposed modernisation of the Customs Union aims not only to address systemic inefficiencies but also to expand the agreement's scope into key regulatory areas. Services trade stands out as a major component of the modernisation agenda. Aligning with the EU's Services Directive and facilitating the mutual recognition of professional qualifications are essential for enhancing market access and cross-border mobility. In parallel, the inclusion of public procurement in the updated framework will require Türkiye to adopt more transparent, non-discriminatory, and competitive procurement rules aligned with EU directives. Türkiye has already introduced its Public Procurement Law in 2003 and established an independent regulatory authority; however, EU Progress Reports have consistently noted discrepancies, including overly generous thresholds, excessive exemptions, and preferential treatment for domestic bidders, all of which require further reform.[15]

From a competition policy perspective, Türkiye has already established a robust legal and institutional framework with Law No. 4054 on the Protection of Competition

[15] https://ticaret.gov.tr/dis-iliskiler/avrupa-birligi/gumruk-birliginin-guncelleme-sureci , Available in Turkish. Date of Access: 28.10.2025.

and the operations of the TCA. The TCA has adopted secondary legislation and exemption communiqués closely modelled on EU regulations, demonstrating a high level of procedural and substantive alignment. Nevertheless, the area of State aid control remains the most critical gap. Despite the adoption of the Law on Monitoring and Supervision of State Aids in 2010, the establishment of an independent and fully operational authority has been significantly delayed. The EC has repeatedly highlighted this deficiency as a major obstacle not only for completing Chapter 8 of the accession negotiations but also for the sound functioning of the Customs Union itself. As the modernised Customs Union would encompass sectors where State support is prevalent, such as services, agriculture and public procurement, effective State aid control is indispensable for ensuring a level playing field. In sum, the modernisation of the Customs Union represents a strategic opportunity to recalibrate EU–Türkiye economic relations on a more balanced, comprehensive and rules-based foundation. For Türkiye, this process not only entails substantial legal and institutional adaptation, but also offers a renewed pathway toward convergence with the EU acquis in a wide range of policy domains. Achieving this, however, requires sustained political will, administrative capacity and a credible commitment to European norms, both in spirit and in practice.

2.6. The Legal Rationale Behind Türkiye's Obligation to Align with EU Competition Rules

Türkiye's obligation to align its competition rules with those of the EU is not simply a matter of political choice or economic pragmatism, it is grounded in a dense network of binding legal instruments, treaty-based obligations, and the broader strategic trajectory of EU–Türkiye relations. From the foundational principles of the Ankara Agreement to the operational mechanisms of the Customs Union, and further through the accession negotiation framework, Türkiye's alignment with the EU competition acquis emerges as both a legal imperative and a functional necessity.

2.6.1. Treaty-Based Obligations: The Ankara Agreement and Decision No 1/95

The legal basis for Türkiye's obligation originates in the 1963 Ankara Agreement and its 1970 Additional Protocol. These foundational texts envisioned Türkiye's

progressive integration into the European economic area via the establishment of a Customs Union. Crucially, the logic of the Customs Union, unlike a mere free trade area, entails not only the removal of tariffs and quotas but also the creation of a common competitive environment where distortions to trade arising from anti-competitive practices or State intervention are neutralised.

This principle was operationalised in Decision No. 1/95 of the Türkiye-EU Association Council, which formalised the Customs Union and laid out Türkiye's obligations in detailed legal terms. Article 39 of this Decision is particularly pivotal: it obliges Türkiye to align its national competition law with Articles 101 and 102 of the TFEU, provisions prohibiting anti-competitive agreements and abuse of dominance, respectively. Beyond adopting equivalent legal rules, Türkiye is required to establish an independent competition authority, implement EU-style block exemption regulations, and ensure convergence with the case law of the CJEU.

Notably, Article 54 of Decision 1/95 extends this obligation of approximation beyond classic competition rules to all policy areas "directly affecting the functioning of the Customs Union" including State aid, public undertakings and competition in network industries. This broad interpretation creates a dynamic and evolving obligation to keep pace with EU legislative developments, such as those emerging under the DMA or the Foreign Subsidies Regulation.

2.6.2. Accession Commitments and Chapter 8 of the Acquis

Türkiye's candidacy for EU membership, officially recognised at the 1999 Helsinki European Council and the subsequent opening of accession negotiations in 2005, introduced a new layer of legal and political responsibility. Under the accession framework, Türkiye must adopt and implement the entire body of the EU acquis communautaire, including Chapter 8: Competition Policy.

This chapter encompasses four critical sub-areas:

- Antitrust (restrictive agreements and abuse of dominance)
- Merger control

- State aid regulation
- Control over public undertakings and undertakings with exclusive rights

The screening process in 2005 confirmed that Türkiye had made substantial progress in antitrust and merger control, thanks largely to the enactment of Law No. 4054 on the Protection of Competition and the establishment of the TCA. However, the lack of a fully operational State aid control system has been repeatedly flagged by the EC as a major deficiency preventing the opening and eventual closing of Chapter 8.

This condition transforms alignment with competition law into a precondition for accession, not merely a goodwill gesture. It reflects a substantive requirement: full legal, institutional, and administrative capacity to ensure market discipline, prevent distortions, and safeguard the integrity of the internal market. Until these obligations, especially those concerning State aid are fully met, Türkiye's progress in EU accession remains effectively stalled.

2.6.3. Institutional Continuity Under the Customs Union Framework

Even amidst political stagnation in the accession process, Türkiye remains subject to the institutional and legal mechanisms of the Customs Union. The Customs Union Joint Committee, established under Decision 1/95, plays a key role in monitoring Türkiye's implementation of its obligations and fostering dialogue on regulatory convergence. Given the evolving nature of EU competition law, including the expansion of enforcement into digital markets, cross-border platforms and data-driven business models, Türkiye's continued alignment is critical. The growing scope of the EU's competition acquis, notably through instruments like the DMA, the Platform-to-Business (P2B) Regulation and proposed reforms on foreign subsidies and digital mergers, places an implicit expectation on Türkiye to adapt its regulatory model to remain interoperable with the EU's legal environment.

To sum up, by maintaining a high level of harmonisation with EU rules, Türkiye can position itself as a trusted and capable stakeholder in EU's evolving regulatory ecosystem, even in the absence of full membership. This not only preserves the

functionality of the Customs Union but also aligns with Türkiye's long-term economic and geopolitical interests as Türkiye's obligation to align with EU competition law rests on a deeply rooted legal foundation that spans association agreements, Customs Union commitments and accession negotiations. Far from being a discretionary or secondary matter, it seems to constitute a binding, operational and strategic necessity. As the EU deepens its regulatory reach and modernises its competition policy tools, Türkiye's continued alignment will remain a litmus test of its commitment to shared norms, legal certainty and integrated market governance.

CHAPTER 3

BACKGROUND OF DIGITAL MARKETS ACT

This chapter provides the groundwork needed to evaluate the DMA as a regulatory model and to assess its implications for Türkiye's ongoing reform debate.

3.1. The Rise of Digital Gatekeepers

To begin with, the EC's shift from ex-post competition enforcement to a new ex-ante regulatory framework, as embodied in the DMA, was shaped by a convergence of institutional experience, political context, expert consensus and the dynamics of stakeholder influence. What initially emerged as a response to internal frustrations within the EU with the limitations of competition law evolved into a broader regulatory project under the external pressure to assert digital sovereignty. While intense lobbying surrounded the legislative process, the EC's position ultimately reflected a growing recognition, internally and externally, that existing tools were insufficient for addressing systemic issues posed by dominant digital platforms. As the EC moved towards regulation, it was not stepping into uncharted territory, but rather extending a governance model familiar from other regulated sectors, adapted to the unique challenges of the platform economy.

To unpack the institutional and political foundations of this regulatory transformation, the next subsections will examine in detail the contextual and conceptual developments that shaped the EC's digital policy agenda. Beginning with the structural rise of platform power and its implications for EU governance, this chapter traces the evolution of digital competition policy through shifting paradigms of regulatory thinking, theoretical explanations for policy change and the operational dynamics within the EC. Each subsection focuses on a critical dimension of this

transformation from the historical context of digital gatekeeping to the theoretical underpinnings of institutional change; from the limitations of ex-post enforcement to the role of expert consultation and lobbying pressures presenting a comprehensive picture of how the DMA emerged as a cornerstone of the EU's reconfigured digital strategy.

The digital transformation brought about by the rise of advanced technologies is often likened to a "new global industrial revolution" due to its profound societal and economic implications (EC, 2021a, p. 2). Digital communication, social media engagement, e-commerce and the rise of digital enterprises are not only reshaping interactions and business models but are also producing vast amounts of data. When effectively harnessed, this data can drive unprecedented levels and forms of value creation. As such, this ongoing transformation is as revolutionary as the original Industrial Revolution (EC, 2021a, p. 2). At the heart of this transformation lie large online platforms such as Google, Apple, Microsoft, Meta, Amazon; which have evolved into central actors in digital markets. These platforms operate multi-sided markets, facilitating interactions between diverse user groups, including businesses and consumers (EC, 2020b). Their structural role as intermediaries enables them to function as gatekeepers, often controlling access to essential digital infrastructure and markets. This gatekeeping power allows them to both provide their own services and mediate others' market access, frequently leading to an imbalance in power and dependency, particularly for smaller business users who rely heavily on platform access for market visibility and sales. The EC has acknowledged these concerns and proposed legislation, notably the DMA, to restore fairness and contestability in digital markets. Margrethe Vestager emphasized the DMA's dual purpose: ensuring that users enjoy a diverse and secure digital environment and allowing businesses to compete online with the same freedoms they have offline. She stated, "*What is illegal offline is equally illegal online*" reinforcing the need for harmonized digital governance (EC, 2020b).

The market dominance of tech giants; Google, Amazon, Meta, Microsoft, Apple, among others, raises substantial concerns not only about economic fairness but also political accountability. These firms accumulate substantial economic value,

influence public discourse and pose complex regulatory challenges. Within the Single European Market (SEM), such dominance risks market fragmentation and undermines competitive parity, especially in the absence of coordinated EU-level intervention.

Traditionally, the EU's competition policy has relied on an ex-post regulatory framework, addressing violations only after they occur through investigations and decisions by the Directorate-General for Competition (DG COMP) and rulings of the Court of Justice of the European Union (CJEU). This model, while thorough, is increasingly seen as inadequate in addressing the rapid pace and scale of digital market developments. Scholars like Anderson and Mariniello (2021) have noted that ex-post enforcement struggles to keep up with digital markets' dynamics, thereby necessitating a shift towards more anticipatory regulation.

Indeed, the primary aim of EU competition policy is to ensure the effective operation of the SEM by upholding a level playing field, which is viewed as a fundamental prerequisite for the market's success (Cini and McGowan, 2009, p. 32). The DMA, by adopting a more proactive stance, seeks to fulfill this objective by preemptively addressing structural imbalances and ensuring that dominant digital platforms cannot exploit their positions to the detriment of market fairness and innovation.

3.2. European Union's Digital Governance and the Emergence of the Digital Markets Act

Over recent years, the enforcement of competition policy vis-à-vis online platforms has evolved into a subject of intense scrutiny and debate. While EC officials initially expressed confidence in the adaptability of traditional antitrust instruments to digital market realities, the shifting dynamics of these markets ultimately necessitated a more proactive regulatory response. Between 2014 and 2019, key figures within the EC emphasized the enduring relevance of established competition law, contending that it was sufficiently resilient to manage emerging digital challenges. For instance, then-Director General of DG COMP, Johannes Laitenberger, noted the importance of reassessing foundational assumptions in light of novel market configurations, calling

for an intensified focus on understanding complex digital ecosystems (Laitenberger 2019a, 2019b).

However, confidence in the prevailing institutional settlement progressively eroded. National leaders and institutions across the EU expressed growing concern about the adequacy of existing frameworks. The UK's Chancellor of the Exchequer at the time, Philip Hammond, characterized Britain's competition regime as "*unfit for purpose*" in light of the dominance of online platforms.[16] Concurrently, Germany embarked on legislative reforms to modernize its competition law, specifically targeting the new dynamics of digital markets, with consensus on amendments anticipated by Autumn 2019.

In 2018, Competition Commissioner Margrethe Vestager asserted that the flexible nature of EU competition rules allowed them to remain applicable across evolving markets, underscoring the need not for new laws, but for deeper market comprehension (Vestager, 2018). Yet, by early 2019, the tone shifted. Vestager acknowledged that traditional competition policy might no longer offer comprehensive solutions and that additional instruments might be necessary, though she remained uncertain whether this entailed reinterpretation of existing laws or the formulation of new legislative tools (EC, 2019).

This re-evaluation culminated in the EC's December 2020 assertion that competition policy alone was insufficient to tackle the systemic risks emerging within platform economies. Citing the need for contestability, fairness, innovation and broader societal safeguards, the EC laid the groundwork for a new legislative paradigm (EC, 2021a). The result was the DMA, which introduced an ex-ante regulatory framework to supplement the traditionally reactive, ex-post antitrust regime.

Seen through Raudla and Spendzharova's (2022) lens, the road to the DMA illustrates renewed market integration in EU digital policy. Rather than drifting toward re-nationalisation, the EU moved with institutional innovation. The EC acted

[16] UK competition laws may be 'unfit for purpose' in digital era, says Hammond, Mlex (Jun. 12, 2019).

as a policy entrepreneur within the EU's multi-level system: it set the agenda, brought together expertise and translated MS preferences into a workable proposal. In this view, a central coordinating actor such as the Commission increases the odds of integration by initiating common projects, pooling knowledge, and mediating national positions (Raudla & Spendzharova, 2022; Cini & Czulno, 2022, pp. 42–43, 53).

This policy shift was pushed by several overlapping factors. First, the growing political and economic significance of digital platforms and their associated risks prompted institutional reconsideration of regulatory strategies. Second, the EC's direct experience in applying competition rules against dominant platforms revealed procedural and temporal limitations in addressing rapidly evolving harms (Cini and Czulno, 2022, p. 46). Third, an emerging expert consensus, voiced through public consultations and reinforced by independent advisory groups, supported the adoption of ex-ante obligations targeting systemic risks. Fourth, despite intensive lobbying by large platforms, the push for regulatory reform continued undeterred. This outcome reflects not only public pressure and non-governmental organization (NGO) advocacy, but also the maturing of EU policy-making, which increasingly combines stakeholder input with independent analysis (Raudla and Spendzharova, 2022; Cini and Czulno, 2022, pp. 48–49).

The decision to propose the DMA, therefore, reflects an approach aimed at preserving the integrity of the Single European Market. The EC's move was also strategic: In the absence of EU-wide rules, MSs such as Germany and France were beginning to pursue divergent national solutions, creating a risk of regulatory fragmentation.[17] As such, the DMA served both to harmonize market rules and to reinforce supranational oversight.

[17] In Germany**,** the Bundeskartellamt (Federal Cartel Office) has implemented significant reforms through the 10th Amendment to the German Competition Act (GWB) in January 2021. This law grants the authority special powers to tackle large digital platforms with "paramount significance across markets" (§19a), allowing proactive interventions even before traditional market dominance is established. In France**,** the Autorité de la concurrence (French Competition Authority) has also taken proactive steps. It notably conducted an in-depth sector inquiry into online advertising and emphasized the importance of data access and interoperability**.** The authority has advocated for ex ante regulatory measures targeting structural competition issues in digital markets.

This progression exemplifies how hybrid governance, characterized by the interaction of supranational institutions and private actors, shapes the dynamics of EU market integration. While the EC played a pivotal coordinating role, the engagement of public and private stakeholders in consultations, advisory roles and legislative dialogue shows the horizontal character of regulatory development. According to the findings across the digital markets and other sectors such as transport and energy, such hybrid arrangements can either facilitate or hinder integration depending on the degree of institutional support and alignment among private actors (Raudla and Spendzharova, 2022).

In conclusion, the EC's advocacy for the DMA illustrates a clear pivot from relying solely on traditional competition enforcement to embracing a more structured and proactive regulatory architecture. This shift proves the adaptability of EU governance structures in responding to the unique challenges of the digital economy and reaffirms the strategic role of the EC as both regulator and integrator within the evolving framework of the ESM.

3.3. Theoretical Framework of Regulatory Change

This section uses a narrow definition of policy change: the creation of a new regulatory framework, viewed against the EU's renewed push for market integration in the digital economy. The analysis stays within a defined policy subsystem, digital competition policy; centred on the EU institutions, especially the EC. Within this setting, it examines the main drivers of regulatory change through four lenses: punctuated equilibrium, endogenous institutional change, the role of expert knowledge and interest-group lobbying.

3.3.1. Punctuated Equilibrium and Institutional Disruption

The punctuated equilibrium model, originally developed by Baumgartner and Jones, challenges the view of policymaking as a gradual and stable process. Instead, it posits that long periods of institutional inertia are frequently disrupted by short bursts of rapid, transformative change, often prompted by external shocks or shifts in

attention (Baumgartner and Jones, 1993). In their seminal work, "*Agendas and Instability in American Politics*", the authors demonstrate how agenda-setting processes are susceptible to disruption, leading to new policy outcomes when systemic pressure, often from technological change or crises, becomes unsustainable within existing institutional logics.

This theory is particularly relevant to digital markets, where the rapid evolution of technology has created regulatory gaps and catalyzed political attention. The arrival of disruptive business models, such as Uber in urban transport has frequently exposed the obsolescence of legacy frameworks, leading to regulatory instability and ultimately, new legislative initiatives (Cartwright, 2019). Cartwright's historical institutionalist analysis of Uber's regulatory trajectory in Baltimore explains how technological innovation, coupled with inadequate pre-existing rules, necessitated a re-evaluation of institutional assumptions.

3.3.2. Endogenous Change and the Role of Institutional Actors

While punctuated equilibrium focuses on external drivers, recent advances in historical institutionalism highlight the importance of internal agency and structural ambiguity in driving policy evolution. Mahoney and Thelen (2010) argue that institutions, far from being rigid or immutable, are often characterized by interpretive flexibility and enforcement discretion. This allows actors operating within institutions to gradually redirect their function through reinterpretation and strategic use of existing rules, what they term "gradual institutional change". Their typology identifies various actor-driven modes of change (including conversion, layering, and drift) depending on the institutional context and political configuration. For instance, when enforcement is weak and veto points are limited, so-called "opportunists" can manipulate institutional structures to suit new objectives. This lens is particularly apt for explaining the EC's evolving stance toward digital platform regulation. Originally committed to ex-post enforcement under traditional competition law, the EC eventually proposed a forward-looking, ex-ante regulatory framework in the form of the DMA, suggesting an internal reassessment of institutional tools (Mahoney and Thelen, 2010; Eckert, 2022).

3.3.3. Knowledge and Expertise in Policy Development

Theories of expertise emphasize the epistemic foundations of policy change, focusing on how ideas, learning processes, and knowledge-based networks contribute to policymaking. Radaelli (1999) conceptualizes the politics of expertise not merely as a technical exercise, but as a process interwoven with political and normative considerations. In the context of EU policymaking, expertise is often institutionalized through consultations, regulatory committees and policy entrepreneurship.

Haas's (1992) concept of epistemic communities further elucidates how experts, sharing causal beliefs and normative values, can influence state behavior by framing policy problems and offering interpretive authority. This is particularly relevant in the case of digital competition, where complex, technical issues, such as algorithmic fairness or data interoperability, require specialized knowledge for effective regulation. Zeilinger (2021, p. 69-72) adds nuance to this view by framing the EC itself as a "policy entrepreneur" that strategically deploys its technocratic capacities. Under the European Semester framework, for example, the EC leveraged its analytical expertise and policy monitoring tools to assert greater influence over national economic agendas. Similar dynamics are observable in the digital domain, where the EC has positioned itself as both an agenda-setter and arbiter of appropriate regulatory responses.

3.3.4. The Influence of Interest Groups

Lastly, theories of interest group politics provide insight into how organized stakeholders seek to shape policy outcomes. Dür and de Bièvre (2007) argue that the business community typically holds a structural advantage in lobbying due to its superior resources and institutional access. Their study, focusing on EU trade policy, found that while NGOs can access policymaking processes, they often lack the leverage to alter outcomes in their favor. However, this asymmetry is not absolute. Subsequent research by Dür and Mateo (2016) and Falkner (2007) shows that conflict within business sectors can dilute the effectiveness of corporate lobbying, opening space for other interests to gain traction.

In the context of the DMA, this is illustrated by the divergence between dominant platforms, which opposed the legislation and smaller digital firms and civil society organizations, which largely supported regulatory intervention. This fragmentation within the business community, combined with expert consensus and political momentum, helped shift the policy trajectory toward stronger regulatory oversight.

3.4. The European Commission's Digital Shift and Market Integration Agenda

The EC's strategic orientation toward digital market governance emerged in response to increasing regulatory activity by MSs, which raised concerns regarding potential fragmentation within the SEM. To safeguard market unity and enhance competitiveness, the EC launched its DSM strategy in 2014, under the leadership of then-President Jean-Claude Juncker. Over the subsequent five years, this initiative yielded a considerable legislative output, 28 legal acts aimed at fostering integration across Europe's digital economy (EC, 2021c).

A pivotal early milestone in this process was the enactment of the Platform-to-Business (P2B) Regulation, which came into effect in July 2020. This regulation represented the EU's first concerted effort to establish a regulatory framework ensuring fairness and transparency in the dealings between digital platforms and their business users, particularly smaller enterprises that often face asymmetrical power relations (EC, 2021b; 2021d).

The digital policy trajectory gained further momentum under the presidency of Ursula von der Leyen, appointed in late 2019. A significant institutional innovation under her leadership was the expansion of Margrethe Vestager's portfolio from Commissioner for Competition to Executive Vice-President responsible for both competition and digital policy, a move that symbolically and structurally underlined the growing convergence of these two domains. The new Commission's digital policy agenda was articulated under the banner of building "A Europe Fit for the Digital Age" reflecting both its strategic importance and cross-sectoral reach (EC, 2021e). In February 2020, the EC unveiled its updated Digital Strategy, followed by a comprehensive industrial policy blueprint aimed at facilitating a "twin transition"

toward both ecological sustainability and digital innovation. Central to this vision was the concept of "open strategic autonomy", a framework designed to bolster Europe's capacity for technological sovereignty while preserving openness in international trade. This dual ambition was perceived by some United States (U.S.) observers as indicative of a resurgent European economic interventionism, especially in light of American firms' dominance in the global platform economy (Barshefsky, 2020).

The Digital Strategy refined the DSM's foundational goals by introducing concrete policy targets, one of which was to ensure the emergence of a "fair and competitive digital economy" (EC, 2021a; 2021f). However, the implications for competition enforcement remained initially ambiguous. Among the early regulatory proposals was the New Competition Tool (NCT), envisaged as an instrument to address structural market problems, including those outside the digital domain. The NCT aimed to empower the EC to impose remedial measures without the requirement of proving an infringement of Articles 101 or 102 TFEU, a significant departure from conventional ex-post enforcement mechanisms. Nonetheless, the proposal received a tepid response during the 2020 public consultation, particularly from key national competition authorities (CNMC, 2020; EC, 2020c), leading to its eventual dilution and absorption into the broader Digital Services package.

This package, unveiled in late 2020, was divided into two distinct legislative proposals: the DSA and the DMA. The DMA, finalized in draft form on 15 December 2020, faced initial resistance within the EC's internal scrutiny processes. Its early version was rejected by the Regulatory Scrutiny Board in November but was subsequently revised and approved the following month (EC, 2020a; 2021g; 2021h).

The DMA marked a fundamental regulatory shift, introducing a proactive, ex-ante framework targeted at so-called "gatekeeper" platforms, defined by their systemic role in intermediation, market scale, and persistence. These gatekeepers are subject to a specific set of obligations and prohibitions designed to prevent abuse of entrenched market positions. Among the key provisions are restrictions on the use of

business users' data for competitive purposes, requirements for interoperability, and bans on self-preferencing practices that favor the platform's own products over those of third parties (EC, 2020b).

Beyond its prescriptive list of *do*s and *don't*s, the DMA introduced a forward-looking regulatory mechanism allowing for ongoing market surveillance and adaptive rule-making, an essential feature in a rapidly evolving digital ecosystems. Non-compliance by designated gatekeepers is met with the prospect of substantial administrative fines and recurring penalty payments. While the DMA text avoids directly stating its ex-ante regulatory nature, the structural design and scope of its provisions unmistakably align with such a regime, reinforcing the EU's ambition to establish a harmonized and equitable digital market across MS (EC, 2021a; 2021i).

3.5. The Limits of Ex-Post Enforcement in Digital Competition Policy

The formulation of the DMA was heavily informed by the EC's extensive but often contentious history of enforcing competition law in digital markets. Throughout the 2010s, the EC pursued a series of high-profile cases, particularly against Google, that revealed both the strengths and the limitations of traditional ex-post enforcement mechanisms. As a firm with a diversified portfolio but primarily reliant on advertising revenue, Google exemplifies the gatekeeping dynamics characteristic of dominant digital platforms. Such firms exert significant control over digital market access and often impose unilateral terms on both business users and consumers (EC, 2021h).

Among the most notable antitrust interventions were three major cases targeting Google's conduct. The *Google Shopping* case focused on self-preferencing, wherein the company systematically favored its own comparison shopping service in search results while demoting those of rivals. The EC found that Google's algorithms had not applied penalties to its own services, thereby distorting competition (EC, 2017). In the *AdSense* case, Google was charged with leveraging exclusivity clauses to restrict competitors' access to advertising partners, an abuse of its intermediation role (Vestager, 2016; 2018; EC, 2019). Furthermore, in the *Android* case, the EC

concluded that Google had imposed illegal restrictions on Android device manufacturers and mobile network operators to cement the dominance of its search engine. These included tying the Google Search app and Chrome browser to the Play Store and offering financial incentives for exclusive pre-installation of Google Search. Collectively, these cases resulted in fines exceeding €8 billion, the highest ever imposed under EU competition law (Espinoza, 2021).

Despite these landmark decisions, the EC's enforcement record in digital markets has not been without criticism. Observers have questioned not only the substantive effectiveness of the imposed remedies but also the protracted nature of investigations. For instance, the *Google Shopping* case took seven years from its opening in 2010 to the final decision in 2017 (EC, 2017). While the technical complexity of such cases and the EC's evolving institutional experience may account for some of the delay, the slow pace risks enabling ongoing harm to market integrity and competitiveness (Tirole, 2019). Moreover, enforcement outcomes have often failed to secure meaningful compliance; reports indicated that Google continued favoring its services post-decision, undermining the deterrent effect of the ruling (Vestager, 2018).

The EC's reactive posture, intervening only after market distortions have already materialized has proven especially ill-suited for the fast-paced digital economy. Scholars have noted that while ex-post enforcement may suffice in well-functioning markets, it struggles in digital ecosystems characterized by rapid innovation and limited institutional precedent (Crémer et al, 2019, p. 125). The EC itself recognized that many of the anti-competitive practices associated with gatekeepers fall outside the scope of Article 102 TFEU, as market dominance is not always a prerequisite for gatekeeping power (EC, 2020a). Notably, the EC has not avoided taking politically and economically sensitive actions, even in the face of intense lobbying pressure from some of the world's most powerful corporations (ALTER-EU, 2020). However, the adversarial and resource-intensive nature of ex-post enforcement has placed a significant strain on DG Competition's capacity to make reforms (Espinoza, 2020). These limitations have prompted a broader reconsideration of whether competition

policy alone can adequately address the structural imbalances posed by dominant digital platforms.

In seeking alternatives, the EC looked to models of regulation from other jurisdictions and sectors. The UK's Competition and Markets Authority (CMA) provided a conceptual blueprint with its market investigation tool, an ex-ante approach allowing intervention absent a formal finding of antitrust infringement. This instrument inspired the initial proposal of the NCT, which later evolved into elements of the DMA. Furthermore, Executive Vice-President Margrethe Vestager drew parallels with existing EU sectoral frameworks, noting that proactive regulatory regimes in banking, telecommunications and energy had long complemented competition law enforcement. As she observed, the goal is to develop "a complete set of tools" acknowledging that regulation and competition law must function symbiotically in today's complex markets (EC, 2020b; De Streel et al., 2021, p. 26).

Thus, the EC's shift toward ex-ante regulation through the DMA seems to represent not a break with the past, but rather an adaptive response rooted in its own institutional learning experience.

3.6. Expert Consultation and the Role of Ideas in Shaping the Digital Markets Act

As momentum for reform in the digital economy increased, the EC drew deliberately on three sources of input: expert analysis, empirical evidence and stakeholder views. Expert contributions generally followed a technocratic logic grounded in data and theory, while stakeholder submissions often reflected organizational interests or broader appeals to the public interest. The EC's public consultations helped connect these two streams. Between June and September 2020, the EC ran two major consultations; one on a proposed New Competition Tool (NCT) and another on the wider Digital Services package. The responses showed broad support for new regulatory action, with particularly strong backing from NGOs, trade unions and many business respondents. Across submissions there was a shared view that existing competition rules were not equipped to address the structural features of

platform markets, such as entrenched positions and data-driven advantages (EC, 2020a, pp. 7–8).

Substantively, a consensus emerged around the need for binding prohibitions and obligations directed at powerful gatekeeper platforms, with most contributors favoring procedural remedies. However, debate persisted over the criteria that should define a "gatekeeper" (EC, 2020a, p. 8). These findings provided important political legitimacy and practical grounding for the EC's emerging legislative agenda.

Beyond these participatory channels, the EC also proactively engaged with expert communities. In January 2019, DG Competition convened a high-profile conference titled *Shaping Competition Policy in the Era of Digitisation*, introduced by Commissioner Margrethe Vestager and closed by then-Director General Johannes Laitenberger. The event brought together leading economists, legal scholars, and policymakers, many of whom advocated for a shift away from isolated enforcement actions toward more systemic regulatory frameworks capable of addressing entrenched market power and structural abuses (EC, 2019; Laitenberger, 2019a, 2019b; EC, 2021j).

Among the most influential contributions was the EC-commissioned expert report *Competition Policy for the Digital Era*, authored by Crémer et al (2019). This report called for a recalibration of EU competition policy to respond to novel features of digital markets, including their tendency toward winner-takes-all dynamics, data-driven network effects and platform-driven exclusion strategies. The authors proposed strengthening enforcement mechanisms, reconsidering the role of consumer welfare, and crafting analytical tools and theories of harm that better reflect digital realities. Their overarching recommendation was the establishment of ex-ante regulatory rules tailored to systemic risks posed by dominant platforms (Crémer et al, 2019, pp. 40-50, 63-69, 125-127). The ECN also strengthened its evidence base by mobilising its internal expertise and linked advisory networks. Core directorates of the EC commissioned technical studies from independent consultancies and research institutes. For example, DG Competition invited members of its Economic Advisory Group to assess the proposed NCT from an economic

perspective. In parallel, the Joint Research Centre produced analytical work on platform dynamics and market performance. DG Connect further convened a high-level expert panel and worked with standing advisory bodies, including the EU Observatory for the Online Platform Economy and the e-Commerce Expert Group (EC, 2020a, p. 9; 2021g).

These internal initiatives were complemented by external expert advice. Notable among the contributions were national-level policy reports, particularly from the UK and the U.S., as well as from Japan and Australia. EU-based insights included both individual country reports and joint statements, such as the memorandum by the Benelux competition authorities and the joint proposal on competition modernization from the German, French and Portuguese economic ministries (EC, 2021g). Bilateral engagements with NCAs, as well as targeted consultation through the ECN, provided the EC with direct feedback on national preferences. While broad MS support was noted in the DMA proposal, it was also acknowledged that certain actors, such as the Irish government and the Nordic Competition Authorities (2020), expressed reservations concerning the scope and operational aspects of the proposed framework (EC, 2020a, pp. 7-9; Stolton, 2020).

International perspectives further enriched the policy formulation process. Although only one formal reference was made to the OECD's 2018 Report, its analytical emphasis on regulatory asymmetries in platform markets helped validate the EC's pursuit of structural remedies (OECD, 2018). The EC also took into account the consumer policy stance of the European Consumer Organisation (BEUC, 2019) and incorporated insights from five reports by the Centre on Regulation in Europe (CERRE), which advocates for evidence-based regulatory approaches (EC, 2021g).
Significantly, individual academics and professionals also shaped the debate. Eminent economists and legal scholars, including Massimo Motta, Luis Cabral, Richard Whish, Martin Peitz and Heike Schweitzer, contributed through commissioned studies and policy workshops. Most of these experts were based in Europe, aligning with research showing that European economists tend to favor stronger regulatory oversight of digital platforms compared to their counterparts in other jurisdictions (Vaitilingam, 2020).

In sum, the DMA's architecture was constructed not only through political and institutional negotiation but also through a deeply consultative and intellectually grounded process. The multiplicity of expert inputs, from internal research bodies, national regulators, international institutions, and academia, provided the EC with a comprehensive analytical foundation for devising a new regulatory paradigm for digital markets.

3.7. Advocacy and Lobbying in the Legislative Process

The policy trajectory of the DMA unfolded in a politically charged environment marked by intense lobbying and advocacy efforts. Civil society actors, while generally supportive of stronger digital regulation, faced limitations in their access to decision-makers and influence over policy design. Although groups such as the BEUC, European Digital Rights (EDRi), Reporters Sans Frontières and the Electronic Frontier Foundation actively contributed to the debate, their impact remained constrained. BEUC was the only civil society organisation listed among the most frequent lobbyists on the DMA and DSA, suggesting a marginalised role for public interest voices in shaping legislative outcomes (CEO, 2020; Lübbig, Jensen and Goyder, 2020).

In contrast, large digital platforms, most prominently the so-called "Big Five" (Google, Amazon, Meta, Apple and Microsoft) mounted a vigorous and well-resourced campaign to influence the legislative process. Analysis of the EC's Transparency Register revealed that from 2017 to 2021, lobbying on digital regulation was dominated by corporate actors, particularly Silicon Valley giants, who secured a disproportionate share of high-level meetings with EC officials (Kergueno, 2018; Pearson, 2021). Between late 2019 and late 2020 alone, 158 meetings referenced discussions on the DMA or DSA, with Google leading in engagement frequency, closely followed by Microsoft and Facebook. Apple and Amazon also maintained an active presence, while other digital firms like Airbnb, Allegro, Zalando and Trivago also joined the advocacy field (CEO, 2020; Hurley, 2020a; Hurley, 2020b). Financial disclosures further underscore the scale of this influence campaign. In 2019, the combined lobbying expenditure of the Big Five in the EU

approached €20 million. Google, in particular, saw its Brussels lobbying budget grow by 360% since 2014, underscoring its strategic investment in shaping EU digital policy (Pearson, 2021; Clarke, 2021). This spending disparity prompted growing concern among digital rights advocates and transparency groups, such as the ALTER-EU coalition, who argued that the opacity of corporate lobbying threatened the integrity of the legislative process. In a 2020 open letter, ALTER-EU criticised Google's lobbying tactics and urged the EC to increase transparency, especially in light of the exclusion of consumer groups and NGOs from high-level meetings in the final weeks leading to the DMA proposal (Scott and Kayali, 2020).

The COVID-19 pandemic further complicated matters by shifting much of the policymaking process to virtual channels, reducing already limited transparency and further insulating EC discussions from public scrutiny (Scott and Kayali, 2020). While early lobbying efforts combined competition and content moderation concerns, by mid-2020 most corporate lobbying had pivoted almost entirely to competition issues, reflecting the growing strategic relevance of the DMA for platform business models (Scott and Kayali, 2020).

Despite the intensity of corporate lobbying, there is no compelling evidence that it influenced the EC's core policy orientation. Although large platforms expressed strong reservations about the DMA, particularly provisions targeting large platforms exclusively, including inflexible blacklists of prohibited conduct and concerns about consumer choice (Google, 2021; Apple, 2021; Facebook, 2021), the EC did not significantly alter its legislative position. Instead, the EC remained committed to establishing a regulatory framework rooted in ex-ante intervention, suggesting that lobbying may have failed to shift policy direction, even if it contributed to shaping the debate's contours (CEO, 2020).

Tensions between the EC and platform giants escalated further with the leak of Google's internal lobbying strategy in October 2020. The document revealed a 60-day campaign plan aimed at undermining the DMA through transatlantic political pressure, the mobilisation of think tanks and academics, and efforts to build an alliance with smaller European platforms by portraying the proposal as detrimental

to them as well. Google's messaging strategy also sought to frame the DMA as a threat to EU-U.S. relations and to the European digital economy more broadly (Hurley, 2020a; Satariano and Stevis-Gridneff, 2020). While the EC did not officially respond to these revelations, the public backlash likely undermined Google's credibility in the ongoing legislative negotiations (Scott and Kayali, 2020).

Importantly, not all digital platforms opposed the EC's initiative. Some mid-sized and smaller platforms, along with certain business users of the dominant platforms, saw the DMA as an opportunity to level the playing field. The sector's competitive landscape proved fragmented, with divergent interests even among the largest firms. Facebook, for instance, publicly criticised Apple's app store practices and later described the DMA as "on the right track" (Kelion, 2020; Scott and Kayali, 2020). Similarly, Booking.com's CEO distanced the company from Google's anti-regulatory stance, arguing that smaller European firms should not be treated identically to dominant platforms (Scott and Kayali, 2020). This intra-industry divergence reveals a complex and divided advocacy landscape, with no unified position from the platform economy as a whole (Geradin, 2018, pp. 2-5). Ultimately, the lobbying and advocacy battles surrounding the DMA demonstrate that corporate influence, while powerful and well-financed, did not decisively shape the regulatory framework. The EC proceeded with a robust and forward-looking approach, resisting pressures that could have diluted the effectiveness of its proposal. This suggests both institutional resilience and a growing recognition of the need for stronger oversight in digital markets.

3.8. The Public Consultation on the DMA Implementing Regulation

In line with its transparency practice, the EC ran a public consultation[18] on the draft Implementing Regulation[19] that would set the DMA's procedural "rules of the game"

[18] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/feedback_en?p_id=16548 .

[19] Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.102.01.0006.01.ENG&toc=OJ%3AL%3A2023%3A102%3ATOC

(deadlines, access to file, confidentiality, investigative steps), pursuant to Article 46 DMA. The Draft Implementing Regulation as published in December 2022, feedback was invited from 9 December 2022 to 9 January 2023, and the final text was adopted on 14 April 2023. The draft itself spelled out procedural architecture, including the hearing officer's role and time-limit extensions and was accompanied by standard forms and page-limit templates that drew many remarks in submissions.

Large operators and sector associations broadly welcomed rapid, effective DMA enforcement, but asked the EC to calibrate procedure to ensure clarity and defendability. Deutsche Telekom supported swift processes, yet urged the EC to: (i) clarify when proceedings are "formally opened" and what that triggers for rights of defence; (ii) avoid an overly rigid "objectively impossible" threshold for extending page-limit or deadline constraints; and (iii) improve transparency around access-to-file and hearing modalities.[20] Across their submissions, the large platforms converged on a common message: procedural clarity and balance matter because DMA enforcement moves fast and touches many confidential systems and datasets. Google pressed for *workable access-to-file arrangements and realistic time-limits,* flagging that clear terms of disclosure and confidentiality handling are essential to enable meaningful responses under Article 34 DMA. In particular, Google focused on how access should operate in practice given the volume/sensitivity of material, and on the need for predictable timing when the Commission opens proceedings or issues preliminary findings.[21] Meta likewise emphasised *predictable, transparent procedures*, how confidentiality markings are identified; how third-party comments are handled; and how page-limits and deadlines interact with the right to be heard, so that a gatekeeper can effectively engage with the EC's preliminary findings. These themes map directly onto the Implementing Regulation's core provisions on access to file, page-limits and time-limits.[22] Booking highlighted the importance of *clear timelines and the right to be heard*, aligning with the final Regulation's approach to

[20] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374524_en .

[21] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374518_en .

[22] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374508_en .

opening proceedings, setting time-limits, and allowing justified extensions where needed. Booking's emphasis was on ensuring that speed does not come at the expense of legal certainty in fast-moving, multi-market investigations.[23]

Across small and mid-sized actors the message was pragmatic and pro-enforcement. Industry associations and publishers urged the EC to keep procedures fast and use page-limits and narrow extensions to avoid tactical delay, while still preserving "*equality of arms*" through workable access-to-file arrangements and confidentiality rings for sensitive material. They also warned against loopholes in the delineation of core platform services that would let gatekeepers narrow the scope of enforcement, an argument that sits behind their support for tight drafting around "plausible alternative delineations" and limited grounds for deadline extensions. [24] Independent competitors and developer-led firms focused on remedies that make market entry real. Qwant emphasized it has welcomed the DMA's choice-screen duty and the search-data access rule in Article 6(11) and then translated that support into implementation details[25]; while policy researchers at ICLE argues that certain proposed reporting duties risk moving the assessment standard from compliance with legal obligations to an open-ended requirement to demonstrate market-wide effectiveness. It recommends that the Commission anchor metrics in variables within the gatekeeper's control, such as design choices, internal processes, and technical implementations; rather than in outcomes that are jointly determined by many actors and exogenous market conditions.[26] Taken together, smaller firms, trade groups and academic voices seem to be converged on some common points which are to keep the regime fast and protective of informants, to make technical access real and measurable and to design templates that are rigorous enough for independent scrutiny without becoming so burdensome that they sap enforcement capacity or

[23] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374485_en .

[24] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374498_en .

[25] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374542_en .

[26] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374488_en .

deter entry. In addition, consumer groups like BEUC stressed that the real danger was that over-protecting gatekeepers procedural rights could make the system slow, cumbersome and ultimately ineffective.[27]

This divide illustrates the delicate balancing act the EC faced in finalizing the Implementing Regulation. The challenge was to design procedures that would be both robust enough to survive judicial scrutiny at the EU Courts and streamlined enough to deliver rapid and practical enforcement. The public consultation thus exposed the heart of the policy dilemma of reconciling legal certainty and due process with regulatory effectiveness and market fairness.

Having established the main lines of public opinions through the consultation records of the EC; in order to sum up the first chapter, it is important to emphasize that the EC's strategic shift toward ex-ante regulation through the DMA reflects a multifaceted transformation in the EU's approach to governing digital markets. This change was not the product of a single trigger but rather the result of intersecting forces, ranging from the internal recognition of enforcement limitations, to the evolving political and economic imperatives of the digital era, and the consolidation of expert consensus around the need for preemptive regulatory mechanisms. Despite intensive lobbying by dominant digital firms, the fractured nature of corporate interests, combined with robust internal and external advisory input, empowered the EC to adopt a regulatory path aligned with broader integration goals. Ultimately, the DMA represents not only a response to specific market failures but also a reflection of the EC's evolving identity as a proactive architect of Europe's digital future.

This chapter has traced the EU's strategic reorientation from reactive competition enforcement to a proactive, regulatory framework designed to address the systemic challenges posed by powerful online platforms. By exploring the rise of platform power through the lens of digital transformation and contextualizing the DMA within broader shifts in EU digital governance, the chapter has illuminated how policy change emerges from the confluence of institutional experience, political context,

[27] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13540-Digital-Markets-Act-implementing-provisions/F3374351_en .

expert input, and stakeholder dynamics. The integration of theoretical perspectives from punctuated equilibrium to theories of expertise and interest group influence has enabled a nuanced understanding of the multi-layered processes that underpin regulatory transformation.

As demonstrated, the EC's growing dissatisfaction with the limits of ex post tools combined with political concern for the integrity of the ESM and the ambition to develop a more autonomous digital economy opened both internal and external windows for regulatory reform. Expert input helped set the agenda and give the shift credibility, while lobbying dynamics seem to have exposed divisions within the platform ecosystem that weakened organised resistance to new rules. The DMA thus reads less as a break with the past than as an evolution of the EU's regulatory tradition adapted to digital markets. This chapter has, accordingly, prepared the ground for the analysis that follows, which examines the "*DMA in Practice*".

CHAPTER 4

THE DIGITAL MARKETS ACT IN PRACTICE

4.1. Nature of the Digital Markets Act

The regulation of digital markets in the EU has witnessed a paradigmatic shift in recent years, marked by the introduction of ex ante regulatory instruments like the DMA, which complement and in some cases overlap with traditional ex post competition enforcement mechanisms under Articles 101 and 102 TFEU. Understanding the evolving relationship between these two distinct yet interlinked regulatory paradigms is essential for grasping the EU's broader strategy in addressing the challenges posed by large digital platforms.

4.1.1. Conceptual Distinctions Between Ex Ante and Ex Post Approaches

At their core, ex ante regulation and ex post competition law are built on different regulatory logics. Ex ante regulation is proactive, prescriptive**,** and often **s**ector-specific. It aims to correct or prevent market failures before harm occurs by establishing a set of positive obligations applicable to certain market actors. These rules are not contingent upon proof of anticompetitive harm but are triggered by meeting certain structural conditions, such as size, economic influence or platform centrality (Dunne, 2015, p. 45; OECD, 2021b, p. 8). The key decision variables that ex ante regulation typically targets include:

- Pricing conditions**,** ensuring fair and non-discriminatory access (Viscusi et al., 2005, p. 358);
- Market access and exit controls**,** often linked to interoperability and data portability (OECD, 2021a, p. 24-25);
- Structural features, such as platform neutrality and separation of vertical services (OECD, 2021a, p. 24-25).

In contrast, ex post competition law enforcement operates retrospectively. It is concerned with the legal consequences of past behaviour that is deemed anticompetitive based on a detailed analysis of the market, conduct, and resulting harm. Rather than prescribing behaviour in advance, it prohibits specific conduct (e.g., abuse of dominance, cartel agreements) through negative obligations**.** Enforcement is therefore slower, more detailed and grounded in economic evidence (Furman et al., 2019).

4.1.2. Structural Gaps and Enforcement Delays

The divergence between these frameworks becomes particularly clear in digital markets, which exhibit fast-moving dynamics, high levels of network effects and strong economies of scale and scope**.** These features facilitate rapid concentration and create environments where dominant players can entrench their positions long before traditional competition tools can be deployed (OECD 2021a, p. 13). Ex post enforcement, despite its analytical rigour, often arrives too late. Investigations are inherently lengthy, sometimes taking several years, as exemplified by the Google Shopping case, which spanned over seven years from the EC's investigation to the final decision (Google Shopping, 2017; Dethmers and Blondeel, 2017, pp. 161-162). During that time, the market may have irrevocably changed, rendering remedial measures either obsolete or insufficient. By contrast, ex ante regulation (like the DMA) can directly prohibit certain behaviours (e.g., self-preferencing, data combination across services) without requiring a demonstration of anticompetitive harm in each case (Petit, 2020, p. 58). This prevents harmful conduct from crystallising**,** which is especially critical in markets characterised by path dependency and first-mover advantages.

4.1.3. Legal and Practical Risks of Ex Ante Regulation

The benefits of speed and predictability in ex ante regulation, however, come at a cost. First, there is the issue of legal uncertainty**.** While the DMA seeks to create clarity by codifying obligations, the breadth and novelty of certain rules may create interpretive ambiguities**,** especially in a fast-evolving technological context (DMA,

Legislative Financial Statement, p. 64). Second, there is the risk of regulatory obsolescence. Rules set today may no longer apply tomorrow as business models evolve, potentially locking regulators into frameworks that no longer reflect market realities ((OECD, 2021a, p. 13). Third, the phenomenon of regulatory capture, where regulatory bodies become aligned with the interests of the entities they oversee, remains an omnipresent concern (Ogus, 2004, pp. 57-58). However, the DMA's centralised structure under the EC is arguably more insulated from capture compared to national or co-regulatory frameworks, such as the UK's "participative" model, which favours ongoing engagement between regulators and platforms (UK Consultation Document, Part 6, paras. 124-125).

4.1.4. Structural Tensions and Doctrinal Divergence

The DMA's architecture represents not merely a procedural innovation, but also a doctrinal shift**.** While competition law is effects-based**,** requiring detailed assessments of harm, market structure and intent; the DMA operates on a rule-based logic, applying uniform obligations to gatekeepers defined by objective thresholds (DMA, Article 3). This move from a "case-by-case" to a "category-based" approach aligns with the findings of Crémer et al, who argue that enforcement must adjust to the scale and speed of digital markets (Crémer et al., 2019, p. 4).

One striking illustration is the treatment of self-preferencing**.** Under Article 102 TFEU, self-preferencing must be assessed for its actual or potential exclusionary effects, as in Google Shopping. Under the DMA, Article 6(5) bans it outright for designated gatekeepers, sidestepping the traditional burden of proof (Petit, 2020, p. 58). While this expedites enforcement and strengthens predictability, it eliminates the ability to consider efficiency justifications, a longstanding feature of EU competition law.[28] A further difference is rather procedural. Traditional antitrust cases in the EU run within a mature framework of safeguards: broad access to the file, a meaningful

[28] Efficiencies are recognized under both Articles 101 and 102 of the TFEU in the context of EU competition law. These provisions allow for a consideration of pro-competitive justifications, as reflected in the EC's guidelines interpreting Article 101(3) TFEU (Communication from the EC, "Guidelines on the application of Article 81(3) of the Treaty", [2004] OJ C101/97) and confirmed by the CJEU in its assessment in Case C-307/18 Generics (UK) Ltd and Others v Competition and Markets Authority ECLI:EU:C:2020:52, para. 165.

right to be heard and to defend oneself and close judicial review. By contrast, the DMA is considered to follow a more streamlined administrative path. It does provide basic protections (Article 34), but the fuller set of procedural guarantees tends to materialize only when a decision is appealed before the EU Courts (Lianos, 2021, p. 105).

4.1.5. Strategic Alignment Between the Two Regimes

Despite the tensions, the DMA and competition law are not mutually exclusive. Rather, they are complementary tools in the EU's digital regulation toolkit. While the DMA targets systemic and recurring practices through codified rules, competition law remains crucial for novel, firm-specific strategies that fall outside the DMA's predefined scope (Furman et al., 2019, p. 46).

However, their coexistence introduces risks of institutional fragmentation**,** legal uncertainty and conflicting decisions. To address this, Monti and de Streel propose a "sequencing" model whereby the DMA addresses structural market failures, while competition law is reserved for residual abuses (Monti and de Streel, 2022, p. 22).

Such coordination is vital:

- To avoid duplicative investigations**,**
- To clarify interpretive boundaries (e.g., can DMA compliance preclude a competition investigation?),
- And to provide firms with predictable legal frameworks across jurisdictions.

The challenge going forward is not only institutional coordination but also normative coherence: ensuring that both tools work toward shared goals, contestability, fairness, and innovation, without undermining one another.

The DMA and EU competition law are different but interconnected tools for regulating the digital markets. The DMA offers faster, rule-based intervention aimed at system-wide problems, while competition law provides case-by-case analysis and flexibility. Their overall effectiveness depends on clear legal standards, strong

coordination among institutions and the ability to adjust as markets evolve. When used together in a consistent way, they can support a durable framework that protects contestability and fairness in Europe's digital economy.

4.2. Main Components of the Digital Markets Act

4.2.1. Gatekeeper Designation

The overarching aim of the DMA is to safeguard the proper functioning of the internal market by fostering effective competition within digital markets, particularly through the establishment of a contestable and equitable platform environment.[29] According to Akman (2022, p. 6), among the three legislative pathways considered, the draft DMA adopts a "semi-flexible" approach. This model includes a defined set of "core platform services," employs both quantitative and qualitative criteria to identify "gatekeepers," and imposes directly applicable obligations, some of which allow for a regulatory dialogue to enhance implementation. Additionally, the EC retains the authority to revise the scope of obligations and core services through a structured "market investigation" process, as per DMA's Explanatory Memorandum.

The DMA signifies a paradigmatic departure from the classical competition law reliance on the concept of "dominance" and its grounding in narrowly defined relevant markets. Instead, it introduces the category of "gatekeepers" to capture a more dynamic and functional form of market power exercised by large digital platforms (Crémer et al., 2019, p. 42). This conceptual shift acknowledges the inadequacy of traditional competition frameworks to address the economic realities of multisided markets characterized by strong network effects, data-driven feedback loops, and user lock-in mechanisms (Stigler Committee, 2019, p. 105).

In conventional antitrust analysis under Article 102 of the TFEU, establishing a finding of dominance requires a fact-intensive and often time-consuming assessment of market structures, competitive dynamics, and boundaries. This approach has been

[29] DMA Explanatory Memorandum, p.9.

criticized for contributing to enforcement delays and increased legal uncertainty. The General Court) in *Microsoft v Commission* underscored the complexity of such assessments, noting that*"The Commission first identifies three separate worldwide product markets and considers that Microsoft had a dominant position on two of them. It then finds that Microsoft had engaged in two kinds of abusive conduct. As a result it imposes a fine and a number of remedies on Microsoft."* (Case T-201/04, *Microsoft v Commission*, ECLI:EU:T:2007:289, para. 22). This passage illustrates how dominance inquiries are deeply rooted in market definition exercises and structural analysis, which often require extensive evidentiary investigation before intervention is justified or permitted. As such, conventional enforcement mechanisms under Article 102 TFEU may struggle to respond swiftly to fast-moving developments in digital markets. This process becomes especially problematic in digital contexts where market boundaries are fluid and competitive dynamics shift rapidly (Crémer et al., 2019, p. 47). As such, the DMA moves away from case-by-case analysis and substitutes a prescriptive model in which certain core platform services may qualify as gatekeepers based on pre-set quantitative thresholds, such as turnover and user base.

The gatekeeper designation process is governed by three cumulative criteria: significant impact on the internal market, operation of a core platform service serving as an important gateway and an entrenched and durable position in its operations (DMA, Art. 3(1)). These criteria function as proxies for structural intermediation power, rather than traditional economic dominance, thereby enabling regulatory intervention irrespective of whether a platform meets the conventional threshold for market dominance (DMA, recital 5).

This reconceptualization is informed by growing empirical and theoretical insights into how digital gatekeepers gain and maintain power, not necessarily through price-setting authority, but through control over ecosystems, access points and user data (Crémer et al., 2019, pp. 48-49). In particular, the DMA's emphasis on core platform services such as online intermediation, search engines, app stores and social networks reflects a recognition that these infrastructures function as critical bottlenecks for competition and innovation (Furman et al., 2019, pp. 41-42).

Importantly, this approach also facilitates anticipatory regulation. By relying on rebuttable presumptions and observable criteria, the EC can act before competitive harm materializes, thereby mitigating risks associated with irreversible market tipping or exclusionary conduct (EC, 2020d, paras 118-121). This contrasts with ex post competition enforcement, which often comes too late to remedy entrenched anticompetitive structures, as evidenced in lengthy investigations such as *Google Shopping*, which took over six years to reach a decision (EC, 2017).

Furthermore, the gatekeeper designation reflects an evolving understanding of platform power that includes concepts like "strategic market status" and "intermediation power", notions that escape the confines of traditional market share analysis but are crucial to grasping the economic and social impact of dominant digital firms (Stigler Committee, 2019, p. 32; Crémer et al., 2019, p. 50). This broader framing enables regulation to capture harms associated with information asymmetries, self-preferencing, and dependency relationships that may not always produce immediate price effects but distort competition in more subtle and lasting ways.

In this respect, the DMA seeks to remedy not only the procedural inertia of competition law but also its substantive limitations. Traditional doctrines such as refusal to supply or tying require proof of indispensability or anticompetitive foreclosure, standards that are often too demanding in the platform context (Crémer et al., 2019, pp. 53-54). By contrast, the gatekeeper regime imposes obligations independently of demonstrated harm or abuse, thereby shifting the burden of justification onto the designated platform (DMA, Art. 8).

Nevertheless, the gatekeeper framework also introduces legal and conceptual challenges. Critics have questioned whether the reliance on formal thresholds could result in both over- and under-inclusiveness, failing to capture emerging gatekeepers or ensnaring firms that lack systemic power (Deutscher, 2022, p. 314). Additionally, the distinction between dominance and gatekeeper status may be blurred in practice, especially where enforcement relies on traditional antitrust concepts such as exclusion or exploitation to interpret obligations (Ezrachi, 2019, pp. 13-14).

Under the DMA framework, the EC is empowered to designate a provider of core platform services as a "gatekeeper" through one of two mechanisms. The primary route relies on a rebuttable presumption triggered when the provider meets certain quantitative thresholds related to its economic size, user reach, and market presence (DMA Recital 24). These thresholds serve as regulatory proxies for identifying undertakings with substantial structural power in digital markets. However, the presumption is not absolute: platform providers retain the right to challenge their designation by presenting counterarguments to the EC. When such a challenge is made or when the quantitative criteria are not met, the EC must undertake a formal "market investigation" to assess whether the provider should nonetheless be considered a gatekeeper under the overarching legal criteria (DMA Article 3(2), 3(4), 3(6) and Article 15).

In these instances, designation is based on three cumulative conditions: the provider must exert a significant impact on the internal market; it must operate a core platform service that serves as an essential gateway for business users to reach end users; and it must hold, or be likely to acquire in the near future, an entrenched and durable position in its operations under DMA Article 3(1). Although these are referred to as "objective requirements" within the DMA, their interpretation raises significant ambiguity. Terms such as "significant impact," "important gateway," and "entrenched and durable position", particularly in their "foreseeable" form, are not precisely defined in the DMA, leaving considerable discretion to the EC and thereby introducing potential legal uncertainty. According to Fernandez (2021, p. 271), these conditions are "quite loose" and thus, give ample discretion in practice to the EC to designate gatekeepers, which is a kind of flexibility that is more typical of ex post assessment than of ex ante rules, and should not undermine legal certainty.

To mitigate this uncertainty, the DMA introduces measurable indicators that are presumed to satisfy these criteria. These include thresholds such as an annual EU turnover of at least €7.5 billion in each of the last three financial years, or an average market capitalisation of at least €75 billion; the operation of a core platform service in at least three MSs; and monthly active user counts, 45 million for end users and 10,000 for business users, sustained over a three-year period.

In cases where designation follows a market investigation, Article 3(6) of the DMA outlines a more robust and economically attuned set of elements for consideration. These include the size of the platform provider, its user base, the degree of dependence by business users and end users, entry barriers such as network effects and data accumulation, economies of scale and scope, and consumer lock-in, among other structural features of the market under Article 3(6). This approach, grounded in empirical and economic analysis, is arguably better suited to capturing the complexities of multi-sided digital platforms and is more likely to yield nuanced, accurate and forward-looking assessments than the relatively blunt quantitative thresholds alone (Geradin, 2021, p. 14-15).

However, this method presents significant procedural and institutional trade-offs. Conducting a market investigation entails detailed economic analysis, the gathering of large volumes of data, and the careful evaluation of complex market dynamics, all of which demand time, expertise and administrative resources. As such, while the market investigation process may result in more accurate and forward-looking decisions, it may also delay the imposition of obligations on powerful platforms and thus prolong periods of unchecked market dominance. Importantly, the possibility for platforms to rebut the presumption of gatekeeper status even when quantitative thresholds are met introduces an additional layer of complexity. To trigger a market investigation in such cases, platforms must present "sufficiently substantiated arguments" to challenge the designation (DMA, Art. 3(5)). Yet, the DMA does not provide a detailed definition of what constitutes "sufficiently substantiated" leaving this determination to the discretion of the EC. The absence of clear criteria raises questions about legal certainty for platforms and opens the door to potential litigation. If the EC finds that the evidence provided is insufficient and upholds the designation, that decision becomes subject to judicial review by the CoJ of the EU. Such proceedings may further delay regulatory action and dilute the DMA's goal of prompt intervention. Ultimately, whether the presumption-based path or the market investigation route will prevail in practice as the more effective and timely mechanism for gatekeeper designation remains to be seen. Much will depend on the frequency and legal success of rebuttals by platform providers and the EC's evolving standards for evaluating those rebuttals. For example, in *Bytedance Ltd v*

Commission, the General Court dismissed the applicant's challenge against gatekeeper designation, holding that the evidence provided did not meet the threshold of "sufficiently substantiated arguments" required under Article 3(5) DMA (Case T-1077/23, ECLI:EU:T:2024:478 para. 10). The interplay between legal certainty, administrative efficiency and the accuracy of designation decisions will thus be a critical determinant of the DMA's practical success in reining in digital gatekeeping power.

4.2.2. Obligations

Once a platform is designated as a gatekeeper under the DMA, it becomes subject to a comprehensive set of regulatory obligations that are designed to tackle both structural and behavioral issues endemic to digital markets. These obligations, laid out primarily in Articles 5 and 6 of the DMA, are described as "directly applicable" meaning that they do not require further legislative transposition to be binding on the designated entity (DMA Explanatory Memorandum, p.10).

The underlying rationale for codifying such obligations lies in the recognition that certain business practices employed by large online platforms are not only persistently harmful but are also capable of being identified with sufficient legal clarity. Consequently, the DMA focuses on practices that are particularly unfair or anti-competitive, have been observed repeatedly across various markets and jurisdictions, and for which both the EC and certain national competition authorities have accumulated regulatory experience (DMA Explanatory Memorandum, p.6). The notion of "sufficient experience" however, invites scrutiny, as most of the landmark decisions by the EC concerning major digital platforms have not yet received final validation by the CJEU.[30] Furthermore, whether all the obligations laid down in the DMA truly provide the degree of legal clarity and predictability that the DMA purports to achieve remains an open question (DMA, Recital 66). Substantively, the obligations imposed by the DMA are rules with immediate legal

[30] Please see Case COMP/AT.40411 - Google Search (AdSense), 20 March 2019, currently on appeal in Case T-334/19, Google and Alphabet v Commission [2019] OJ C255/46; Case COMP/AT.40099 – Google Android, 18 July 2018.

effect, requiring gatekeepers to achieve full and effective compliance without the necessity of preliminary regulatory guidance or interpretation. Broadly speaking, these obligations can be categorized according to their regulatory objectives. A significant number of them are designed to enhance fairness in the relationships between gatekeepers and their business users, especially in light of the significant asymmetries of power and information that characterize these interactions.[31] Others are crafted to eliminate conflicts of interest inherent in vertically integrated platform models, particularly where a platform both facilitates and competes in transactions involving the same set of business users (EP, IMCO, Compromise Amendments Recitals 48 and 49). Finally and perhaps most critically, a core subset of obligations seeks to safeguard contestability in digital markets by reducing switching costs, encouraging multi-homing, enhancing interoperability, and addressing the data-driven barriers to entry that often entrench incumbent advantages.

A crucial distinction under the DMA is made between the obligations set out in Article 5 and those in Article 6. The former are described as "self-executing" and require no further elaboration or specification to become enforceable. Article 5 contains seven such obligations, including four that take the form of outright prohibitions and three that are expressed as positive requirements. In contrast, Article 6 comprises eleven obligations, which, although also directly applicable, are "*susceptible of being further specified*" (DMA Explanatory Memorandum, p.13). This creates a unique regulatory architecture whereby a gatekeeper is immediately bound by these obligations, yet the EC retains the discretionary authority to specify their application more concretely through subsequent regulatory action.

The obligations outlined in Article 5 of the DMA are crafted to operate autonomously, without requiring case-specific interpretation or procedural elaboration. This design reflects the legislature's intent to establish clear and unambiguous rules of conduct that gatekeepers must internalize and implement from the moment of designation.

[31] The P2B Regulation regulates this as well. Please see EC, "*Regulation (EU) 2019/1150 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services*", [2019] OJ L186/57.

One of the most consequential obligations under Article 5 prohibits gatekeepers from combining personal data obtained from different core platform services or from third-party services without the user's explicit consent. This rule is widely interpreted as a direct response to earlier enforcement actions—most notably the German Bundeskartellamt's investigation into Facebook—which centred on the unlawful aggregation of user data across multiple services to reinforce market dominance.

Another obligation under Article 5 requires gatekeepers to allow business users to freely set prices and conditions for their products or services, even when these are offered through the gatekeeper's platform. This provision aims to eliminate the use of "most-favoured-nation" (MFN) clauses, a contractual practice that has been the subject of several European enforcement proceedings, particularly in relation to online marketplaces and travel platforms. It reflects the broader policy objective of preventing gatekeepers from unduly restricting commercial freedom or distorting price competition through their intermediation power.

Article 5 further requires that gatekeepers do not impede business users from establishing direct relationships with end users. This includes allowing them to promote offers and conclude contracts outside the gatekeeper's platform. The obligation is widely viewed as a regulatory response to Apple's App Store practices, which historically limited developers' ability to communicate alternative pricing options or redirect users to external payment systems. By safeguarding such interactions, the DMA seeks to rebalance the bargaining asymmetry in digital ecosystems and enhance user choice.

Additionally, Article 5 contains transparency and interoperability obligations designed to strengthen market contestability. For instance, gatekeepers providing advertising services must disclose to advertisers and publishers detailed information on the pricing structure, including the amounts paid and remuneration received. This measure targets the opaque nature of digital advertising ecosystems dominated by vertically integrated players such as Google. The same article also prohibits gatekeepers from conditioning access to one core platform service on the mandatory

use of another, a practice scrutinised in the EC's *Android* case, where Google was found to have tied access to the Play Store to the pre-installation of its own search engine and browser. By proscribing such forms of technical tying, the DMA reinforces user autonomy and prevents the leveraging of entrenched positions across markets.

In contrast to the self-executing nature of Article 5, the obligations set out in Article 6 of the DMA are drafted to allow further specification where necessary. This reflects the recognition that certain regulatory interventions require contextual calibration (DMA Explanatory Memorandum, p. 13). Although these provisions are directly applicable, the EC retains the authority to engage in a regulatory dialogue with designated gatekeepers to assess whether the measures implemented adequately achieve the objectives of each obligation. This hybrid enforcement framework aims to balance legal certainty with regulatory flexibility, particularly in areas where the application of rules depends on evolving technical standards, market practices, or complex economic assessments.

Among the most prominent obligations in Article 6 of the DMA is the prohibition of self-preferencing. Gatekeepers are barred from treating their own products or services more favorably in rankings than those of third parties. While such conduct has long been a recurring concern in digital competition enforcement, most notably in the *Google Shopping* case, it is now codified as a structural, ex ante obligation.[32] Notably, the provision also establishes a positive duty to apply "fair and non-discriminatory conditions" to such rankings, thereby moving beyond mere prohibition to require affirmative compliance with equal treatment standards.

Another key obligation requires gatekeepers providing search engine services to grant third-party providers access to data generated through ranking, queries, clicks, and views under fair, reasonable, and non-discriminatory (FRAND) conditions. This provision is intended to reduce information asymmetries and empower market rivals by ensuring that critical data is not monopolized. Similarly, application store

[32] Case COMP/AT.39740 Google Search (Shopping).

providers are required to apply transparent and FRAND-based general access conditions to business users—a rule closely associated with concerns raised in past investigations of Apple's App Store practices.[33]

The DMA also prohibits gatekeepers from using non-public data obtained from their business users to compete directly with those users. This obligation addresses concerns raised during the EC's Amazon Marketplace investigation34, where the platform was alleged to have exploited commercially sensitive third-party data to inform its own retail strategies. The inclusion of this rule under Article 6 reflects the DMA's broader aim of preventing exploitative conduct that entrenches dominance and undermines market fairness.

Several additional obligations in Article 6 are directly aimed at enhancing contestability. Gatekeepers must allow end users to uninstall pre-installed applications and must not prevent switching between, or subscription to, services offered by competitors. These requirements are particularly relevant in the context of operating systems, where user lock-in can be perpetuated through pre-set defaults and technical restrictions. Another obligation ensures that gatekeepers enable interoperability with their operating systems and hardware for third-party providers of ancillary services, such as mobile payment solutions. 35 This measure is intended to dismantle structural barriers that would otherwise limit market access. The right to "side-load" applications, installing and using apps from sources other than the gatekeeper's platform, is also enshrined in Article 6. This aims to preserve developer autonomy and prevent platforms from acting as chokepoints for innovation and consumer access.[36]

The ability of the EC to further specify these obligations through formal proceedings introduces a dynamic layer to the regulatory framework. Where the EC determines

[33] Case COMP/AT.40437 Apple App Store Practices Music Streaming.

[34] Case COMP/At.40462 Amazon Marketplace.

[35] COMP/AT.40452 Apple Mobile Payments

[36] Case COMP/AT.40437 Apple App Store Practices Music Streaming.

that a gatekeeper's measures fall short of effective compliance, as per Article 7, it can adopt binding decisions outlining the necessary remedial actions. Conversely, gatekeepers may proactively seek EC guidance to validate their compliance strategies. However, as per Article 7, this dialogue mechanism does not suspend the applicability of Article 6 obligations; they remain binding even as discussions proceed. In this sense, the DMA balances immediate enforceability with procedural adaptability, allowing for tailored interventions while maintaining regulatory authority. In addition to the enumerated obligations in Articles 5 and 6, the DMA incorporates mechanisms for the future evolution of the regulatory framework through Article 10. Article 10 empowers the EC to adopt delegated acts to update or supplement the list of obligations based on findings from market investigations. Such flexibility is essential in a rapidly transforming digital landscape, where new forms of gatekeeping or anti-competitive practices may emerge beyond the originally identified scenarios. As per Article 10(2), the rationale for amending the list of obligations is anchored in two core principles: addressing practices that unfairly disadvantage business users by creating imbalances of rights and obligations and targeting conduct that weakens contestability in the market.

Two additional obligations introduced by the DMA (Article 12 and 13) further illustrate its holistic approach to regulating platform power. First, as per Article 12, designated gatekeepers are required to notify the EC of any intended concentrations involving other providers of core platform services or digital sector companies, even when these transactions do not meet EU merger control thresholds. This provision responds to longstanding criticism regarding the so-called "killer acquisitions," where dominant platforms acquire nascent competitors outside of conventional merger review channels (Caffara et al, 2020). Interestingly, the DMA provides no accompanying recital explaining the rationale for this obligation, suggesting that it may have been a late-stage policy insertion. Nonetheless, it marks a significant step toward enhanced scrutiny of structural market consolidation in the digital sphere.

Second, the DMA Article 13 introduces an obligation for gatekeepers to submit their consumer profiling techniques to an independent audit. The stated objective of this rule is to increase transparency regarding the use of personal data and to mitigate the

risk of deep profiling becoming the industry norm (DMA Recital 61). By shining a light on opaque data practices, the DMA aims to generate competitive pressure among platforms, enabling rivals to differentiate themselves through stronger privacy protections. This regulatory philosophy diverges notably from the EC's prior position in merger cases like Google/Fitbit, where it was held that the General Data Protection Regulation (GDPR) precluded privacy-based competition.[37] The DMA thus introduces a more expansive conception of market fairness, one that interweaves data governance with structural competition concerns. The debate on the intersection of privacy and competition law is still ongoing (Kemp, 2020, p. 628; Sokol and Comerford, 2016, p. 23).

Together, these provisions demonstrate that the DMA is not merely a static list of *"do's"* and *"don'ts"* but a dynamic governance tool designed to respond to the evolving nature of digital power. It embodies a regulatory vision that combines legal precision with anticipatory oversight, while embedding procedural safeguards to ensure legitimacy and proportionality in enforcement. The success of these obligations will ultimately depend on rigorous implementation, consistent jurisprudential interpretation and the willingness of institutions to engage in an iterative learning process. In this light, the obligations under the DMA represent both a culmination of past regulatory experience and a starting point for a new paradigm of digital market governance.

4.3. Implementation and Enforcement

The successful implementation of the DMA hinges not only on the clarity and structure of its substantive provisions but also on the institutional and procedural architecture through which it is enforced. The DMA introduces a centralized enforcement model with the EC at its core, reflecting the need for consistent, timely and robust oversight of gatekeepers across the EU. This centralized model contrasts with the more fragmented enforcement mechanisms seen in general EU competition law, where NCAs play a co-enforcement role. By contrast, the DMA assigns

[37] Case COMP/M.9660 Google/Fitbit.

exclusive enforcement responsibilities to the EC, ensuring that divergent national interpretations do not dilute the uniform application of gatekeeper obligations.

This institutional choice is grounded in the understanding that digital markets are inherently cross-border in nature and gatekeepers often operate at a scale that transcends national jurisdictions. The DMA thus creates a legal framework where enforcement is unified and streamlined under the supranational authority of the EC, enabling it to take swift and decisive action against non-compliance.

To this end, the DMA equips the EC with robust investigative and enforcement tools to ensure gatekeepers comply with their obligations. These powers, which closely mirror those used in EU competition law enforcement, include:

- Investigating gatekeepers, conduct market investigations, accept commitments and adopt decisions requiring remedial measures, including behavioral and structural remedies **(**Art. 17, 25, 29 DMA**);**
- Issuing formal requests for information, including access to data, algorithms and documentation **(**Art. 21 DMA**);**
- Conducting onsite inspections at the premises of designated gatekeepers **(**Art. 23 DMA**);**
- Holding interviews with company representatives and other relevant stakeholders **(**Art. 22 DMA**);**
- The appointment of external experts to support specific aspects of an investigation **(**Art. 26 DMA**);**
- The authority to impose interim measures when urgent intervention is necessary **(**Art. 24 DMA**);**
- The power to impose fines and periodic penalty payments on non-compliant gatekeepers **(**Arts. 30–31 DMA**).**

Although the DMA explicitly provides for judicial review of fines and penalties by the CJEU, it remains unclear why such a provision is narrowly confined to these measures, given broader judicial review rights already enshrined in EU law (Akman, 2022, p. 14). It is important to note that the EC's investigative powers under the DMA are modeled on its existing powers under EU competition law, particularly

Regulation 1/2003, but with modifications to accommodate the ex ante nature of the DMA regime.

The enforcement process under the DMA begins with the designation of gatekeepers, based on both quantitative thresholds and qualitative assessments. Once a gatekeeper is designated, the relevant obligations become immediately applicable and the gatekeeper is expected to achieve full compliance within the timeframe specified by the EC. To monitor and ensure compliance, the DMA obliges gatekeepers to submit annual compliance reports detailing how they meet their obligations, including information on the implementation of technical and organizational measures.[38] These reports provide the EC with a baseline for assessing whether the gatekeeper's conduct aligns with the letter and spirit of the DMA.

In instances where a designated gatekeeper fails to uphold the obligations enshrined in Articles 5 or 6 of the DMA or disregards other binding measures or commitments stipulated under the DMA, the EC is authorised to issue a formal non-compliance decision pursuant to Article 25 of the DMA. Such a decision is not merely declaratory in nature; it imposes concrete obligations on the gatekeeper. Specifically, the EC is required to order the undertaking to:

- Cease the infringing conduct without delay and
- Submit a comprehensive plan detailing how it intends to bring its operations into compliance with the DMA

This procedural requirement reflects a shift towards a more proactive and forward-looking enforcement model, which not only addresses past infractions but also compels transparency regarding future compliance strategies. A cornerstone procedural mechanism introduced by the DMA is the market investigation tool. This mechanism allows the EC to respond flexibly to various regulatory challenges and is structured around three primary functions:

The first purpose of a market investigation is to assess whether a digital platform should be designated as a gatekeeper despite not meeting the default quantitative

[38] Please visit this link to see the Compliance Reports of the designated gatekeepers:

thresholds. This applies in two scenarios: i) when a platform satisfies the qualitative criteria for designation but falls short of the quantitative benchmarks or conversely, ii) when a platform meets the quantitative thresholds yet presents substantiated arguments to contest its qualification based on qualitative factors, under DMA Article 15.

A second and more consequential function is the use of market investigations to determine whether a gatekeeper has engaged in systematic non-compliance with DMA obligations. Under Article 16, such a finding may arise where the EC has already issued at least three formal decisions, either non-compliance findings or penalty decisions, against the gatekeeper concerning any of its core platform services within a five-year window, under Article 16(2).[39] If systematic non-compliance is established, the EC gains the authority to impose remedial measures, which may be either behavioural remedies, intended to correct specific conduct, or structural remedies, such as divestitures or operational separation.

Initially, the DMA restricted the application of structural remedies to cases where behavioural solutions were either ineffective or overly burdensome for the gatekeeper. However, the IMCO Committee has removed this constraint, effectively allowing structural remedies to be imposed even when behavioural measures might offer an equally effective alternative.[40]

The third use of market investigations is instrumental for the dynamic evolution of the DMA itself. Through these inquiries, under Article 17, the EC may i) examine whether new services should be added to the list of core platform services and ii) identify novel business practices that potentially harm market contestability or user fairness but are not explicitly addressed under the current regulatory framework.

Following such an investigation, the EC is obliged to publish a comprehensive public report detailing its findings. Where appropriate, the report must be accompanied by i)

[39] Amendments proposed by the EP's IMCO Committee adjust this threshold to two decisions within a ten-year period.

[40] EP, IMCO, Compromise Amendments, Article 15 deleting Article 15(3).

a legislative proposal to amend the DMA's list of core platform services or ii) a delegated act to modify the obligations under Articles 5 and 6. This ensures the DMA remains responsive to the rapid technological and commercial developments in the digital economy. In sum, the market investigation mechanism under the DMA operates as a multifunctional instrument. It reinforces compliance, facilitates responsive regulatory adjustments and enhances the institutional capacity of the EC to intervene in complex and evolving digital ecosystems. The ability to adopt structural remedies and to revise core regulatory obligations reflects a deliberate regulatory strategy: to combine the procedural sophistication of competition law with the predictability and swiftness of ex ante regulation.

Failure to comply with the DMA obligations exposes gatekeepers to significant sanctions. The EC may impose fines of up to 10% of a gatekeeper's total worldwide turnover, and in the case of repeated infringements, up to 20%. In addition, periodic penalty payments may be imposed to compel compliance with decisions or requests for information. These fines mirror the deterrent tools available under antitrust law but are applied in a forward-looking regulatory regime designed to preempt rather than retrospectively punish anticompetitive behavior. Furthermore, in cases of systematic non-compliance, the EC may adopt structural remedies, including the divestiture of parts of a business, if behavioral measures are deemed insufficient to restore contestability. Importantly, these enforcement decisions are subject to judicial review before the Court of Justice of the European Union, which holds unlimited jurisdiction to assess the legality and proportionality of fines and penalty payments. As provided in Article 45 of the DMA, read in conjunction with Article 261 TFEU, the Court may cancel, reduce or increase the amount imposed, thereby ensuring procedural safeguards and legal accountability in the application of sanctions.

4.4. Digital Markets Act Enforcement Through European Commission Cases

Firstly, it is important to note that pursuant to Article 46 DMA, the EC adopted Implementing Regulation 2023/814 on 14 April 2023, following a public consultation on the draft (9 Dec 2022–9 Jan 2023) and discussion in the newly constituted Digital Markets Advisory Committee (DMAC) on 13 January 2023.

The Implementing Regulation streamlines procedural matters (e.g., access to file, formats, deadlines), with annexed Form GD for notifications under Article 3(3).[41,42]

On 3 July 2023, the EC received notifications from Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft and Samsung. On 5 September 2023, it designated Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft as gatekeepers for 22 CPS and did not designate Samsung (rebuttal accepted for Samsung Internet Browser).[43]

The EC accepted three outright (Alphabet/Gmail; Microsoft/Outlook; Samsung/SIB), rejected three (ByteDance/TikTok; Meta/Messenger; Meta/Marketplace) and opened four market investigations on rebuttals (Apple/iMessage; Microsoft/Bing; Microsoft/Edge; Microsoft Advertising); out of ten rebuttals received with the first notifications. In parallel, it opened a qualitative investigation into Apple's iPadOS for possible designation despite not meeting quantitative thresholds.[44]

Although the six-month substantive obligations timing (Arts 5–7 and 15 of the DMA) would run to 7 March 2024 for the first set of designations, Article 14 (concentration information) and Article 28 (compliance function) applied immediately. In 2023, the EC received three Article 14 submissions and supervised the appointment of compliance officers by all designated gatekeepers under Article 28.[45]

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[41] EC Implementing Regulation (EU) 2023/814**,** OJ L 102, 17.4.2023, p. 6–19; Annexes (Form GD; form/length specifications).

[42] Annual report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, 06.03.2024, please see introductory sections on 2023 activities, including the Implementing Regulation and DMAC's role.

[43] Ibid, Section II; EC designations of 5 Sept 2023 (Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft) and non-designation of Samsung; total 22 CPS designated.

[44] Ibid: ten rebuttals; three accepted outright: Gmail, Outlook, SIB; three rejected: TikTok, Messenger, Marketplace; four investigated: iMessage, Bing, Edge, Microsoft Advertising; qualitative probe into iPadOS.

[45] Ibid, Section III (Art. 14 concentration notifications—three submissions in 2023; Art. 28 compliance officers appointed).

On 29 April 2024, the EC designated Apple's iPadOS (qualitative path) as a CPS.[46] On 13 May 2024, it designated Booking for Booking.com (online intermediation).[47]

The EC concluded the four rebuttal investigations launched in 2023 by not designating[48]:

- Apple for iMessage,
- Microsoft for Bing, Edge and Microsoft Advertising.

ByteDance notified TikTok Ads (online advertising) with a rebuttal; on 13 May 2024 the EC accepted the rebuttal and did not designate TikTok Ads.[49] In the meantime, X notified its online social networking service and X Ads (both with rebuttals); on 13 May 2024 the EC accepted the rebuttal for X Ads and opened a market investigation into the social network. After an in-depth probe, the EC accepted the rebuttal for the social network on 16 October 2024.[50]

For the gatekeepers designated on 5 September 2023, the compliance deadline was 7 March 2024. The EC then opened six non-compliance investigations on 25 March 2024 concerning Alphabet, Apple and Meta. It later issued preliminary findings in two proceedings; Apple (24 June 2024) and Meta (1 July 2024) and announced preliminary investigative steps regarding Amazon.[51]

On 19 September 2024 the EC opened the first proceedings to specify Apple's interoperability obligations under Article 6(7) and on 19 December 2024 published

[46] Case DMA.100047 – Apple/iPadOS (designation), OJ C/2024/4374 (4.7.2024).

[47] Case DMA.100019 – Booking/Booking.com (designation), OJ C/2024/4360 (4.7.2024).

[48] Annual report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, 25.04.2025 (Second Annual Report): Apple iMessage not designated; Microsoft Bing, Edge, Microsoft Advertising not designated; DMAC opinions 1 Feb 2024.

[49] Case DMA.100042 – ByteDance/TikTok Ads (rebuttal accepted; non-designation) (13.5.2024).

[50] Case DMA.100232 – X Ads (rebuttal accepted) (13.5.2024); Case DMA.100041 – X social network (market investigation opened 13.5.2024; rebuttal accepted 16.10.2024; public decision pending; DMAC positive opinion 4.10.2024).

[51] Second Annual Report, compliance deadline 7.3.2024 for 5.9.2023 designations; six non-compliance investigations opened 25.3.2024 (Alphabet, Apple, Meta); preliminary findings: Apple (24.6.2024) and Meta (1.7.2024); preliminary steps re Amazon.

preliminary findings and sought third-party feedback on the measures required to ensure effective interoperability.[52]

As of the end of 2024, the number of gatekeepers rose from six to seven (addition of Booking), and designated CPS increased from 22 to 24 (addition of iPadOS). Operationally, supervision moved decisively from designation to merits-based enforcement, including non-compliance proceedings, preliminary findings, and obligation specification, supported by structured stakeholder engagement and inter-agency coordination.[53]

As seen, the DMA enforcement has unfolded in phases, moving from gatekeeper designation to specific proceedings, preliminary findings and finally non-compliance rulings. Tracking this timeline is important because it shows the pace of enforcement, the sequencing of obligations and the way in which regulatory practice builds momentum over time. It also helps predict what future enforcement might look like as more obligations are tested.

Enforcement has unfolded in distinct waves as shown below:

a) **Gatekeeper wave (Sept 2023):** Initial designation of the six big firms, with some rebuttals accepted (e.g., Microsoft and Samsung in certain verticals) and Apple's iPadOS moving into a qualitative path.

b) **From designation to merits (Mar–Jun 2024):** The first substantive proceedings were launched, focusing on anti-steering (5(4)), self-preferencing (6(5)), and interoperability (6(7)).

c) **First outcome mix (Late 2024–Mar 2025):** Preliminary findings and Article 8 decisions, particularly concerning Apple's interoperability with connected devices.

d) **First non-compliance findings (Apr–Jun 2025):** Apple and Meta received the first formal non-compliance rulings, marking a new stage where the DMA

[52] Ibid, Article 6(7) interoperability specification proceedings against Apple opened 19.9.2024; preliminary findings and third-party feedback sought 19.12.2024.

[53] Ibid, as of the end of 2024, there were 7 gatekeepers and 24 CPS; Sections II–VI summarising the shift to implementation and active enforcement.

moved from designation and investigation to actual penalties and corrective measures.

This timeline demonstrates that the DMA is not static. It started with broad gatekeeper designation, then evolved toward specific obligations being tested, and is now producing binding outcomes. Each phase not only resolves individual cases but also sets precedent for how the DMA will be applied going forward.

4.5. The Digital Markets Act Critics

The DMA represents a landmark initiative in the EU's evolving digital regulatory architecture. Conceived as a complement to existing EU competition law, the DMA introduces a novel, ex ante regulatory framework aimed at curbing the systemic power of so-called "gatekeepers" in core platform services (DMA, Recital 3). By departing from case-by-case antitrust enforcement in favour of rule-based, structural obligations, the DMA seeks to restore contestability and fairness in markets that have become increasingly concentrated, opaque, and unresponsive to traditional legal tools (Crémer, de Montjoye & Schweitzer, 2019, p. 4; Furman et al., 2019, p. 45).

However, while the DMA's regulatory ambition is commendable, its implementation raises a host of conceptual, legal, and institutional challenges. This section critically assesses the DMA through six interrelated dimensions:

i. The ambiguous regulatory nature of the DMA and its departure from conventional ex ante frameworks;
ii. Internal tensions between prescriptive and proscriptive regulatory logics within its obligations structure;
iii. Procedural asymmetries and due process concerns relative to established antitrust procedures;
iv. The overbreadth and uniform application of obligations across heterogeneous platform services;
v. The static nature of DMA rules in the context of highly dynamic digital markets;

vi. And risks of regulatory fragmentation both within the EU and in global cross-jurisdictional settings.

These critiques do not seek to undermine the DMA's foundational goals. Rather, they underscore the complexities of applying industrial-era regulatory models to post-industrial digital ecosystems. The analysis reveals that while the DMA marks an important regulatory step forward, its design may inadvertently compromise the very objectives it aims to serve, namely, legal certainty, proportionality, adaptability and institutional legitimacy (Dunne, 2015, pp. 43-45; Lianos, 2021, p. 105).

4.5.1. The Digital Markets Act's Ambiguous Regulatory Nature

One of the most significant criticisms surrounding the DMA is the conceptual ambiguity regarding its nature as a regulatory instrument. The DMA is frequently labelled as a form of ex ante economic regulation. However, closer inspection reveals that it diverges in multiple ways from traditional models of such regulation, raising serious questions about its internal coherence and the practical implications of its hybrid structure.

Conventional ex ante regulation is generally tied to a clearly defined economic sector (telecommunications, energy, water or rail) where regulators impose obligations on all operators within that sector to simulate or protect competition in the presence of natural monopolies or structural market failures (Ogus, 2004, p. 5). The DMA, however, does not regulate a clearly bounded "sector". Although its preamble refers to the "digital sector" (DMA, Recital 12), this term lacks definitional precision.

Although the widespread integration of digital technologies across economic sectors complicates attempts to define "digital markets" with precision, efforts have been made to delineate the concept. For example, the OECD has adopted a sectoral classification based on the United Nations' Standard Industrial Classifications, encompassing a broad range of activities such as telecommunications, wholesale of ICT equipment, and even services like the repair of electronic devices. Notably, many of these sub-sectors are not covered under the regulatory scope of the DMA

(OECD, 2022, p. 7). In contrast, the CMA has highlighted the limitations of such classifications. The CMA, in its advisory to the Digital Markets Taskforce, explicitly noted that the term "digital" should not be regarded as indicative of a distinct economic sector. Instead, it reflects a broad and evolving set of functionalities that increasingly permeate traditional industries (CMA, 2020, para. 6.2).

The UK Department for Digital, Culture, Media and Sport has also recognized this conceptual ambiguity. Despite publishing economic estimates for what it termed the "digital sector" it acknowledged that many activities falling under this label, such as the repair of electronic goods, are largely irrelevant to the DMA's regulatory objectives (DCMS, 2020).

As noted by the CMA, digital is not a sector but a set of capabilities that cross-cut traditional sectoral boundaries (CMA, 2020, para. 6.2). The OECD's categorisation of a "digital sector" using UN SIC codes includes fields such as computer repair and wholesale electronics, areas wholly unrelated to the DMA's actual regulatory targets. Thus, invoking a "digital sector" risks importing analogies from utility regulation that are poorly suited to the dynamic and heterogeneous reality of platform markets.

While the DMA does not regulate a sector, it does not comfortably fit into the category of entity-based regulation either. Traditional entity-based regimes, such as those applied to financial institutions, impose conduct rules on clearly defined classes of actors to maintain systemic stability or protect consumers (Restoy, 2021). The DMA targets entities, so-called "gatekeepers", but not because they belong to a coherent category of businesses. Rather, their inclusion is determined by a combination of quantitative thresholds (e.g., turnover, user base) and qualitative assessments (DMA, Art. 3). These gatekeepers operate across fundamentally different markets, ranging from app stores to search engines and possess divergent technologies, user relations, monetisation models and contractual structures.

In fact, there is no recognised economic activity that corresponds to "gatekeeping". The term is not grounded in commercial or legal practice but instead functions as a conceptual device derived from economic theory and previous antitrust enforcement

experience. Thus, what the DMA regulates is not a market segment or a business model, but a concentration of structural power in digital ecosystems.

The ambiguity of the DMA's design is compounded by circular definitions embedded in the legislative text. For instance, a "core platform service" is one that functions as a "gateway" to users and a "gatekeeper" is defined as an undertaking that provides such a core platform service in a manner that serves as an "important gateway" (DMA, Art. 3(1)(b); Recital 6 and 15) This circular logic makes it difficult to clearly distinguish between the subject matter of regulation (services) and the subject of regulation (entities). Although amendments by the EP IMCO Committee have slightly mitigated this issue by clarifying language around the designation process (IMCO Amendments, Art. 3(1)), conceptual confusion remains.

This definitional murkiness has practical consequences. It is unclear, for example:

- Whether the DMA primarily seeks to regulate services or to control specific firms**;**
- On what basis certain services are included as core platform services while others are not;
- How to rationalise uniform obligations for platforms with drastically different business models and user roles (e.g., an app store vs. a messaging service).

As a result, the regulatory rationale appears strategically fragmented. At times, the DMA seems to pursue a structural remedy akin to utility-style regulation, while at other times, it operates as a codified extension of previous competition law enforcement outcomes**.**

This regulatory hybridity has implications for legal certainty and administrative coherence. The absence of a clearly articulated regulatory identity makes it difficult for gatekeepers to anticipate their obligations and for enforcers to apply consistent standards. It also invites litigation over the scope, applicability and proportionality of obligations, issues that have already dogged previous competition law interventions in the digital economy. Furthermore, a uniform rulebook for all gatekeepers fails to account for their heterogeneity. As noted in comparative analyses, imposing identical

obligations on fundamentally different platform types ignores the diversity of business models, revenue structures and user dependencies (Akman, 2022, p. 27; Cennamo & Sokol, 2021). For example, a booking platform and a search engine interact with business users in fundamentally different ways; yet the DMA prescribes obligations that apply across both without differentiation.

To correct these design deficiencies, the DMA would benefit from the following structural reforms:

- Explicitly acknowledge its sui generis nature**,** avoiding inappropriate analogies to either sectoral or financial regulation;
- Redesign the obligations framework around individual core platform service types (e.g., marketplaces, operating systems, social media), enabling service-specific rules that align with underlying business models;
- Clarify the regulatory rationale**:** is the goal to address systemic features of certain digital markets (e.g. tipping, data bottlenecks), or to directly constrain the conduct of powerful firms? Currently, the DMA oscillates between both aims without reconciling them;
- Remove or revise circular definitions**,** replacing them with functionally precise, non-overlapping categories that clearly delineate scope and subject.

Implementing such changes would not only improve doctrinal clarity but also facilitate more predictable and efficient enforcement, aligning the DMA more closely with its intended policy objectives.

4.5.2. Prescriptive vs. Proscriptive Tensions in the Obligations Framework

Another fundamental critique directed at the DMA pertains to the internal tension between its prescriptive and proscriptive regulatory logic. The DMA introduces a dual-layered obligations framework, divided across Articles 5 and 6, which imposes both general conduct obligations and obligations susceptible to further specification by the EC. However, the conceptual and procedural bifurcation between these obligations has led to criticisms regarding legal certainty, coherence, and enforceability.

The DMA's obligations are split into two primary categories:

- Article 5 contains "self-executing" obligations, which apply directly and do not require additional interpretative acts;
- Article 6 sets out obligations "susceptible to specification", meaning that the EC may issue guidelines or adopt delegated acts to clarify their application (DMA, Art. 7(2)).

Yet, as Colomo (2021) observes, the clarity associated with these categories is questionable. Certain Article 5 provisions exhibit significant vagueness despite their supposedly self-enforcing nature.

Moreover, Akman (2021) highlights that obligations such as Article 6, which require gatekeepers to provide business users access to data, combine both prescriptive and proscriptive elements: a mandate to share data and a restriction on exclusivity. This hybrid character complicates enforcement strategies and creates compliance uncertainties.

Additional concerns stem from the EC's power to refine Article 6 obligations via non-binding guidelines or delegated acts under Article 10. As Botta and Wiedemann (2020) argue, this discretion, while offering flexibility, may weaken the predictability and stability of the regulatory framework, raising potential rule of law concerns.

Unlike competition law, which involves effect-based assessment grounded in economic analysis, the DMA enforces per se rules that do not consider market context or conduct-specific justifications. Petit (2020) warns that this rigidity may stifle innovation or result in over-enforcement in rapidly evolving digital sectors.

The DMA's uniform application of obligations across heterogeneous platform services further deepens concerns. Requirements that are appropriate for one type of platform may be ineffective or even harmful in another context. For instance, mandatory access for third-party app stores (Art. 6(4)) may be suitable for mobile OSs but ill-suited to search engines or online marketplaces. This "one-size-fits-all"

approach may conflict with principles of proportionality and sector-specific sensitivity (Cennamo and Sokol, 2021). Instead, it is important to start with a focus on a specific problem and seek well-tailored and well-informed solutions, thinking through the benefits, the secondorder impacts and the potential for unintended side-effects (Gürkaynak et al, 2022, p. 8).

To address these structural tensions and enhance the coherence of the obligations framework, several reforms could be contemplated:

- Reclassify obligations based on regulatory logic, prescriptive vs. proscriptive, each aligned with specific enforcement tools;
- Introduce interpretive standards for Article 6 compliance, such as reasonableness or proportionality tests;
- Apply a modular system that links obligations to platform type and functionality;
- Clarify how and when the EC will amend obligations, to prevent arbitrary or inconsistent enforcement.

4.5.3. Procedural Asymmetries and Due Process Concerns

A central criticism of the DMA concerns its procedural framework, which, despite being inspired by EU competition law enforcement, departs significantly from its well-established procedural architecture. Scholars have raised concerns regarding the asymmetric allocation of procedural safeguards and the implications this has for due process, institutional accountability, and enforcement legitimacy (Akman, 2021, pp. 18-21).

Unlike the enforcement of Articles 101 and 102 TFEU, which is supported by decades of jurisprudence ensuring rights such as access to the file, oral hearings, and detailed judicial oversight, the DMA introduces a more streamlined administrative regime. While it includes certain procedural protections such as the right to be heard (DMA, Art. 34) and the right to judicial review before the CJEU (DMA, Art. 35), these fall short of the procedural depth traditionally associated with antitrust investigations.

Notably:

- The DMA does not explicitly guarantee full access to the EC's file, thereby limiting the ability of gatekeepers to mount an effective defence;
- There is no provision mandating an oral hearing before the adoption of binding decisions;
- The regulation lacks a formal mechanism for pre-investigation dialogue or structured engagement with gatekeepers (Akman, 2021, p. 19; Lianos, 2021, p. 105).

These shortcomings are particularly troubling in light of the severity of the sanctions prescribed under the DMA, which include fines of up to 10% of a firm's global turnover and periodic penalty payments (DMA, Art. 30). Given the gravity of these measures, procedural safeguards should arguably align with the standards required by Article 6 of the European Convention on Human Rights (ECHR) (Geradin and Katsifis, 2021, p. 10).

Another significant concern arises from the expansive powers conferred upon the EC. Under the DMA, the EC holds the authority to:

- Designate gatekeepers (DMA, Art. 3);
- Interpret and specify obligations (DMA, Arts. 6–8);
- Conduct investigations and request information (DMA, Art. 21);
- Impose penalties (DMA, Art. 30);
- Defend its own decisions in court.

This accumulation of investigative, interpretive, and adjudicative powers in a single institution poses risks of institutional bias and threatens the perceived impartiality of enforcement actions (Geradin and Katsifis, 2021, p. 12). Colomo (2021) further warns that the lack of clarity in how obligations will be interpreted, particularly those in Article 6 that are susceptible to further specification, raises serious questions about legal certainty and foreseeability.

Moreover, the DMA's centralised enforcement by the EC introduces potential tensions with NCAs. Although NCAs retain the ability to act under national rules,

the absence of a formalised coordination mechanism between national and EU-level procedures risks regulatory fragmentation and inconsistent procedural standards across MS (OECD, 2021, p. 20). For businesses operating in multiple jurisdictions, such inconsistencies create legal uncertainty and undermine the DMA's goal of creating a coherent regulatory environment for digital markets.

To mitigate these procedural concerns and enhance the rule of law within the DMA's enforcement model, the following reforms have been proposed in the literature:

- Align procedural protections with those available in EU competition law, including full access to the file and mandatory oral hearings (Lianos, 2021);
- Establish clearer separation of powers within the EC, or create an independent supervisory authority for procedural oversight (Geradin and Katsifis, 2021);
- Introduce formal mechanisms for pre-investigation consultation to promote transparency and cooperation;
- Adopt binding guidelines on enforcement prioritisation and procedural conduct to constrain discretion and ensure predictability (Colomo, 2021).

Enhancing the DMA's procedural framework would not only improve its resilience to legal challenges but also foster greater confidence among stakeholders and MS in its fair and effective implementation.

4.5.4. Overbreadth and Uniformity of Obligations

A key criticism frequently directed at the DMA relates to its uniform application of obligations across diverse platform services. While the DMA classifies certain services under the umbrella of CPS (DMA, Art. 2(2)), it imposes a single set of obligations, primarily via Articles 5 and 6, regardless of the heterogeneity in business models, technological architecture, user interaction modes, and competitive dynamics. This regulatory uniformity has been criticised for lacking proportionality, reducing effectiveness, and generating inefficiencies in both compliance and enforcement (Akman, 2021, pp. 16-18).

The DMA's "one-size-fits-all" approach risks both over- and under-inclusiveness. For example:

- Search engines monetise attention through targeted advertising;
- App stores facilitate software distribution, often with transaction-based fees;
- Messaging services operate as communication utilities, with minimal commercial intermediation.

Despite these differences, obligations such as interoperability (Art. 6(7)), self-preferencing prohibitions (Art. 6(5)) and mandatory data access (Arts. 5(1), 6(9)) apply across the board, without contextual analysis (Crémer et al., 2019, p. 65).

This raises concerns under the principle of proportionality, a core tenet of EU law. Regulatory obligations must be necessary, suitable, and not excessively burdensome relative to their objectives. Yet, the DMA lacks systematic mechanisms for calibrating obligations to platform-specific functions or risks (Akman, 2021, p. 17). In this regard, the UK's proposed Digital Markets Unit has been commended for pursuing a more flexible model, allowing obligations to be tailored to individual firms based on their role and market behaviour (Furman et al., 2019, p. 53).

Moreover, the DMA does not clarify how its rules apply to conglomerate platforms operating across multiple core service types. In such cases, obligations might either be overgeneralised or inconsistently applied, leading to confusion and legal uncertainty (Akman, 2021, pp. 16–17).

Additionally, scholars have expressed concern that broad obligations, when combined with a lack of precise enforcement guidance, may result in regulatory overcompliance. Firms, in an attempt to err on the side of caution, might overcorrect behaviours, leading to reduced innovation incentives, elevated compliance costs, or architectural distortions to digital ecosystems (Crémer et al., 2019, p. 68; Furman et al., 2019, p. 54).

To mitigate these shortcomings, scholars and policy experts propose a more modular and differentiated regulatory framework:

- Obligations should be mapped to platform-specific functions, not uniformly imposed;
- A tiered system of obligations, aligned with scale, service type, or competitive risk, could enhance proportionality;
- Regulatory exemptions or interpretive flexibility may be warranted where obligations are technically inappropriate or economically unjustified (Furman et al., 2019, pp. 53–54) .

By acknowledging the functional asymmetries across digital services and adapting its regulatory logic accordingly, the DMA could increase both compliance legitimacy and enforcement efficiency.

4.5.5. Dynamic Markets and Static Rules

A core structural tension within the DMA arises from its attempt to regulate highly dynamic and rapidly evolving digital markets through a set of fixed, legally binding rules. While ex ante regulation inherently favours legal clarity and predictability, the fast-paced nature of digital ecosystems, marked by continuous technological innovation, market entry and evolving user behaviour, raises questions about the DMA's adaptability and long-term efficacy.

Digital markets exhibit unique features that make them especially volatile and subject to non-linear change. These include:

- Rapid innovation cycles, where new business models and services emerge in months rather than years,
- Network effects, which may accelerate the concentration or fragmentation of market power in unpredictable ways;
- Multi-sidedness, where changes on one side of a platform can instantaneously reshape dynamics on another;
- Data-driven feedback loops, which continuously alter how value is created and extracted (Akman, 2021, p. 12; see also Crémer et al., 2019).

Such characteristics imply that market failures or anti-competitive risks do not arise in fixed forms but evolve over time, often in ways that cannot be anticipated ex ante.

One of the DMA's weaknesses is its reliance on a closed list of core platform services and a finite catalogue of obligations (DMA, Art. 2(2); Arts. 5-6; Akman, 2021, p. 12). While the DMA provides mechanisms for review and amendment, such as market investigations to update the list of services or revise obligations (DMA, Art. 17), these mechanisms are procedurally heavy and politically sensitive, limiting their ability to respond in real time to novel challenges (Akman, 2021, pp. 12-13).

As acknowledged in the Legislative Financial Statement, two core risks of such static regulation are:

- Legal uncertainty due to ambiguously worded obligations;
- Factual obsolescence**,** where obligations become outdated due to structural shifts in market conditions (DMA, Legislative Financial Statement, p. 64).

These concerns are not merely theoretical. In previous regulatory frameworks, delays in updating rules or adapting enforcement tools have resulted in regulatory lag, whereby harmful practices persist unchecked due to procedural inertia.

The DMA aims to provide clear, enforceable rules that reduce ambiguity and expedite intervention. However, this clarity may come at the cost of responsiveness. Unlike competition law, which evolves through case law and effects-based interpretation, the DMA establishes per se prohibitions and mandates that may lack the nuance required to address emergent strategies or unanticipated behaviours (Akman, 2021, p. 13; Petit, 2020, p. 61). For example, if a new form of user discrimination or data extraction develops outside the scope of current obligations, enforcement would require:

- Either invoking general principles under competition law (outside DMA)
- Or initiating a formal process to amend the DMA, an effort that could take years and require legislative consensus.

In this sense, the DMA risks becoming institutionally rigid, unable to maintain regulatory relevance in a market landscape that transforms continuously (Akman, 2021, p. 13). Another consequence of static rulemaking is the potential chilling effect on innovation. By prescribing fixed conduct requirements without regard to context,

the DMA might disincentivise experimentation with business models, deter efficiency-enhancing integrations, or inadvertently codify current market structures, making it more difficult for new or alternative designs to emerge (Petit, 2020, p. 61; Akman, 2021, p. 13). Additionally, gatekeepers may hesitate to roll out new features or services if they fear future retroactive designation as a regulated activity. This phenomenon, sometimes described as "compliance conservatism", can lock in existing technologies and hinder digital evolution (Akman, 2021, p. 13).

To mitigate the risks associated with regulatory rigidity, the DMA could adopt more adaptive governance mechanisms, such as:

- Sunset clauses or periodic review triggers for obligations based on market indicators;
- A more agile, co-regulatory approach**,** allowing for real-time dialogue between regulators and gatekeepers;
- The integration of "regulatory sandboxes" for testing new services under supervised, flexible conditions;
- Delegated powers for the EC to issue interpretive guidelines without requiring formal amendment of the DMA (Akman, 2021, pp. 13-14).

Such measures would help align the DMA's regulatory ambitions with the inherent unpredictability and velocity of digital innovation.

4.5.6. Fragmentation Risks and Cross-Jurisdictional Tensions

While the DMA aspires to establish a unified regulatory framework for digital platforms within the EU, its implementation introduces the potential for regulatory fragmentation, both intra-EU and internationally**.** The DMA centralises enforcement authority within the EC, yet its coexistence with national competition rules**,** MS interventions**,** and external legal regimes creates a complex enforcement ecosystem that may compromise the coherence and predictability the DMA seeks to achieve. One of the central justifications for the DMA was to harmonise digital platform regulation across MS**,** preventing a proliferation of national regimes that would fragment the internal market. Nevertheless, national competition authorities (NCAs)

retain the ability to apply domestic rules in parallel with DMA obligations, particularly in relation to practices not covered by the DMA (DMA, Recital 11).

This dual-track system may result in:

- Conflicting interpretations of similar or related conduct;
- Duplicative investigations into the same market behaviour;
- Or forum shopping**,** whereby firms or complainants strategically target more favourable jurisdictions.

Moreover, some MS have proposed or adopted national digital platform regulations (e.g. Germany's Section 19a GWB), which may operate independently or in tension with the DMA. The risk is that gatekeepers may face differentiated compliance obligations across MS despite being subject to a supposedly harmonised EU regulation. Although the DMA empowers the EC as the sole enforcer, it does not establish a clear co-governance mechanism with national authorities. Unlike the ECN, which fosters collaboration and case allocation among competition enforcers, the DMA does not institutionalise structured coordination channels with NCAs.
The absence of such mechanisms may:

- Undermine consistent enforcement across the EU;
- Impede the exchange of evidence and expertise;
- Reduce the legitimacy of EC decisions, particularly in politically sensitive cases with strong national implications.

Calls for the creation of a Digital Markets Advisory Committee, or a dedicated DMA network akin to the ECN, have been raised to address these gaps, but such structures remain underdeveloped in the current regulatory architecture.

The DMA also poses challenges in the context of global platform governance. Many of the firms designated as gatekeepers under the DMA are headquartered outside the EU, particularly in the U.S.. As a result, the DMA's rules may conflict with foreign legal standards**,** creating a risk of extraterritorial legal friction**.** For example:

- Obligations related to data access or portability may clash with U.S. privacy law or intellectual property protections;

- Prohibitions on self-preferencing may contradict antitrust jurisprudence in other jurisdictions;
- Compliance with DMA standards could require structural changes in business models that affect operations well beyond the EU market.

These tensions have already prompted diplomatic engagement and regulatory pushback**,** particularly in transatlantic fora such as the EU-U.S. Trade and Technology Council. Without frameworks for international regulatory convergence, the risk of balkanised digital governance increases, where global platforms must navigate incompatible rules in different markets, raising costs and legal uncertainty.

To minimise fragmentation and cross-jurisdictional conflict, the DMA framework could be improved through:

- The creation of a formal DMA enforcement network, including both the EC and NCAs;
- Enhanced procedural alignment mechanisms to manage overlapping investigations and reduce legal inconsistency;
- Strengthening international regulatory dialogues aimed at harmonising principles or recognising equivalent rules across jurisdictions;
- Incorporating mutual recognition clauses or guidance on conflict resolution where DMA obligations may interfere with third-country laws.

Such institutional and legal innovations would support the DMA's credibility as a model of digital regulation, while promoting interoperability, legal certainty, and international coherence**.** The preceding analysis demonstrates that the DMA, though pioneering in ambition, is structurally and conceptually burdened by significant regulatory tensions. Its attempt to transplant a rules-based ex ante model onto an environment defined by rapid innovation, platform heterogeneity, and cross-border complexity presents a persistent risk of regulatory misalignment.

At the core of the critique lies the conceptual opacity surrounding the DMA's identity. It is neither a sector-specific framework nor a fully entity-based regime, making its regulatory scope difficult to pin down (Restoy, 2021; CMA, 2020). The

DMA's internal structure, dividing obligations into self-executing and Commission-specifiable categories, creates confusion rather than clarity, particularly when similar obligations oscillate between prescriptive and proscriptive modalities (Petit, 2020, p. 58).

Furthermore, the DMA's procedural architecture lacks the institutional safeguards developed in competition law, raising due process and accountability concerns. Its uniform application across divergent platforms, combined with the inflexibility of static rules in dynamic environments, compounds the risk of inefficient overregulation or regulatory capture (Ogus, 2004, pp. 57-58; DMA Legislative Financial Statement, p. 64). The DMA's effectiveness is further undermined by governance asymmetries, both in terms of intra-EU enforcement coordination and external legal conflicts with non-EU jurisdictions. Absent mechanisms for synchronized investigation, differentiated compliance, and international convergence, the DMA may inadvertently contribute to the very legal fragmentation it sought to resolve (Monti and de Streel, 2022, p. 22).

Moving forward, the DMA must evolve beyond its initial architecture. Reforms should include:

- A modular obligations framework based on platform type and market context;
- Stronger procedural safeguards equivalent to antitrust enforcement standards;
- Dynamic updating mechanisms, such as interpretive guidance or delegated rule-making;
- And formal institutional coordination both within the EU and globally.

Only by addressing these design limitations can the DMA hope to function as a durable, proportionate and future-proof instrument in the digital age. Its success will depend not merely on the clarity of its rules, but on the coherence, legitimacy and responsiveness of the system that implements them.

CHAPTER 5

COMPARATIVE ANALYSIS OF THE DMA AND THE DRAFT AMENDMENT TO THE ACT NO 4054 ON THE PROTECTION OF COMPETITION

This chapter undertakes a systematic comparative analysis of the EU's DMA and the Draft Amendment to the Act No 4054 concerning the regulation of large digital platforms. Both instruments represent a paradigmatic shift from traditional ex post competition enforcement towards an ex ante regulatory model, aiming to address entrenched structural market power in the digital economy. The chapter examines the underlying policy rationales, the scope of application, designation criteria, substantive obligations and enforcement mechanisms under each regime. It further explores the degree of normative convergence and divergence between the two frameworks, as well as the potential implications of their coexistence for undertakings operating across both jurisdictions.

The analysis proceeds in five sections. Section 4.1 explores the conceptual foundations and legislative objectives driving each framework, highlighting their shared recognition of market failures linked to network effects, data-driven economies of scale, and platform dependency. Section 4.2 compares the respective scope and designation mechanisms, contrasting the DMA's quantitative gatekeeper thresholds with the Draft Amendment's qualitative SMP assessment. Section 4.3 analyses the substantive obligations imposed, noting similarities in prohibitions on self-preferencing, tying, and data restrictions, alongside differences in procedural structuring. Section 4.4 assesses the enforcement architecture, including institutional mandates, investigative powers and sanctioning regimes. Finally, Section 4.5 discusses cross-jurisdictional considerations, addressing both the risks of duplicative

regulation and the opportunities for regulatory convergence and 4.6 represents the recommendations for Türkiye.

By combining detailed legal comparison with policy analysis, this chapter seeks to provide a nuanced understanding of how these two regulatory regimes, though rooted in distinct institutional and market contexts, collectively contribute to the emerging global framework for digital platform governance.

5.1. Conceptual Foundations and Regulatory Objectives

5.1.1. The Underlying Market Failures Addressed

Both the DMA and the Draft Amendment are premised on the recognition that certain structural characteristics of digital markets give rise to persistent competition concerns that cannot be adequately addressed through conventional ex post enforcement. Digital platform markets are prone to strong direct and indirect network effects, whereby the value of a service increases with the number of users, reinforcing incumbency advantages (DMA Recital 2). They also exhibit significant economies of scale and scope, particularly in data collection and analytics, enabling large platforms to operate at marginal costs that potential entrants cannot match (DMA Recital 3). These features create high switching costs for both business and end users, leading to lock-in effects that reduce multi-homing and raise barriers to entry.

The DMA conceptualises these issues as *structural market failures*, independent of overtly abusive conduct. According to the European Commission, certain large platforms designated as "gatekeepers" function as unavoidable intermediaries between business users and end users (DMA Art. 2(1)), allowing them to impose unilateral terms and leverage their power into adjacent markets (DMA Recital 5). Accordingly, the DMA's purpose is not merely to sanction anti-competitive behaviour after it occurs, but to prevent the entrenchment and extension of market power through ex ante regulatory obligations (DMA Art. 1(1)).

The Draft Amendment similarly acknowledges that harmful market power can arise even in the absence of dominance as defined under Article 6 of Law No. 4054. Article 4 of the Draft Amendment defines *Significant Market Power (SMP)* as the ability to act independently of competitors, customers, and users in one or more digital markets. The assessment criteria include control over essential data, network effects, vertical integration, leveraging potential, and the dependency of business users (Draft Amendment Art. 4(2)). The underlying rationale is that the procedural and evidentiary burdens of proving dominance and abuse may render traditional competition law tools too slow and reactive in fast-moving technology markets. Both frameworks therefore share a preventive regulatory logic: they aim to address market structures conducive to exclusionary or exploitative conduct, on the understanding that intervention after foreclosure often comes too late to restore contestability.

Sanlı and Doğan (2023, p. 5) put forward the following critique: several of the conducts cited in the Draft's general preamble as examples of harm theories "beyond conventional ones" have already been investigated by the TCA and sanctioned with administrative fines. This raises questions about the legality and necessity of such a new framework. The preamble implies that existing competition law instruments are insufficient to effectively address these conducts, forming the very rationale behind the Draft Amendment. Yet, the fact that similar behaviours have already been sanctioned under Article 6 of Law No. 4054 renders the newly introduced category of "conducts beyond conventional harm theories" legally ambiguous. In essence, the Draft appears to acknowledge that the boundaries of Article 6 have been stretched in previous digital market investigations.

The Draft Amendment's broader and more flexible conception of SMP represents a strength in adapting to digital realities, yet it simultaneously risks undermining legal certainty due to the absence of explicit thresholds in the legislative text. While flexibility enables context-sensitive enforcement, excessive discretion may result in unpredictability for market participants. For Türkiye, it will therefore be crucial to strike a balance—by codifying clear quantitative and qualitative thresholds directly in primary legislation rather than leaving them entirely to secondary rules. This would enhance foreseeability while maintaining adaptability. Moreover,

strengthening institutional capacity for data-driven analysis and monitoring will be essential to ensure that the expanded SMP concept does not lead to arbitrary or inconsistent application.

5.1.2. Legislative Purpose and Policy Drivers

The DMA's legislative purpose is explicitly articulated in Article 1(1): to ensure that digital markets remain contestable and fair**,** thereby promoting innovation, quality, and consumer choice. Contestability requires lowering barriers to entry and enabling competitors to challenge incumbents on the merits, while fairness demands the absence of unjustified trading conditions that distort the relationship between gatekeepers and their business or end users. The dual focus on contestability and fairness reflects the EU's broader Digital Single Market Strategy (DMA Recital 1), which emphasises the need to avoid regulatory fragmentation by harmonising rules at the Union level. This explains the DMA's centralised enforcement by the EC (DMA Art. 1(5)) and the inclusion of a multi-jurisdictional criterion in gatekeeper designation (DMA Art. 3(2)(b)).

The Draft Amendment pursues related objectives but within a national sovereignty framework**.** Türkiye's competition authority has encountered difficulties addressing the conduct of foreign-based platforms that affect domestic markets but lack a legal presence in the country. Article 2(2) of the Draft Amendment expands the law's territorial reach to any undertaking whose conduct has an effect on competition in Türkiye, regardless of establishment. The policy driver here is twofold: to close a jurisdictional gap that has been exploited by global platforms, and to enable earlier intervention before competitive harm becomes irreversible. In doing so, the Draft Amendment reflects an explicit policy choice to integrate digital market regulation into existing national competition structures**,** rather than creating a separate supranational or sectoral regulator.

The Turkish model represents a sovereign, resilience-oriented approach, prioritising enforceability and institutional continuity. Yet its focus on administrative empowerment, without parallel safeguards, risks tilting the balance towards

regulatory overreach. To avoid this, Türkiye should adopt three key safeguards: (i) procedural clarity in the designation of SMP undertakings, including transparent criteria and publication of decisions; (ii) an explicit framework for business users to challenge or appeal regulatory designations, ensuring procedural fairness and (iii) alignment with international standards to avoid regulatory fragmentation, particularly where the same platforms face overlapping obligations under EU and Turkish law. Establishing structured cooperation mechanisms between the Turkish Competition Authority (TCA) and foreign regulators would further mitigate the risk of duplicative compliance burdens.

5.1.3. Normative Influences and Institutional Learning

The DMA is informed by the EC's enforcement experience in high-profile cases under Article 102 TFEU, including *Google Shopping* (Case AT.39740), *Google Android* (Case AT.40099), and *Amazon Marketplace* (Case AT.40462). These cases revealed the limitations of ex post remedies: proceedings often spanned several years, during which market conditions evolved in ways that undermined the effectiveness of the eventual remedies (DMA Recital 5). The DMA codifies certain remedies such as prohibitions on self-preferencing (DMA Art. 6(5)) and requirements for data portability (DMA Art. 6(9)), as ex ante obligations applicable to all designated gatekeepers, thereby reducing the need for case-by-case litigation.

The Draft Amendment similarly reflects the TCA's practical experience in digital markets, including investigations into MFN clauses in online travel agencies, app store restrictions, and data-sharing practices. In each instance, while infringement decisions were possible under existing law, the remedial process was too slow to neutralise the competitive harm before it became entrenched. By granting the TCA authority to impose obligations on SMP undertakings without the need to establish abuse, the Draft Amendment seeks to replicate the preventive orientation of the DMA but with greater procedural agility and adaptation to local market dynamics. The shift from a purely ex post model to a preventive framework represents an important step in institutional learning. Yet the Draft Amendment risks inconsistency in practice if it fails to establish clear guidance on how obligations will be tailored to

different categories of platform services. For Türkiye, a more effective system would require (i) developing sector-specific guidelines that clarify how obligations will be applied in areas such as e-commerce, app stores, and online advertising; (ii) ensuring that the right to invoke efficiency justifications or objective necessity defences is explicitly recognised, thereby preventing rigid application of rules; and (iii) introducing independent compliance monitoring, for example by mandating large platforms to appoint compliance officers reporting directly to the TCA. These measures would enhance both flexibility and accountability, ensuring that institutional learning translates into sustainable and predictable regulatory practice.

5.2. Scope of Application and Designation Criteria

5.2.1. Gatekeeper Designation under the Digital Markets Act

The DMA confines its application to a clearly demarcated set of "core platform services" enumerated in Article 2(2), including online intermediation services (Art. 2(2)(a)), online search engines (Art. 2(2)(b)), online social networking services (Art. 2(2)(c)), video-sharing platform services (Art. 2(2)(d)), number-independent interpersonal communications services (Art. 2(2)(e)), operating systems (Art. 2(2)(f)), web browsers (Art. 2(2)(g)), virtual assistants (Art. 2(2)(h)) and cloud computing services (Art. 2(2)(i)). These categories reflect the EC's determination that they function as critical gateways in the digital economy, connecting business users with end users and therefore possessing the capacity to influence market access and competition conditions (DMA Recital 14).

Designation as a "gatekeeper" requires meeting the cumulative conditions in Article 3(1): (a) significant impact on the internal market, (b) provision of an important gateway for business users to reach end users, and (c) an entrenched and durable position in operations. Article 3(2) supplements these with quantitative thresholds**:** annual EEA turnover of at least EUR 7.5 billion in each of the last three financial years, or an average market capitalisation of at least EUR 75 billion in the last financial year; provision of the same CPS in at least three MS; and at least 45 million monthly active end users and 10,000 yearly active business users established in the

EU. Meeting these thresholds creates a legal presumption of gatekeeper status (Art. 3(4)), rebuttable by evidence that the undertaking lacks an entrenched and durable position (Art. 3(5)).

The DMA also incorporates a qualitative designation mechanism (Art. 3(6)), allowing the EC to classify undertakings as gatekeepers even if thresholds are not met, where qualitative assessment shows they have a significant impact on the internal market, operate an important gateway, and enjoy, or are likely to enjoy, an entrenched position. This mechanism is designed to capture "emerging gatekeepers" before they can consolidate market power beyond challenge (DMA Recital 23).

While the numerical thresholds enhance legal certainty and facilitate objective assessment, they risk under-inclusion: platforms with substantial national or regional influence but insufficient cross-border reach will fall outside the DMA's scope until thresholds are crossed. The DMA's reliance on clear quantitative thresholds provides a strong foundation for legal certainty and predictability. However, it inevitably leaves gaps by excluding platforms with strong national or sector-specific influence that do not meet the EU-wide benchmarks. This under-inclusion problem illustrates the limitations of a one-size-fits-all approach in highly diverse digital markets. A more responsive framework could be achieved by combining quantitative criteria with contextual qualitative indicators, such as dependency of business users, degree of vertical integration, or control over data flows. In addition, the Commission's discretionary authority under Article 3(6) to capture "emerging gatekeepers" is a valuable tool, but it would benefit from more detailed procedural guidance to avoid perceptions of arbitrary enforcement. Strengthening transparency in designation decisions, through systematic publication of evidence, clear reasoning, and avenues for affected parties to contest their classification, would further enhance both the legitimacy and the effectiveness of the gatekeeper designation system.

5.2.2. Significant Market Power Designation under the Draft Amendment

The Draft Amendment takes a more flexible approach through the SMP concept. Article 4(1) defines SMP as the ability to act independently of competitors,

customers, and users in one or more digital markets, regardless of whether the undertaking holds a dominant position under Article 6 of Law No. 4054. This reflects an understanding that harmful market power can exist below the formal dominance threshold.

Article 4(2) lists a series of qualitative assessment factors**,** including:

- Control over data critical for market participation;
- Strength of network effects and user lock-in;
- Degree of vertical integration into related or adjacent markets;
- Leveraging capacity into other services;
- Dependence of business users on the platform;
- Existence of barriers to entry reducing market contestability.

Unlike the DMA, no fixed numerical thresholds are imposed. The TCA may designate an undertaking as SMP either ex officio or following a complaint (Art. 4(3)), based on a market analysis. The designation decision must be published in the Official Gazette (Art. 4(4)), thereby providing transparency and legal certainty to market participants.

This qualitative approach increases regulatory agility**,** enabling the TCA to intervene against undertakings that may not meet the DMA's high thresholds but still exert substantial competitive influence in Türkiye. However, the absence of quantitative benchmarks could lead to predictability concerns and may generate litigation over the criteria and evidence used in SMP determinations.

The Draft Amendment's qualitative approach increases regulatory agility and enables the TCA to respond to market-specific risks that would fall below the DMA's thresholds. This flexibility, however, comes at the cost of predictability and legal certainty. Without quantitative benchmarks, there is a heightened risk of inconsistent or overly discretionary application, potentially leading to protracted litigation. To mitigate this, Türkiye should adopt a hybrid model: (i) introduce baseline quantitative thresholds in the primary legislation to provide clear guidance for undertakings, while (ii) retaining supplementary qualitative factors to ensure

adaptability to evolving digital ecosystems. Moreover, the TCA should issue binding secondary legislation or guidelines clarifying how SMP will be assessed across different sectors, thereby enhancing foreseeability.

From an implementation perspective, three further recommendations are critical. First, SMP designations should be subject to explicit reasoning requirements and made publicly accessible, ensuring transparency and accountability. Second, undertakings should be granted the right to submit efficiency defences or objective justifications, preventing rigid or overly punitive applications of SMP obligations. Third, Türkiye should develop structured mechanisms for regulatory dialogue with other jurisdictions, particularly the EU, to prevent conflicts and duplicative obligations where the same platforms are simultaneously designated as gatekeepers and SMP undertakings. These measures would allow the Draft Amendment to preserve its flexibility while addressing concerns over predictability, thereby ensuring a more balanced and sustainable framework for digital platform regulation.

5.2.3. Territorial Scope

The DMA applies to undertakings meeting its designation criteria and operating CPS within the EU, with the additional requirement that the service is provided in at least three MS (Art. 3(2)(b)). This reflects the regulation's underlying objective of ensuring the proper functioning of the internal market (DMA Recital 6).

By contrast, the Draft Amendment's Article 2(2) adopts an effects-based jurisdiction**:** the SMP regime applies to any undertaking whose conduct has an effect on competition in Turkish markets, irrespective of the undertaking's place of establishment. This allows the TCA to regulate foreign-based platforms without requiring a local presence, consistent with the "effects doctrine" already recognised in Turkish competition law.

The Draft Amendment's reliance on an effects-based jurisdiction significantly expands the TCA's ability to regulate foreign-based platforms. This reflects a pragmatic response to the reality that most global platforms operate in Türkiye

without establishing a legal entity. While this expansion closes a jurisdictional gap, it also raises important challenges of enforceability and legal certainty. For instance, absent a local establishment, effective service of process, collection of fines, or monitoring of compliance may prove difficult. To address this, undertakings designated with SMP should be required to appoint a local representative or establish a compliance liaison within Türkiye, ensuring that regulatory decisions are practically enforceable.

Moreover, the unilateral extension of jurisdiction risks creating divergences with the EU framework, especially where a platform is subject to simultaneous oversight under both the DMA and the Draft Amendment. Divergent obligations or conflicting technical requirements could undermine coherence and place disproportionate burdens on platforms. For this reason, Türkiye should pursue structured cooperation mechanisms with EU institutions, including information sharing, joint monitoring, or even mutual recognition arrangements. Finally, to mitigate litigation risks, the Draft Amendment should embed clear procedural safeguards: publication of designation decisions with detailed reasoning, availability of judicial review, and proportionality assessments before obligations are imposed. By combining its effects-based approach with such safeguards and coordination mechanisms, Türkiye can reinforce both the legitimacy and the effectiveness of its territorial reach.

5.2.4. Comparative Assessment

The DMA's quantitative criteria and fixed CPS categories offer clarity and predictability but limit responsiveness to local or rapidly evolving market power scenarios. The Draft Amendment's qualitative SMP approach enhances flexibility and early intervention capacity but at the potential cost of legal certainty. Both approaches reflect their institutional contexts: the DMA addresses a large, integrated cross-border market, while the Draft Amendment targets a national market with distinct structural and competitive dynamics.

The comparison reveals that the Draft Amendment occupies a "hybrid" position: while it borrows the preventive ex ante philosophy from the DMA, it leaves crucial

design elements such as thresholds and the scope of obligations to the discretion of the TCA. This approach risks undermining the system's coherence and could generate uncertainty for market actors. A clearer normative orientation is therefore essential. If Türkiye aims to follow the EU model, the Draft Amendment should mirror the DMA more closely by embedding explicit thresholds and detailed obligations in the law itself, ensuring legal certainty and regulatory alignment.

From a practical standpoint, Türkiye should also be cautious of regulatory divergence. If the Turkish SMP framework deviates substantially from the DMA, multinational platforms may be forced to implement different compliance architectures for the EU and Türkiye, leading to duplicative costs and fragmented outcomes. Such divergence could reduce consumer welfare by discouraging platforms from rolling out services uniformly across jurisdictions. Hence, Türkiye should seek to minimize unnecessary divergences by harmonizing its framework with EU standards wherever possible, while retaining flexibility only to address local market idiosyncrasies.

Finally, for the Draft Amendment to function effectively, the introduction of procedural safeguards is indispensable: publication of designation criteria, robust reasoning in SMP decisions, avenues for appeal, and compliance functions within designated firms. These mechanisms would mitigate the risks of an overly discretionary model while preserving the preventive and adaptive character that makes the Draft Amendment particularly well-suited to Türkiye's market environment.

5.3. Obligations and Prohibited Conduct

The substantive core of both the DMA and the Draft Amendment lies in the imposition of ex ante obligations on designated undertakings, respectively "gatekeepers" and "SMP undertakings", designed to prevent practices that undermine market contestability or fairness. While both frameworks adopt a proscriptive–prescriptive mix of obligations, their scope, structure, and degree of specificity differ substantially.

A sustainable ex ante regulatory framework must carefully distinguish between two types of obligations: rules and standards**.** *Rules* are clear-cut prohibitions that do not admit exceptions or case-specific effects analysis; for example, a categorical ban on combining personal data without user consent. *Standards*, by contrast, require an assessment of context, competitive effects, or the possibility of objective justification; for instance, obligations framed in terms such as "fair", "reasonable" or "non-discriminatory".

If this distinction is not drawn clearly at the legislative level, obligations risk drifting into legal ambiguity. Vague terms like "sufficient", "appropriate" or "unjustified" may undermine legal certainty if left undefined, as they leave excessive room for discretion in secondary legislation or case-by-case decisions. This problem is not merely theoretical: experience from both EU and national practice shows that indeterminate drafting often translates into long disputes about interpretation, delaying effective enforcement and creating compliance uncertainty for firms. To address this, obligations should be structured so that per se bans are codified in primary legislation**,** while standard-like obligations are accompanied by precise limiting principles**.** The latter can include references to objective necessity, proportionality, or efficiency justifications. In addition, the law should provide clear definitions of contested terms; such as *non-public data*, *ancillary services*, and *unjustified differentiation* to prevent interpretative drift. Leaving these entirely to secondary legislation or regulatory discretion risks weakening the normative force of the statute and placing too much weight on the implementing authority.

Finally, the design of obligations should be informed by the principle of regulatory coherence**.** Where obligations overlap with adjacent regimes, such as data protection or telecommunications law, coordination mechanisms should be built in from the outset. Without such coherence, there is a risk of conflicting compliance requirements and regulatory fragmentation.

5.3.1. Structure of the Digital Markets Act Obligations

The DMA divides obligations into three principal categories:

- Self-executing obligations under Article 5, which apply automatically upon designation and do not require further specification by the EC (DMA Recital 65).
- Obligations susceptible of specification under Article 6, where the EC may refine the measures necessary to ensure compliance (DMA Art. 8(2)).
- Obligations related to interoperability of number-independent interpersonal communications services under Article 7, subject to phased implementation (DMA Recital 57).

This tiered structure reflects a balance between legal certainty, ensuring certain practices are categorically prohibited, and regulatory flexibility, allowing adaptation of other obligations to the technological and business model realities of each gatekeeper.

The DMA's tiered structure is one of its most important innovations, because it signals to firms and enforcers which obligations are *absolute prohibitions* and which require *technical specification or proportionality review*. This approach increases legal certainty, since businesses know in advance which behaviours are categorically unlawful, while also providing flexibility where technical complexity demands contextual application.

For Türkiye, adopting a similar tiered design would reduce the risk of confusion between obligations that are meant to function as strict rules and those that are more like standards. Without such differentiation, as in the Draft Amendment, there is a danger that firms cannot clearly distinguish which duties must be observed without exception and which may require additional interpretation.

To operationalise this, obligations should be grouped into clear categories in the legislative text itself, rather than being left to secondary rules or case-by-case interpretation. Per se prohibitions, such as bans on self-preferencing or combining data without consent should be codified as directly applicable. Meanwhile, obligations involving technical processes, like interoperability or data portability, should be expressly identified as requiring implementation guidance and

accompanied by measurable compliance benchmarks. This structure would preserve the preventive spirit of ex ante regulation while providing businesses with a predictable compliance framework.

5.3.1.1. Article 5 – Per Se Prohibitions

Article 5 enumerates obligations that require no case-specific elaboration, such as:

- Prohibition on combining personal data from different services without user consent (Art. 5(2));
- Ban on restricting business users from offering products or services under different conditions via other channels (anti-MFN clauses) (Art. 5(3));
- Prohibition on requiring business users to use the gatekeeper's identification service or other ancillary services (Art. 5(4));
- Restriction on preventing users from raising issues with public authorities (Art. 5(7)).

These obligations mirror remedies imposed in past competition cases, codifying them as ex ante rules to avoid repetitive litigation (cf. *Google Android* – Case AT.40099; *Amazon Marketplace* – Case AT.40462).

The strength of Article 5 lies in its clarity: the obligations are designed to apply *immediately* and *uniformly* across all designated gatekeepers, eliminating ambiguity about what is prohibited. By codifying lessons learned from previous antitrust enforcement, the DMA prevents the need for lengthy investigations and ensures that harmful practices are addressed before they distort the market.

However, the effectiveness of these prohibitions depends heavily on coordination with adjacent legal regimes—particularly data protection and consumer protection law. For example, the prohibition on combining personal data overlaps with the GDPR's consent requirements, while restrictions on MFN clauses interact with contractual and consumer law principles. Without alignment, gatekeepers could face conflicting obligations or exploit regulatory gaps.

For Türkiye, a key recommendation is to ensure that per se prohibitions in the Draft Amendment are drafted with similar precision and are supported by inter-agency cooperation mechanisms**.** Where obligations intersect with data protection, telecoms, or consumer law, regulatory authorities should issue joint guidance to avoid contradictory interpretations. Moreover, enforcement should focus on developing clear compliance benchmarks, such as what constitutes "effective consent" for data use or "unjustified" restrictions on multi-homing to ensure that per se rules remain robust but also technologically neutral.

5.3.1.2. Article 6 – Obligations Subject to Specification

Article 6 contains obligations that may require technical or procedural specification, including:

- Prohibition on self-preferencing in ranking (Art. 6(5));
- Mandate for real-time access to performance data generated by business users (Art. 6(8));
- Requirements for effective portability of end-user data (Art. 6(9));
- Duty to provide interoperability with hardware and software features (Art. 6(7));
- Obligation to allow app developers to use third-party payment systems (Art. 6(12)).

These provisions target leveraging strategies whereby gatekeepers use their control over a CPS to favour their own services or restrict user choice, thereby undermining market contestability (DMA Recital 49).

The key innovation of Article 6 is its flexibility: obligations are drafted broadly but can be specified by the EC to reflect technical realities and market conditions. This strikes a balance between regulatory certainty and adaptability. However, flexibility without clear limits risks creating uncertainty for firms and scope for inconsistent enforcement. To avoid these risks, three safeguards are essential. First, specifications should be outcome-based rather than technology-specific. For example, obligations on interoperability or data portability should focus on measurable outcomes such as

functionality, reliability, or latency; rather than prescribing fixed technical solutions that may quickly become outdated.

Second, Article 6 obligations should explicitly accommodate objective justifications and efficiency defences**,** particularly where strict compliance might endanger security, privacy, or innovation incentives. This ensures that the regime remains proportionate and does not inadvertently discourage investment.

Third, specification decisions should be accompanied by transparent reasoning and consultation processes, including input from stakeholders and independent experts. This would strengthen the legitimacy of enforcement and reduce the perception of arbitrary decision-making.

For Türkiye, it could be said that if the Draft Amendment continues to rely on broadly phrased obligations, it should adopt a similar two-step mechanism, general obligations in the statute, followed by detailed specifications issued through binding guidelines. This approach would preserve flexibility while ensuring predictability, thus allowing the TCA to respond to novel business models without creating unnecessary legal uncertainty.

5.3.1.3. Article 7 – Interoperability of Messaging Services

Article 7 addresses interoperability for number-independent interpersonal communication services, obliging gatekeepers to enable basic functionalities (e.g., text messaging, file sharing) across services in a staged manner. This reflects a recognition of network effects in communications markets and their role in locking users into particular ecosystems (DMA Recital 57). The interoperability mandate under Article 7 is particularly ambitious, as it goes beyond traditional competition remedies and directly reshapes the technical architecture of digital communication markets. By targeting lock-in effects in messaging services, the rule addresses one of the most durable barriers to user switching. However, interoperability requirements also raise significant risks**,** notably regarding data security, privacy and service quality**.**

To be effective, interoperability must be rolled out with phased implementation milestones that are tied to verifiable technical progress rather than open-ended deadlines. Without such milestones, platforms may comply superficially or delay meaningful integration. Independent audits or technical certification could provide credibility to the process.

At the same time, safeguards must be introduced to prevent "compliance by degradation", where gatekeepers weaken the quality or reliability of interoperability features to discourage adoption. Clear service-quality benchmarks such as limits on latency, encryption standards, and error rates should accompany the interoperability mandate. For Türkiye, the adoption of similar interoperability obligations would require special caution. The Turkish digital ecosystem is dominated by foreign-based platforms, making enforcement and monitoring more complex. Thus, a phased, carefully monitored approach is essential. Moreover, the TCA should coordinate with data protection and cybersecurity regulators to ensure that interoperability obligations do not compromise user safety or violate privacy laws. By embedding these safeguards, interoperability can become a genuine pro-competitive tool rather than a source of new vulnerabilities.

5.3.2. Obligations under the Draft Amendment

The Draft Amendment's obligations are not divided into self-executing and specified categories; instead, they are directly applicable to SMP undertakings upon designation under Article 4. The list in Article 5 ("Obligations of Undertakings with Significant Market Power in Digital Markets") includes:

- Prohibition on engaging in self-preferencing practices that distort competition (Draft Amendment Art. 5(1)(a));
- Ban on tying or bundling services in a manner that forecloses competition (Art. 5(1)(b));
- Requirement to provide data access to business users under FRAND terms (Art. 5(1)(d));
- Obligation to ensure interoperability of services and ancillary products (Art. 5(1)(f));

- Prohibition on preventing users from multi-homing or switching (Art. 5(1)(g));
- Restriction on imposing most-favoured-nation clauses (Art. 5(1)(h)).

These obligations closely track the substantive content of DMA Articles 5–7 but are integrated into a single provision without procedural differentiation. The qualitative SMP designation approach means the obligations can be applied to undertakings of varying size and scope, tailored to the specific competitive risks identified in the designation decision.

The Draft Amendment's choice to consolidate all obligations into a single article reflects a desire for simplicity, but it risks blurring the distinction between per se prohibitions and obligations that require contextual specification. Terms such as "fair", "reasonable" and "necessary" are left undefined, creating significant room for interpretative discretion. This may undermine legal certainty and increase the likelihood of litigation, particularly given the absence of statutory guidance on how these concepts should be applied.

To strengthen the Draft Amendment, three measures are essential. First, the law should adopt a tiered structure similar to the DMA, explicitly distinguishing between obligations that are directly applicable and those that require further specification. This would provide undertakings with a clearer compliance roadmap.

Second, contested concepts should be defined in primary legislation or through binding secondary rules. For example, "non-public data", "ancillary services" and "unjustified differentiation" should be given precise definitions to prevent arbitrary or inconsistent enforcement. Without this, undertakings may face uncertainty about what conduct is prohibited, reducing the deterrent effect of the law.

Third, the Draft Amendment should embed procedural safeguards to ensure accountability in enforcement. SMP designations and the corresponding obligations should be accompanied by detailed reasoning, made public (with confidential information redacted) and subject to effective judicial review. In addition,

undertakings should have the opportunity to invoke objective justifications or efficiency defences**,** particularly where strict application of obligations might harm innovation or data security.

Finally, the Draft Amendment's obligation concerning advertising transparency deserves special emphasis. By requiring platforms to provide real-time, free access to data on bidding, pricing and verification in online advertising markets, Türkiye can address one of the most acute sources of information asymmetry in digital markets. To make this effective, the TCA should develop detailed implementing rules specifying the scope, format, and frequency of disclosure. This would not only improve competition but also strengthen trust and accountability in the digital advertising ecosystem.

5.3.3. Comparative Analysis of Substantive Content

While there is significant substantive overlap, the DMA is more granular in defining prohibited conduct and often prescribes specific technical requirements (e.g., data portability mechanisms, interoperability standards), whereas the Draft Amendment frames its obligations in broader terms, leaving technical implementation to be determined case-by-case by the TCA. The DMA's approach enhances predictability for regulated entities and facilitates uniform EU-wide application**,** but may be less adaptable to novel business models. Conversely, the Draft Amendment's general clauses afford the TCA flexibility to address unforeseen practices but risk greater legal uncertainty and inconsistent application.

This comparative picture highlights a fundamental trade-off between granularity and adaptability. The DMA prioritises uniformity across MS, which increases predictability but may constrain innovation if obligations prove too rigid. By contrast, Türkiye's Draft Amendment embraces flexibility but risks undermining legal certainty by leaving too much discretion to the competition authority.

For Türkiye, the challenge is to avoid drifting into what may be called a "hybrid by accident" model, where obligations are broad but lack clear normative orientation.

Instead, two complementary steps could provide balance. First, a core set of self-executing prohibitions should be codified in legislation—for example, bans on self-preferencing, anti-MFN clauses, and data combination without consent. These rules should be designed as per se bans with no need for effects analysis, ensuring clarity and immediate deterrence.

Second, obligations that require more nuanced application such as interoperability, data access under FRAND terms, or advertising transparency should be accompanied by binding sector-specific guidelines**.** Such guidelines could set measurable compliance benchmarks (e.g., latency standards for interoperability, minimum disclosure requirements in adtech) while still allowing adjustments to market dynamics. This dual-track approach would provide both predictability and flexibility**,** ensuring that the system does not become either overly rigid or excessively discretionary. In addition, convergence with EU standards remains critical. If Türkiye diverges too far from the DMA, global platforms may face duplicative or conflicting compliance requirements, creating inefficiencies and discouraging investment. Aligning core obligations with the DMA while tailoring secondary rules to Turkish market realities would mitigate this risk and promote a more coherent regulatory landscape.

5.3.4. Enforcement Challenges

In practice, both frameworks will face challenges in interpreting and enforcing obligations in a manner that keeps pace with technological change. For the DMA, the challenge will be ensuring that specifications under Article 6 remain technologically neutral and do not inadvertently favour certain business models. For the Draft Amendment, the challenge lies in developing consistent interpretative guidelines to prevent divergent outcomes across cases, particularly given the qualitative nature of SMP designation and the broad drafting of obligations.

The success of both the DMA and the Draft Amendment depends less on the design of obligations than on the capacity and credibility of enforcement. Three challenges stand out. First, enforceability against foreign-based platforms remains a pressing concern for Türkiye. Most gatekeepers do not maintain a legal presence in the

country, which complicates the service of decisions, monitoring of compliance, and collection of fines. To address this, the Draft Amendment should require designated SMP undertakings to appoint a local legal and technical representative authorised to respond to the Competition Authority, supply data, and facilitate inspections. Non-compliance with this requirement should itself be treated as an infringement, comparable to obstruction of a dawn raid. Second, both regimes need to strengthen procedural safeguards to protect against arbitrary enforcement. Designation decisions and the imposition of obligations should include detailed reasoning, be made publicly accessible (with confidential information redacted), and be subject to effective and timely judicial review. For Türkiye in particular, embedding these safeguards into the statute would enhance predictability and legitimacy, especially given the broad discretion granted to the Competition Authority under the SMP model.

Third, the institutional capacity of regulators will be decisive. Enforcing obligations such as interoperability or algorithmic transparency requires advanced technical expertise. Authorities should invest in building in-house teams of engineers, data scientists, and digital market specialists, while also establishing secure mechanisms for cooperation with external experts under strict confidentiality safeguards. Complementary to this, the introduction of compliance officers within designated undertakings, reporting directly to their boards, would internalise responsibility for ongoing conformity and reduce monitoring burdens on regulators. Finally, effective enforcement requires international cooperation**.** Many platforms designated under the DMA are the same as those likely to be caught under the Turkish SMP regime. Without structured channels for information-sharing, joint monitoring, and coordination of remedies, there is a serious risk of duplicative or inconsistent obligations.

5.4. Enforcement Framework and Institutional Competence

5.4.1. Institutional Authority under the Digital Markets Act

The DMA centralises enforcement exclusively in the hands of the EC (DMA Art. 1(5)), reflecting its character as an internal market regulation aimed at ensuring

uniform application across all MS. The EC is responsible for gatekeeper designation (Art. 3(4)), monitoring compliance (Art. 8), conducting market investigations (Arts. 17–20), and imposing sanctions (Art. 30). NCAs retain a supporting role, primarily in the form of investigative assistance (DMA Art. 38), but do not have independent enforcement powers under the DMA framework. The EC's investigatory powers are broad, including the ability to request information (Art. 21), conduct interviews (Art. 22), and carry out on-site inspections (Art. 23). Non-compliance with obligations may lead to fines of up to 10% of the undertaking's total worldwide turnover (Art. 30(1)), rising to 20% for repeat infringements (Art. 30(2)). The DMA also introduces periodic penalty payments (Art. 31) to compel compliance with investigative or remedial measures. These sanctioning powers mirror those available under EU competition law but are applied in an administrative ex ante context**.**

The centralised model offers the advantage of regulatory consistency**,** minimising the risk of divergent national interpretations. However, it also places a substantial administrative burden on the EC, raising questions about capacity given the number of potential gatekeepers and the complexity of monitoring their compliance across diverse CPS.

Centralisation ensures consistency, but it also risks creating a bottleneck at the EC level. Given the limited resources of the EC relative to the scope of digital markets, there is a danger of selective or delayed enforcement. To mitigate this, the DMA should develop structured mechanisms for decentralised support from NCAs, beyond mere investigative assistance. For example, NCAs could be empowered to monitor compliance locally, report systemic risks, and provide market expertise while leaving final sanctioning power to the EC. Additionally, stronger cooperation with data protection, telecom, and consumer authorities is essential to avoid regulatory silos and ensure holistic oversight.

5.4.2. Institutional Authority under the Draft Amendment

The Draft Amendment vests all enforcement responsibilities in the TCA. Under Article 4(3), the TCA may initiate SMP designation ex officio or upon complaint,

and under Article 5 it may impose obligations on designated undertakings. The TCA's investigative powers are grounded in Law No. 4054, which already permits on-site inspections, information requests, and interim measures. Sanctions for non-compliance with SMP obligations follow the general fining regime of Law No. 4054 (Art. 16), allowing fines of up to 10% of the undertaking's annual turnover in Türkiye**.**

A key institutional distinction is that the TCA operates in a national context**,** with a mandate that extends to all sectors, not only digital markets. This raises the question of whether the TCA possesses, or will require, the sector-specific technical expertise necessary for ongoing monitoring of compliance in fast-evolving digital ecosystems. The Draft Amendment does not create a separate specialised unit for digital market oversight, potentially risking capacity constraints if the number of SMP designations increases rapidly. The Draft Amendment's reliance on the TCA has advantages in terms of institutional continuity, but it risks capacity overload if numerous digital platforms are designated simultaneously. Unlike the EC, the TCA lacks sector-specific structures dedicated to digital markets. To address this, Türkiye should consider creating a specialised digital markets unit within the TCA, equipped with engineers, data scientists, and legal experts trained in platform regulation.

Moreover, fines based only on domestic turnover may not provide sufficient deterrence for global platforms whose Turkish revenues are marginal compared to worldwide operations. A more effective approach would be to link penalties to global turnover or, at minimum, adopt alternative sanctioning mechanisms such as behavioural remedies, periodic penalty payments, or suspension of platform functionalities in case of non-compliance. This would increase the credibility of enforcement and align the Turkish system more closely with international practice.

5.4.3. Procedural Guarantees and Due Process

Both regimes embed procedural safeguards, though their scope and institutional locus differ. The DMA provides for the right to be heard before designation (Art. 3(5)) and before the imposition of non-compliance decisions (Art. 29(3)), along with

access to the EC's file (DMA Recital 92). The Draft Amendment, applying general administrative law principles in Türkiye, likewise requires that undertakings be notified of proceedings and have an opportunity to submit written and oral defences before sanctions are imposed. However, the DMA's formalised procedural framework may offer greater transparency and legal certainty**,** given its codified timelines and stages of investigation.

While both systems recognise the importance of due process, the DMA sets a higher benchmark by codifying explicit timelines and procedural rights. The Draft Amendment's reliance on general administrative law creates risks of inconsistent application and insufficient transparency. To enhance credibility, Türkiye should adopt a more formalised framework specifically tailored to SMP cases. This should include: (i) statutory deadlines for designation and enforcement decisions; (ii) guaranteed access to the case file for undertakings; and (iii) mandatory publication of non-confidential versions of decisions. Strengthening procedural guarantees would not only improve fairness but also reinforce the legitimacy of the TCA's discretionary powers in applying broad SMP obligations.

5.4.4. Comparative Evaluation

The divergence between the EU's DMA and Türkiye's Draft Amendment reflects not so much a consciously designed policy contrast, but rather the structural differences between a supranational legal order and a sovereign nation-state. As a supranational entity, the EU is institutionally predisposed to centralized and harmonized rule-making, ensuring consistency and cross-border enforceability. Türkiye, by contrast, retains full regulatory sovereignty, allowing for national-level discretion, which may result in more agile and context-sensitive interventions.

However, this structural asymmetry carries implications for legal convergence. Under Article 54 of Association Council Decision No. 1/95, Türkiye is legally obliged to approximate its competition policy, including in fields directly affecting the functioning of the Customs Union, with that of the EU. Regulatory divergence in

the context of platform governance must therefore be assessed not only in terms of policy effectiveness, but also in light of Türkiye's binding legal commitments.

Against this background, Türkiye's Draft Amendment could benefit from closer alignment with the DMA in areas such as sanctioning frameworks, designation criteria and procedural safeguards. This would not only reduce regulatory fragmentation for multinational digital platforms but also strengthen enforcement credibility and facilitate the operational integrity of the Customs Union. At the same time, Türkiye's national discretion remains valuable, particularly for addressing local market dynamics, supporting domestic innovation, and responding rapidly to emerging digital risks. A hybrid approach that combines legal approximation in core areas with targeted national flexibility would ensure both legal consistency and contextual adaptability, without undermining Türkiye's international obligations.

Finally, Türkiye should consider expanding the basis for fines beyond domestic turnover, as reliance on national revenues alone risks making penalties negligible for multinational platforms. Options include introducing turnover multipliers**,** using periodic penalty payments or allowing fines tied to global revenues for firms with SMP status. Such measures would enhance deterrence and bring Turkish enforcement closer to the EU standard.

5.5. Cross-Jurisdictional Considerations and Potential Implications

5.5.1. Overlap and Potential Conflicts

The extraterritorial scope of both the DMA and the Draft Amendment creates a high likelihood of regulatory overlap for global digital platforms. Under Article 2(2) of the Draft Amendment, the TCA may assert jurisdiction over any undertaking whose conduct has an actual or potential effect on competition in Turkish markets, regardless of where that undertaking is established. This effects-based jurisdictional principle mirrors the functional reach of the DMA, which applies to any gatekeeper providing CPS to EU users, regardless of its corporate domicile (DMA Art. 1(2) and Recital 6).

In practical terms, this means that major platforms such as global search engines, app stores, or online marketplaces—once designated as gatekeepers under the DMA (DMA Art. 3(4)), may simultaneously be classified as SMP undertakings under the Draft Amendment (Draft Amendment Art. 4(3)). While many of the substantive obligations imposed in these parallel designations will be similar such as prohibitions on self-preferencing (DMA Art. 6(5); Draft Amendment Art. 5(1)(a)), requirements for interoperability (DMA Art. 6(7); Draft Amendment Art. 5(1)(f)) or bans on anti-MFN clauses (DMA Art. 5(3); Draft Amendment Art. 5(1)(h)), the procedural modalities governing their enforcement may differ significantly.

For example, the DMA mandates that obligations apply within six months of designation (DMA Art. 3(10)), with any non-compliance proceedings conducted under the EC's procedural framework (DMA Arts. 29–31). In contrast, the Draft Amendment allows the TCA to determine compliance timelines and the sequencing of obligations on a case-by-case basis, potentially accelerating or delaying implementation depending on market conditions and investigative priorities. This divergence can lead to asynchronous compliance burdens**,** forcing undertakings to implement similar remedies on different schedules, often requiring duplicative technical work and separate reporting systems.

Such overlaps also raise questions of conflicting compliance specifications**.** A gatekeeper may be required under the DMA to provide a particular form of API-based interoperability, while the TCA could mandate a different technical architecture for the same functionality. Absent explicit coordination, these discrepancies can create operational inefficiencies and heighten legal risk.

Overlap between the two regimes creates the risk of duplicative or conflicting compliance obligations**.** Divergent timelines, procedural rules, and technical specifications may force firms to duplicate compliance systems, increasing costs and reducing efficiency. For Türkiye, the priority should be to minimise these burdens by (i) adopting compliance timelines that mirror the DMA wherever possible, (ii) ensuring that technical obligations—such as interoperability—refer to internationally recognised standards, and (iii) introducing an explicit mechanism for recognising

remedies already implemented under the DMA. This would avoid the danger of asynchronous or contradictory enforcement while preserving national autonomy.

5.5.2. Regulatory Convergence and Cooperation

To mitigate these risks, structured regulatory cooperation between the EC and the TCA would be beneficial. Cooperation could occur along three main vectors:

- Information sharing: Exchanging investigative findings, market analysis and compliance monitoring data to reduce duplicative evidence-gathering burdens.
- Enforcement alignment: Coordinating the sequencing of designations and the timing of remedial measures to reduce asynchronous compliance shocks.
- Mutual recognition of compliance measures: Where an undertaking has already implemented a DMA-mandated remedy that substantively meets a Draft Amendment obligation, the TCA could recognise it as satisfying the national requirement.

However, such cooperation faces both legal and institutional hurdles. The EC's mandate under the DMA is strictly confined to MS (DMA Art. 1(5)), and formal cooperation with non-MS might ideally require international agreements or memoranda of understanding. Without such arrangements, each authority will apply its framework autonomously, compelling undertakings to operate parallel compliance programs that meet both regimes independently.

The forum shopping risk also warrants attention. Although DMA enforcement is centralised in the EC, undertakings may still attempt to influence the jurisdictional forum of initial regulatory action, preferring the body perceived as less interventionist or more procedurally accommodating. This concern is amplified if the TCA's sanctioning practices (capped at 10% of Turkish turnover) are perceived as financially less severe than the DMA's potential 20% global turnover fines for repeat infringements (DMA Art. 30(2)). Regulatory cooperation is essential, but it will not emerge organically. Türkiye should pursue formal memoranda of understanding with the EC focused on digital markets, covering information exchange, sequencing of

investigations, and recognition of remedies. Even in the absence of binding agreements, informal cooperation through the ECN or international fora such as the OECD and ICN could provide practical channels for alignment. Türkiye should also consider creating a liaison office within the TCA dedicated to cross-border regulatory coordination, ensuring continuous dialogue with the EC and other authorities.

5.5.3. Strategic Implications for Undertakings

The coexistence of these regimes requires undertakings active in both jurisdictions to develop integrated, multi-jurisdictional compliance architectures**.** From a risk management perspective, the rational strategy is to implement the highest common denominator, that is, to align internal compliance protocols with the most stringent applicable requirement in each obligation category. For example, if the DMA requires a six-month compliance period for a given interoperability measure and the Draft Amendment allows a year, adopting the shorter timeline ensures conformity with both regimes.

Additionally, large platforms may adopt modular compliance systems**,** enabling them to tailor specific functionalities or reporting formats to jurisdiction-specific requirements while maintaining a common core compliance infrastructure. This approach minimises duplication but requires significant upfront investment in compliance design, legal advisory, and technical adaptation. From a governance perspective, firms may also need to establish dedicated regulatory liaison teams that interface with both the EC and the TCA, ensuring that communications, reporting and remedial negotiations remain consistent across jurisdictions. While firms may rationally adopt the strictest requirements to cover both regimes, this approach imposes disproportionate burdens on smaller or regionally focused platforms. Regulators should therefore explore proportionality mechanisms**,** such as safe harbours or differentiated obligations for undertakings whose operations are primarily national in scope. In addition, both the EC and the TCA should encourage the use of modular compliance systems, where core compliance functions (e.g., data governance, interoperability tools) are standardised, while jurisdiction-specific add-

ons address local variations. Such modularity would reduce duplication and support scalability across jurisdictions.

CHAPTER 6

CONCLUSION

The rise of digital markets has fundamentally transformed global economic structures, regulatory priorities, and the role of public institutions in shaping competitive and fair digital environments. Across the world, policymakers are grappling with the challenges posed by increasingly powerful digital platforms, the accumulation and monetisation of data, and the systemic imbalances that arise when market dominance goes unchecked. In response, numerous jurisdictions, from the United States to the United Kingdom, Japan to Australia, have begun to recalibrate their legal frameworks to address the distinct dynamics of digital ecosystems.

Within this broader regulatory reorientation, the European Union has emerged as a global leader. Through landmark instruments such as the DMA and the DSA, the EU has taken a proactive stance in shaping the architecture of digital governance. The DMA, in particular, reflects a shift from traditional ex post competition enforcement to an ex ante regime that imposes targeted obligations on designated gatekeepers. Its ambition lies not only in protecting competition, but also in preserving contestability, fairness, and innovation across core digital services. Given the EU's market size and regulatory capacity, these frameworks have had ripple effects far beyond its borders.

Türkiye, as a candidate country and a party to the EU–Türkiye Customs Union, is not insulated from these developments. On the contrary, it has both legal and strategic incentives to align its competition and digital market regulations with the EU acquis. The obligation to approximate its legal framework, enshrined in the Ankara Agreement, the Additional Protocol and reinforced by Decision No. 1/95 of the Türkiye-EU Association Council provides a binding legal basis for regulatory convergence. Moreover, the growing entanglement of the Turkish and European

digital economies renders such alignment not merely a political aspiration, but a market necessity.

In this context, the Draft Amendment to Act No. 4054 on the Protection of Competition represents an important, albeit not yet finalised, step in Türkiye's journey towards digital market regulation. Although the Draft Amendment has not been made publicly available through formal channels and the consultation process has lacked transparency, it is nonetheless in wide circulation among relevant stakeholders in the Turkish competition law community.

This study has aimed to fill this analytical gap by systematically comparing the DMA with the Turkish Draft Amendment. It has examined their respective designation mechanisms, scope of obligations, institutional roles and enforcement structures. Through this comparison, several important findings have emerged, offering a clearer understanding of Türkiye's regulatory positioning, its alignment trajectory and the broader implications of adopting an ex ante framework for digital markets.

Drawing on the debate around the DMA and on the emerging Draft Amendment, several practical lessons stand out for Türkiye as it designs and enforces an ex ante framework under competition law.

The first concerns scope and calibration. The DMA has been faulted for applying a single rulebook to very different services, raising proportionality concerns. A Turkish framework can lower that risk by linking each obligation to the economic and technical features of the specific service, and by spelling out, within the designation or specification decision itself, the chain from identified harm to chosen remedy.

In practice, that means explaining why a particular app store, operating system, social network or marketplace triggers a given obligation; indicating the metric that signals the risk, such as default bias, multi-homing frictions or opacity in advertising; and setting the outcome measure that will be used to check whether the remedy

works. A modular approach of this kind keeps the decisiveness of the DMA while avoiding a mechanical copy. It also fits Türkiye's market structure, where a few large domestic platforms operate alongside global gatekeepers and business models vary widely across verticals.

A related lesson is about the use of discretion. The Draft Amendment gives the TCA broad powers to identify gatekeepers and shape obligations. Discretion has value in fast-moving markets, yet it benefits from clear fences. Public, non-binding communications can explain how thresholds will be interpreted, which indicators count toward an "important gateway" and when a rebuttal will be considered sufficiently substantiated. This guidance reduces litigation risk without slowing action. Where the evidence base is still forming, staged obligations can be used: a narrowly tailored interim measure with a built-in review after twelve months, followed by an extension or a sunset depending on observed market effects. This turns uncertainty into a monitored hypothesis rather than a permanent mandate and addresses the "static rule" concern often raised about the DMA.

Procedural design deserves equal attention. Experience around the DMA shows that asymmetries in access to the file, compressed deadlines and the lack of a neutral channel for resolving confidentiality disputes quickly become focal points for challenge. Türkiye already benefits from written and oral hearing practice before the Board, but a few targeted additions would strengthen resilience: formal, time-boxed pre-decision meetings to verify technical points; confidentiality rings that allow external economic and engineering advisers to review sensitive material under strict undertakings; and a short, independent review mechanism limited to disputes about confidentiality and file access, concluded within the investigation timeline. At the same time, participation by SMEs and complainants needs safe channels. Anonymous or protected submissions, standardised templates for technical evidence and clear anti-retaliation language in notices help those most exposed to platform conduct share credible information.

Institutional capacity is the backbone of everything above. Ex ante enforcement demands fluency not only in law and economics but also in software engineering,

security architecture, data governance and product analytics. The TCA would benefit from a sustained hiring and training track for engineers and data scientists, secondments from academia and sector regulators, and standing procurement frameworks for independent code and API audits. A small internal “design authority” developed with the Information and Communication Technologies Authority, the Personal Data Protection Authority and, where relevant, the Central Bank—could set minimum technical specifications for interoperability, data access and measurement, so that technical demands remain coherent across cases. Cross-regulator protocols should make roles explicit: the TCA on competition and contestability, the data authority on lawful processing and privacy, and the communications regulator on network and device interfaces. A one-stop coordination unit within the TCA can collect and publish joint guidance so firms do not receive conflicting instructions.

Compliance reporting should be treated as a measurable exercise rather than a narrative one. Reports are most useful when anchored to a short list of outcome indicators that the authority can verify. For defaults and choice architecture, relevant indicators include the share of traffic flowing through preset options before and after intervention, user switching rates and the time it takes users to change providers. For app stores and operating systems, rejection rates by category, median review and publication times, and API availability and latency reveal day-to-day conduct. For advertising, publisher-side revenue transparency and buyer-side effective price metrics help uncover conflicts of interest. Requiring firms to supply these series in machine-readable form and reserving the power to require third-party audits where anomalies persist, supports targeted oversight. Data and privacy form a distinctive interface in Türkiye due to the Personal Data Protection Law. Any obligation that opens data or mandates interoperability should embed privacy by design and security by design as explicit constraints, not afterthoughts. A practical route is to promote controlled environments—data rooms, clean rooms and privacy-enhancing Technologies, so rivals can access necessary datasets or testing tools without bulk transfers of personal data. Another is to rely more on standardised, well-documented APIs rather than one-off bilateral integrations. APIs scale better, are easier to audit and reduce the risk that competition enforcement erodes information-security baselines.

Remedy choice also benefits from careful staging. Behavioural remedies will do most of the work under an ex ante statute, but escalation criteria should be set from the outset for repeated non-compliance. Where structural measures are contemplated, the decision should explain why no set of behavioural constraints would restore contestability at reasonable administrative cost and should define the competitive problem in terms a court can test. This clarity protects both enforcement and investment.

Coordination with the EU reduces costs for firms that operate in both jurisdictions and acts as quality control for enforcement design. Guidance can recognise that compliance solutions accepted by the EC will carry persuasive weight where they are functionally equivalent in the Turkish market, with any local adaptations recorded in writing. Parallel technical workshops with EU services and joint consultations with business users can surface implementation frictions early. At the same time, room for divergence should be kept where domestic market features justify it, for example, where large retail platforms with integrated logistics raise concerns that resemble essential-facility issues more than in the EU. Documenting such divergences with concrete market evidence will help courts and businesses understand why solutions differ. Because ex ante rules can dampen experimentation if applied mechanically, channels for permissioned innovation are useful. Regulatory sandboxes, limited in scope and time, allow platforms to test new user journeys or pricing formats under supervision and with clear safeguards, particularly where the change may improve contestability or consumer welfare. Safe-harbour statements can also encourage pro-competitive collaborations, such as data portability intermediaries or cross-platform identity standards, that reduce switching costs without undermining privacy or security.

Transparency to the public should be treated as part of enforcement. Short, non-technical summaries of designation and specification decisions, with plain-language descriptions of the evidence and the expected user-facing changes, enable external monitoring. Periodic public dashboards that track the outcome indicators described above allow researchers and civil society to see whether remedies work and provide early warnings when they do not. Publishing more data will also discipline future

rule-making by showing where obligations carry significant compliance costs but limited competitive benefit.

Sequencing also matters, as the Turkish framework will sit alongside existing instruments, including amended e-commerce rules and sectoral regulation. Choosing the right tool in the right order reduces overlap. Where a practice lies squarely within the ex ante regime, such as anti-steering by an app store or self-preferencing in rankings by a designated marketplace, the TCA should lead and other authorities should align with its timetable. Where a practice primarily concerns consumer protection or data law with only indirect competitive effects, the specialist regulator should lead with the TCA in support. A short case-allocation note published at the opening of an inquiry makes that division of labour visible and reduces forum shopping.

In sum, Türkiye might draw on the DMA's central lesson that some platform practices warrant firm and anticipatory rules. The emerging framework is expected to function more effectively where i) obligations are tailored to the economics and technology of each service, ii) discretion is channelled by public criteria, iii) multidisciplinary capacity is strengthened, iv) procedural safeguards protect all parties and v) performance is tracked through verifiable outcomes. With coordinated action among domestic authorities and pragmatic convergence with the EU where this reduces compliance frictions, the result is likely to be a context-sensitive regime; rather than a replica of the EU model.

Taken together and as explained in previous sections, the DMA and the Draft Amendment reflect a wider shift toward ex ante control of platform conduct, from a broader policy perspective. Both start from the same diagnosis: in multi-sided digital markets, firms operating as intermediaries can accumulate durable intermediation power, and some behaviours need to be constrained in advance to safeguard contestability and fairness. At the same time, the two frameworks are shaped by different legal and institutional contexts. They diverge in the tests used for designation, the procedural safeguards and investigative tools they provide, the allocation of decision-making authority and the structure and basis of sanctions.

These differences make full legal harmonisation unlikely in the near term. A more realistic prospect is gradual convergence in practice, as each system learns from the other and as firms aim for compliance solutions that function across both jurisdictions.

Against this background, the future policy question for Türkiye turns on how far its regime should converge with the EU model and where it should retain calibrated differences. Deeper alignment with the DMA promises a more predictable environment for firms that operate across both jurisdictions and by extension, lower compliance frictions and faster diffusion of workable compliance solutions. At the same time, there is a case for preserving targeted divergences that respond to local market structure, institutional capacities, and consumer protection priorities. The balance struck between these two paths will shape not only the domestic enforcement toolkit but also Türkiye's degree of integration with the EU regulatory space and its position within emerging structures of global digital governance.

The coexistence of the two regimes may, in practice, generate a productive learning loop. The DMA's experience with uniform, detailed obligations applied across a large and diverse market can inform Turkish guidance and technical specifications, including how to define measurable outcomes and how to audit compliance. Conversely, the Turkish system's ability to act swiftly under a flexible significant-market-power approach may illustrate how ex ante tools can remain responsive as technology and business models evolve. Over time, these reciprocal lessons can narrow interpretive gaps even where legislative texts remain different.

From a cross-jurisdictional perspective, duplication risks for multinational platforms are real, but the growing substantive overlap in obligations creates a platform for convergence in day-to-day compliance. Functional interoperability between regimes so that compliance steps accepted by the EC can be given persuasive weight in Türkiye where market conditions are comparable, with deviations explained on the record, would reduce cost, support timely remedies and limit incentives for forum shopping. In this sense, practical coordination may matter more than formal harmonisation. The ambition should be that compliance in one jurisdiction does not

create contradictions in the other and that neither system inadvertently frustrates legitimate objectives of the other, such as data protection or security.

The comparative analysis in this chapter shows that the DMA and the Draft Amendment pursue the same structural goal through different institutional means. The DMA's quantitative gatekeeper thresholds, centralised enforcement by the Commission, and tiered obligation structure deliver uniformity across the Union, while potentially under-capturing services with strong local effects. Türkiye's qualitative SMP designation, national enforcement by the TCA, and integrated obligations allow closer attention to local market realities, while raising familiar questions about legal certainty and even-handed application. Rather than treating these differences as a zero-sum choice, the policy opportunity lies in cultivating mechanisms that allow both systems to interact smoothly: shared outcome metrics, consistent audit practices, and early technical dialogue with business users and third parties.

In the longer term, effective governance of global platforms is likely to depend less on identical laws and more on compatible enforcement. For Türkiye, this points to a strategy of alignment on core concepts and due-process standards, paired with carefully justified local adaptations where market structure or consumer risks diverge. Such a course would reduce compliance burdens for undertakings, conserve administrative resources and improve the chances that remedies produce the intended effects on the ground.

In sum, the DMA and the Draft Amendment should be read as complementary approaches to the same underlying problem. Taken together, they mark the shift toward proactive oversight of digital gatekeepers and illustrate how coordination, formal or informal, will be central to coherent supervision of the digital economy. For Türkiye, the policy choice is not between imitation and isolation but between different degrees of convergence. The direction chosen will influence the stability and credibility of the national framework, its interoperability with the EU, and its broader role within international debates on digital market regulation.

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APPENDICES

A. CURRICULUM VITAE

Çiğdem Gizem OKKAOĞLU

PERSONAL INFORMATION

Date of Birth:
Title:
Phone:
E-mail:

EDUCATION

Master of Science 09.2022 – 09.2025	Middle East Technical University Faculty of Economics and Administrative Sciences European Studies Master's Program (with Thesis) cGPA: 3.64/4.00
LLB 09.2015 – 07.2019	Ankara University, Faculty of Law Awarded Honor and High Honor Student, cGPA: 3.17/4.00
Bachelor of Arts 09.2015 – 07.2018	Anadolu University, Faculty of Economics - Economics Awarded High Honor Student, cGPA: 3.62/4.00
Bachelor of Science 09.2010 – 06.2015	Bilkent University, Faculty of Engineering Industrial Engineering, Full Scholarship, Awarded Honor and High Honor Student 25 additional courses in Economics and Management
Erasmus Program 04.2013 – 08.2013	Johann Wolfgang Goethe University – Frankfurt, Germany Faculty of Business Administration and Economics, Erasmus Student
High School 09.2005 - 06.2009	Ataturk Anadolu High School Math-Science, Grade: 91/100

WORK EXPERIENCE

01.2025 – still	Yandex Türkiye Lead Legal Counsel

04.2023 – 01.2025	Günay Erdoğan Attorneys-at-Law Partner
09.2021 – 04.2023	ELİG Gürkaynak Attorneys-at-Law Senior Associate – Competition and Regulation
10.2020 – 07.2021	Dentons Istanbul (BASEAK Attorney Partnership) Associate – Compliance, Competition and Regulation
01.2016 – 09.2020	Turkish Competition Authority Competition Expert/ Enforcement Officer

LANGUAGES

Turkish (native speaker)
English (TOEFL iBT: 112/120)
German (limited working proficiency)
Spanish (A2)

PRESENTATIONS AND ARTICLES

- Okkaoğlu, Ç.G., Günay, Y. S., Kurt, E.; "Computational Antitrust", Uygulamalı Rekabet Hukuku Seminerleri, 12 Levha Yayınları, April 2025.
- Okkaoğlu, Ç.G., Günay, Y. S., Kurt, E.; "Evolution of On-Site Inspections in Türkiye", Concurrences Competition Law Review, On-Topic N3-2024, P. 5-16.
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- Gürkaynak G., Yıldırım C., Okkaoğlu Ç. G. vd., "Restriction of Sales through Online Marketplaces Considered Hardcore Restriction by the Turkish Competition Board: The Turkish Competition Board's BSH Exemption Decision", I.C.C.L.R Journal, Vol. 8, 2022.
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- Gürkaynak G., İnce E., Okkaoğlu Ç. G. vd., "DMA: EU, Turkey and Beyond", Mondaq, May 2022.
- Gürkaynak G., İnce E., Okkaoğlu Ç. G. vd., "The Turkish Competition Authority grants an individual exemption for five years to a "frequent flyer cooperation agreement" between a national airline and a bank (Turkish Airlines / Kuveyt Turk)", Concurrences e-Competitions News Issue, April 2022.
- Okkaoğlu, Ç. G., İnce C.; *İlaç Sektöründe Rekabeti Kısıtlayıcı Yatay Anlaşmalar,* İstanbul Bilgi Üniversitesi, Rekabet Hukuku Merkezi, Doç. Dr. Nurkut İnan Armağanı, 12 Levha Yayınları, 2022.
- Okkaoğlu, Ç. G., *Rekabet ve Sürdürülebilirlik: Sorulması Gereken Normatif ve Teknik Sorular*, Üstad Dergi, vol. 14, 2022.
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- Okkaoğlu, Ç. G., *Dijital Piyasalara Etkin Müdahale: Türkiye için Çıkarımlar*, Üstad Dergi, vol. 12, 2021.
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- Okkaoğlu, Ç. G., "*Big Data and Merger Control*", Expert Thesis, Turkish Competition Authority, 2020.
- "*OECDBackground Note by Turkey on Consumer Data Rights and Competition"*, https://one.oecd.org/document/DAF/COMP/WD(2020)55/en/pdf, 25.05.2020.
- Okkaoğlu, Ç. G., *Data Protection As a Non-Price Parameter of Competition*, Competition Law Presentation Series, Oniki Levha Yayınları, 2020.
- Okkaoğlu, Ç. G., Presentation, "*Data Protection As a Non-Price Parameter of Competition*", İstanbul Bilgi Üniversitesi, Rekabet Hukuku Merkezi, 16.04.2020.
- Okkaoğlu, Ç. G., "*Pay-for-Delay Agreements in Turkish Pharmaceutical Sector*", OECD Headquarter, Paris, 26.02.2019.
- Okkaoğlu, Ç. G., "*Competition Enforcement in the Pharmaceutical Sector: The Case for* Turkey *in Light of the Turkish Pharmaceutical Sector Report*", OECD RCC Newsletter Issue No:13, July 2019, p. 16-19.

MEMBERSHIPS

Senior Courts of England and Wales – Solicitor (*in progress*)
Member of Ankara Bar – Lawyer
Board Member of TOBB Uyum Below 40
Member of Turkish Competition Experts Association
Founder and President of Bilkent International House Club (2014-2015)
Co-Founder & Moderator of Bilkent International Forum (2014-2015)
Board Member of Akbank Think Tank (2013-2015)
Young Guru Academy Leadership School (2009-2012)

B. TURKISH SUMMARY / TÜRKÇE ÖZET

Tezin ilk bölümü, Avrupa Birliği-Türkiye ilişkilerinin hukuki ve kurumsal temellerini ele alarak, Türkiye'nin AB rekabet hukukuna yakınsama yükümlülüğünü tarihsel bir perspektif içinde açıklamaktadır. 1963 tarihli Ankara Anlaşması ve 1970 tarihli Ek Protokol ile başlayan ortaklık süreci, Türkiye'nin Avrupa iç pazarına entegrasyon hedefini ortaya koymuş; bu süreç, 1995 tarihli 1/95 sayılı Ortaklık Konseyi Kararı ile hukuki bağlayıcılık kazanarak Gümrük Birliği'nin kurulmasına ve rekabet hukukuna uyum yükümlülüğünün açık şekilde tanımlanmasına yol açmıştır. Bu çerçevede, Türkiye'nin rekabet hukuku düzenlemelerini AB normlarıyla uyumlu hale getirmesi yalnızca ekonomik bir zorunluluk değil, aynı zamanda uluslararası anlaşmalardan kaynaklanan bir yükümlülük olarak ortaya çıkmaktadır.

Bölümde ayrıca, Türkiye'nin AB üyelik süreci ve müzakere çerçevesi üzerinden rekabet politikasına dair ilerlemesi değerlendirilmekte; özellikle 2005 yılında açılması beklenen 8. fasıl (Rekabet Politikası) kapsamında devlet yardımlarına ilişkin eksikliklerin bu süreci tıkadığına dikkat çekilmektedir. Rekabet Kurumunun teknik yeterliliği ve AB uygulamalarıyla uyumlu mevzuat yapısına rağmen, devlet yardımlarının denetimine ilişkin bağımsız ve işlevsel bir otoritenin kurulamamış olması, sürecin tamamlanmasını engelleyen temel unsur olarak öne çıkmaktadır. Bu bağlamda, Türkiye'nin rekabet hukukuna ilişkin düzenlemeleri yalnızca iç hukuka dair bir mesele değil, aynı zamanda AB ile yürütülen çok katmanlı bir yakınsama sürecinin parçası olarak değerlendirilmesi gerektiği hususu, hukuki arka planıyla açıklanmaktadır.

Tezin ikinci bölümü, dijital ekonomide son yirmi yılda gözlemlenen yapısal dönüşümü ve bu dönüşümün Avrupa Birliği rekabet politikasında yarattığı köklü paradigma değişimini ayrıntılı biçimde incelemektedir. Dijital dönüşümün merkezinde, "geçit bekçisi" olarak adlandırılan ve küresel ölçekte faaliyet gösteren büyük ölçekli çevrim içi platformlar yer almaktadır. Bahse konu platformlar yalnızca

bir ürün veya hizmet sağlayıcısı olmanın ötesine geçerek kullanıcılar ile işletmeler arasındaki etkileşimleri kontrol eden, pazarın temel altyapısını oluşturan stratejik geçitler haline gelmiştir. Dolayısıyla söz konusu platformlar, dijital ekonominin en kritik geçit noktalarını tutarak piyasadaki veri akışını, algoritmik sıralamaları, reklam pazarlarını ve ticari ilişkileri yönlendirme kapasitesine sahiptir.

Bu güç yoğunlaşmasının ardında bazı kritik ekonomik ve teknolojik mekanizmalar bulunmaktadır. Öncelikle ağ etkileri, platformların kullanıcı sayısı arttıkça daha fazla değer üretmesine neden olmaktadır. Kullanıcı sayısındaki artış, hem mevcut kullanıcıların platforma bağlı kalma isteğini artırmakta hem de potansiyel kullanıcıların platforma yönelmesini teşvik etmektedir. İkinci olarak veri temelli ölçek ekonomileri, büyük kullanıcı tabanlarından elde edilen kapsamlı veri setlerinin, daha gelişmiş algoritmalar, daha isabetli hedefli reklamcılık ve daha yüksek kaliteli hizmetler geliştirme amacıyla kullanılması anlamına gelmektedir. Üçüncü olarak çok taraflı piyasa yapıları, farklı kullanıcı grupları arasındaki karşılıklı bağımlılık ilişkilerini güçlendirerek platformların stratejik önemini artırmaktadır. Bu yapı, örneğin bir çevrim içi pazar yerinde hem satıcı hem de alıcı tarafında kritik kitleye ulaşmayı gerektirir; bu da rekabetin yalnızca bir taraf üzerinden değil, tüm ekosistem çapında yönetilmesini zorunlu kılmaktadır. Son olarak, kullanıcı kilitleme stratejileri, kullanıcıların rakip platformlara geçişini maliyetli ve zahmetli hale getirerek pazarın doğal rekabet mekanizmalarını zayıflatmaktadır.

Avrupa Birliği, bu tür yapısal piyasa güçlerinin yalnızca geleneksel rekabet hukuku çerçevesinde, yani ihlallerin ortaya çıkmasının ardından müdahale edilerek denetlenmesinin yeterli olmadığını fark etmiştir. Geleneksel "sonradan müdahale" yaklaşımı, uzun süren soruşturmalar, karmaşık piyasa analizleri ve hukuki süreçler nedeniyle çoğu zaman etkisini ancak yıllar sonra gösterebilmektedir. Bu gecikme, özellikle teknoloji sektöründe olduğu gibi piyasa koşullarının hızla değiştiği alanlarda, düzenleyici müdahalenin etkinliğini büyük ölçüde azaltmaktadır. Teknolojik yeniliklerin ve iş modellerinin bu denli hızlı geliştiği bir ortamda, rekabetçi yapının korunabilmesi için daha proaktif, önleyici ve bağlayıcı düzenleme araçlarının devreye sokulması kaçınılmaz hale gelmiştir. Bu bağlamda, Avrupa Birliği'nin dijital tek pazar stratejisi ile rekabet politikasında benimsediği yeni

yaklaşım arasında doğrudan bir bağ bulunmaktadır. Dijital tek pazar stratejisinin temel hedeflerinden biri, sınır ötesi dijital hizmetlerin serbest dolaşımını sağlamak ve Avrupa Birliği genelinde yeknesak bir düzenleyici çerçeve oluşturmaktır. Bunun yanı sıra, büyük dijital platformların pazar gücünü sınırlayarak yenilikçi ve görece küçük ölçekli girişimlerin piyasaya girişini kolaylaştırmak da bu stratejinin kritik bir bileşenidir. Böylece yalnızca mevcut rekabet ihlallerine müdahale etmekle sınırlı kalmayan, aynı zamanda gelecekte ortaya çıkabilecek rekabet tehditlerini daha ortaya çıkmadan engellemeyi hedefleyen bir politika anlayışı hayata geçirilmiştir.

İkinci bölümde ayrıca, bu düzenleyici dönüşümü anlamlandırmak için kullanılan çeşitli teorik çerçeveler ayrıntılı olarak ele alınmaktadır. Kesintili denge teorisi, uzun süre istikrarlı şekilde işleyen politika alanlarının, dışsal krizler veya içsel baskılar sonucunda ani ve radikal değişimlere uğrayabileceğini öne sürmektedir. Avrupa Birliği'nin davaya dayalı müdahale modelinden kural temelli önceden müdahale modeline geçişi, bu teorinin somut bir yansımasıdır. Kurumsal bozulma yaklaşımı ise mevcut hukuki ve kurumsal yapının dijital piyasalardaki sorunları çözmede yetersiz kalmasının, reform ihtiyacını kaçınılmaz hale getirdiğini vurgulamaktadır. İçsel değişim teorisi ise değişimin yalnızca dışsal baskılarla değil; kurum içindeki aktörlerin vizyonları, stratejik tercihleri ve uzmanlık düzeyleri ile de şekillendiğini ortaya koymaktadır. Bu noktada, Avrupa Komisyonunda görev yapan politika yapıcıların, akademisyenlerin, sektör uzmanlarının ve danışma organlarının görüşleri, düzenleyici çerçevenin hem kapsamı hem de teknik içeriğinin belirlenmesinde önemli rol oynamıştır. Bilgi ve uzmanlık unsuru, yasa tasarımında teknik ve ekonomik analizlerin belirleyici olduğunu; çıkar gruplarının etkisi ise sektörel temsilciler, tüketici örgütleri ve sivil toplum kuruluşlarının politika metninin şekillenmesindeki etkisini açıklamaktadır.

Tüm bu unsurlar birlikte değerlendirildiğinde, ikinci bölümün ortaya koyduğu en önemli sonuç, dijital platformların yarattığı rekabet sorunlarının yalnızca ihlalin ardından yapılan müdahalelerle çözülemeyeceğidir. Piyasa gücü, ağ etkileri, veri temelli ölçek ekonomileri ve çok taraflı pazar yapıları üzerinden pekiştiği için, bu gücün erken, bağlayıcı ve teknik olarak sağlam düzenlemelerle sınırlandırılması gerekmektedir. Ayrıca politika değişiminin yalnızca teknik bir zorunluluk değil, aynı

zamanda siyasi irade, kurumsal yönelim ve toplumsal baskıların kesişiminde şekillenen çok boyutlu bir süreç olduğu anlaşılmaktadır. Avrupa Birliği'nin dijital piyasalara yönelik bu yeni yaklaşımı, hem iç pazar bütünleşmesini hem de rekabetçi piyasa yapısının korunmasını eş zamanlı olarak hedefleyen, kapsamlı ve ileriye dönük bir politika çerçevesi sunmaktadır.

Tezin üçüncü bölümü, Avrupa Birliği tarafından kabul edilen Dijital Piyasalar Yasası'nın hukuki niteliğini, normatif yapısını, uygulama mekanizmalarını ve mevcut rekabet hukuku ile olan ilişkisini çok boyutlu bir biçimde ele almaktadır. Bölüm, özellikle dijital piyasalardaki rekabet sorunlarının geleneksel rekabet hukukunun sunduğu araçlarla yeterli düzeyde çözülememesi nedeniyle, neden daha proaktif ve önleyici bir yaklaşım olan ex ante düzenleme sistemine geçişin gerekli hâle geldiğini kavramsal bir zemin üzerinden tartışmaktadır. Bu bağlamda, Dijital Piyasalar Yasası'nın ortaya çıkışı, hem piyasa yapısındaki yapısal boşluklara hem de ihlal sonrası müdahalelerin gecikmeli ve yetersiz etkisine verilen bir yanıt olarak değerlendirilmektedir.

Dijital Piyasalar Yasası, üç temel bileşene dayanmaktadır. Bunlardan ilki, geçit bekçisi statüsünün belirlenmesidir. Bu statü, kullanıcı sayısı, yıllık ciro ve pazar üzerindeki etki gibi nesnel göstergelere dayalı olarak Avrupa Komisyonu tarafından tanımlanmaktadır. İkincisi, geçit bekçilerine getirilen yükümlülüklerdir. Bu yükümlülükler, bazı durumlarda açıkça uygulanabilir ve teknik yorum gerektirmeyen doğrudan kurallar iken; bazı durumlarda ise teknik detayları Komisyon tarafından belirlenecek esnek hükümlerden oluşmaktadır. Üçüncü bileşen ise uygulama ve denetim mekanizmalarıdır. Avrupa Komisyonu, bu yasada tek yetkili otorite olup geçit bekçileri hakkında kapsamlı soruşturma yapma, belge ve veri talep etme, pazar araştırmaları yürütme ve ciddi idari para cezaları uygulama yetkisine sahiptir. Tekrarlayan ihlaller durumunda ise yapısal tedbirler alma yetkisi de bulunmaktadır. Bu merkeziyetçi yapı, Avrupa Birliği genelinde yeknesak bir uygulama standardı oluşturmayı hedeflemektedir.

Dijital Piyasalar Yasası, rekabet hukuku ile bir ikame ilişkisi kurmaktan ziyade, tamamlayıcılık ilişkisi tesis etmektedir. Rekabet hukuku, Dijital Piyasalar Yasası

kapsamına girmeyen teşebbüslerin veya davranışların denetimi bakımından hâlâ önem taşımaktadır. Ancak Dijital Piyasalar Yasası, piyasa gücünü yapısal olarak elinde bulunduran aktörler bakımından, öngörülebilir, bağlayıcı ve önleyici nitelikteki düzenlemelerle daha hızlı ve etkili bir müdahale kapasitesi sunmaktadır.

Bölüm, bununla birlikte, yasanın uygulama sürecinde karşılaşılan yapısal sorunları ve akademik-eleştirel değerlendirmeleri de kapsamlı biçimde irdelemektedir. İlk olarak, Dijital Piyasalar Yasası'nın hukuki niteliğinin belirsiz olması eleştirilmektedir. Zira yasa hem klasik rekabet hukukuna özgü normları hem de sektörel düzenlemelere özgü teknik yükümlülükleri içeren hibrit bir yapı arz etmektedir. Bu durum, uygulamada yorum farklılıklarına ve normatif sınırların bulanıklaşmasına neden olabilmektedir.

İkinci olarak, yükümlülüklerin tasarımındaki tek tip yaklaşım eleştirilmekte; farklı iş modellerine sahip dijital hizmet sağlayıcılarına aynı kuralların uygulanmasının hem rekabeti sınırlayıcı hem de inovasyonu engelleyici sonuçlar doğurabileceği ifade edilmektedir. Üçüncü olarak, Avrupa Komisyonunun hem düzenleyici hem de uygulayıcı rolü üstlenmesi nedeniyle usul hukuku açısından güç yoğunlaşmasına ve savunma haklarının zayıflamasına dair endişeler gündeme getirilmektedir. Dosya erişiminde yaşanan kısıtlar, sıkıştırılmış soruşturma takvimleri ve tarafsız bir uyuşmazlık çözüm mekanizmasının yokluğu, adil yargılanma ilkesinin tam anlamıyla hayata geçirilemediğine işaret etmektedir.

Dördüncü olarak, yasanın dinamik dijital piyasalara statik kurallar getirmesi yönündeki eleştiriler vurgulanmaktadır. Hızla değişen teknoloji ve iş modelleri karşısında, sabit ve teknik detaylarla belirlenmiş kuralların etkinliğini zamanla kaybetme riski bulunmaktadır. Bu durum, düzenlemenin teknolojik yeniliklerin önünde bir engel hâline gelmesine neden olabilir. Beşinci olarak, Avrupa Birliği ile diğer yargı alanları arasında ortaya çıkan düzenleyici parçalanma riski, küresel platformların çifte yükümlülüklerle karşı karşıya kalmasına yol açmakta ve düzenleyici tutarlılığı zayıflatmaktadır.

Sonuç olarak, bu bölüm, Dijital Piyasalar Yasası'nın sadece hukuki bir metin olmanın ötesinde, dijital piyasalardaki yapısal güç yoğunlaşmasına karşı geliştirilen

yeni nesil bir düzenleyici paradigma olduğunu ortaya koymaktadır. Yasa, geleneksel rekabet hukukunun sınırlarını aşan, teknik uzmanlık, hızlı müdahale ve önleyici kapasite gerektiren yeni bir regülasyon anlayışını temsil etmektedir. Ancak bu potansiyelin hayata geçirilmesi, uygulama süreçlerinde hukuki öngörülebilirliğin, usuli güvencelerin ve piyasa dinamiklerine uyumun dengeli biçimde sağlanmasına bağlıdır.

Tezin dördüncü bölümü, Avrupa Birliği tarafından kabul edilen Dijital Piyasalar Yasası ile Türkiye'de hazırlanmış olan Rekabet Kanunu'nda Değişiklik Yapılmasına Dair Taslak Düzenleme'yi kavramsal temellerinden uygulama mekanizmalarına kadar bütüncül bir yaklaşımla karşılaştırmaktadır. Bu bölüm, her iki düzenlemenin de dijital pazarlarda yapısal piyasa gücünün yarattığı rekabet sorunlarını proaktif biçimde ele alma amacı taşıdığını, ancak bu ortak hedefin farklı hukuki ve kurumsal bağlamlarda farklı uygulama biçimlerine dönüştüğünü ortaya koymaktadır.

Öncelikle kavramsal temeller açısından bakıldığında, her iki düzenleme de dijital platformların büyüklükleri, çok taraflı piyasa yapıları, veri temelli ölçek ekonomileri ve kullanıcı kilitleme stratejileri gibi mekanizmalar aracılığıyla edindikleri yapısal pazar gücünü sınırlandırmayı hedeflemektedir. Ancak Avrupa Birliği düzenlemesi, bu hedefi iç pazar bütünleşmesi bağlamında konumlandırmakta ve sınır ötesi dijital hizmetlerin serbest dolaşımını garanti altına almayı amaçlamaktadır. Buna karşılık, Türkiye'deki Taslak Düzenleme daha çok ulusal pazarın rekabetçi yapısını korumaya, yerel piyasada faaliyet gösteren dijital platformların rekabet üzerindeki olumsuz etkilerini sınırlamaya ve ülkenin ekonomik yapısına uyumlu bir esneklik sağlamaya odaklanmaktadır. Bu nedenle Avrupa Birliği düzenlemesinde yeknesaklık, Türk düzenlemesinde ise uyarlanabilirlik ön plandadır.

Uygulama kapsamı ve tanımlama kriterleri açısından önemli farklılıklar bulunmaktadır. Avrupa Birliği düzenlemesi, "geçit bekçisi" statüsünü büyük ölçüde objektif ve nicel eşiklere dayandırmakta; belirli kullanıcı sayılarına, finansal büyüklük eşiğine ve pazar etkisi göstergelerine ulaşan platformlar bu statüyü otomatik olarak kazanmaktadır. Türkiye'deki Taslak Düzenleme ise "önemli pazar gücü" kavramını kullanmakta ve bu kavramın tespitinde yalnızca sayısal eşikler

değil, Rekabet Kurumunun geniş takdir yetkisiyle yapacağı nitel değerlendirmeler de belirleyici olmaktadır. Bu durum, Avrupa Birliği düzenlemesini şeffaflık ve öngörülebilirlik açısından avantajlı kılarken, Türk düzenlemesine daha geniş bir esneklik ve vaka bazlı değerlendirme imkânı tanımaktadır.

Yükümlülükler bakımından her iki düzenlemenin de benzer içeriklere yer verdiği görülmektedir. Kendini kayırma yasağı, veri taşınabilirliği, birlikte işlerlik yükümlülüğü, kullanıcı verilerinin kötüye kullanımının engellenmesi ve platform ile işletmeler arasındaki ilişkilerde adil işlem yükümlülükleri gibi kurallar, hem Avrupa Birliği düzenlemesinde hem de Türkiye'deki Taslak Düzenleme'de yer almaktadır. Ancak bu yükümlülüklerin uygulanma biçimleri ve teknik ayrıntıları farklıdır. Avrupa Birliği düzenlemesinde yükümlülükler kategorilere ayrılmış, uygulanma süreleri net biçimde belirlenmiş ve teknik detayların çoğu Avrupa Komisyonu tarafından ikincil düzenlemelerle şekillendirilecektir. Türkiye'de ise yükümlülüklerin kapsamı ve teknik koşulları çoğunlukla Rekabet Kurumunun kararlarıyla belirlenecek, bu da esneklik sağlarken öngörülebilirliği azaltma riski doğuracaktır.

Uygulama ve denetim mekanizmalarında da belirgin farklılıklar dikkat çekmektedir. Avrupa Birliği'nde düzenlemenin uygulanması tamamen Avrupa Komisyonunun yetkisindedir. Üye devletlerin ulusal rekabet otoriteleri, doğrudan uygulama yetkisine sahip değildir, ancak Komisyon ile bilgi paylaşımı ve belirli koordinasyon görevleri üstlenimektedir. Türkiye'de ise düzenlemenin uygulanması ve yaptırımların hayata geçirilmesi tamamen Rekabet Kurumunun yetkisindedir. Her iki düzenleme de ihlaller için yüksek oranlı para cezaları ve tekrarlayan ihlallerde yapısal tedbirler öngörmektedir. Ancak Avrupa Birliği'nde yaptırımların uygulanması tek bir merkezden yürütülerek yeknesaklık sağlanırken, Türkiye'de ulusal düzeydeki uygulama daha hızlı ama daha değişken olabilecektir.

Dördüncü bölüm, Avrupa Birliği'nin Dijital Piyasalar Yasası ile Türkiye'deki Taslak Düzenleme arasındaki politika yönelimlerini karşılaştırmalı olarak değerlendirirken, iki düzenlemenin ortak bir paradigma kaymasına işaret ettiğini ortaya koymaktadır. Her iki rejim de dijital platformların yapısal pazar gücüne karşı önleyici ve sistematik bir yaklaşım benimsemekte, geleneksel rekabet hukukunun tepkisel

doğasının ötesine geçmektedir. Ancak hukuki araçların, kurumsal yapıların ve uygulama yöntemlerinin farklılaşması, bu dönüşümün farklı bağlamlarda nasıl şekillendiğini göstermektedir. Türkiye açısından bu farklılıklar, Avrupa modelini doğrudan kopyalamak yerine işlevsel uyum ve yerel ihtiyaçlara duyarlılık temelinde bir yakınsama stratejisi geliştirilmesini gerekli kılmaktadır.

Tezin son kısmında, Avrupa Birliği'nin Dijital Piyasalar Yasası uygulama deneyiminden ve Türkiye'deki Taslak Düzenleme'nin içeriğinden hareketle, Türkiye'nin dijital piyasalara yönelik öncül (ex ante) bir rekabet hukuku çerçevesi oluştururken dikkate alması gereken çok boyutlu politik ve uygulamaya dönük önerileri kapsamlı biçimde analiz etmektedir.

Bu çerçevede ilk olarak vurgulanan husus, yükümlülüklerin kapsamı ve kalibrasyonudur. Dijital Piyasalar Yasası'na yönelik temel eleştirilerden biri, farklı iş modellerine sahip dijital hizmetlere tek tip yükümlülüklerin uygulanmasının orantılılık ilkesini zedelediği yönündedir. Türkiye, bu sorunu aşmak adına yükümlülükleri somut hizmet türlerinin teknik ve ekonomik özelliklerine göre farklılaştırmalı; her yükümlülüğün ilgili olduğu pazar hatası ile doğrudan bağını, tanımlama kararının içerisinde açık biçimde göstermelidir. Böyle bir "modüler yaklaşım", hem DMA'nın normatif netliğini korur hem de Türkiye'nin daha çeşitli platform yapısına uyarlanabilir bir sistem sağlar. Özellikle Türkiye pazarında yerli ve yabancı platformların birlikte faaliyette bulunduğu ve dikey pazarlarda iş modellerinin büyük ölçüde değişkenlik gösterdiği dikkate alındığında, bu bağlamsal duyarlılık kritik önem arz etmektedir.

İkinci olarak, idarenin takdir yetkisinin sınırları ve şeffaflık gerekliliği öne çıkmaktadır. Taslak Düzenleme, Rekabet Kurumu'na geçit bekçisi benzeri teşebbüsleri belirlemede ve yükümlülükleri şekillendirmede önemli ölçüde takdir yetkisi tanımaktadır. Ancak hızlı değişen dijital piyasalarda bu yetkinin keyfiliğe dönüşmesini engellemek için, kamuoyuna açık, bağlayıcı olmayan ve öngörülebilirliği artıran rehber belgeler yoluyla uygulama ölçütlerinin önceden ilan edilmesi büyük önem taşımaktadır. Tanım kriterlerinin, eşiklerin, ispat yükümlülüklerinin ve olası istisna durumlarının açıkça ortaya konması, hem

işletmelerin hukuki güvenliğini artıracak hem de olası yargı süreçlerinin önüne geçecektir.

Üçüncü olarak, usuli haklar konusu detaylandırılmaktadır. Dijital Piyasalar Yasası uygulamasında yaşanan tecrübeler göstermiştir ki, soruşturma dosyalarına erişimde yaşanan asimetriler, kısa cevap süreleri ve gizlilik anlaşmazlıklarına dair bağımsız çözüm mekanizmalarının eksikliği, uygulamada ciddi eleştirilere neden olmuştur. Türkiye'nin bu noktada, hâlihazırda yürütmekte olduğu yazılı ve sözlü savunma usulünü koruyarak; ancak buna ilaveten, teknik hususların doğrulanacağı zaman sınırlı ön-karar toplantıları, hassas belgelerin sınırlı erişimle uzman danışmanlarca incelenebileceği "confidentiality ring" modelleri ve sadece dosya erişimi ve gizlilik konularıyla sınırlı, hızlı sonuçlanan bağımsız inceleme mekanizmaları gibi uygulamalarla süreci daha şeffaf ve adil kılması gerekmektedir. Aynı şekilde, KOBİ'lerin ve şikâyetçi tarafların güvenli kanallar üzerinden katkı sunabilmesi, örneğin anonim veya korumalı bildirim sistemleri, teknik delil sunumu için standart formlar ve misillemeye karşı açık hükümler aracılığıyla sağlanmalıdır.

Dördüncü olarak, kurumsal kapasite inşası, önerilen sistemin sürdürülebilirliği için vazgeçilmezdir. Ex ante uygulamalar, yalnızca hukuki ve iktisadi bilgiyle değil, yazılım mühendisliği, veri mimarisi, güvenlik protokolleri ve ürün analitiği gibi teknik uzmanlıklarla desteklenmelidir. Bu noktada, Rekabet Kurumunun yazılımcılar ve veri bilimcileri istihdam etmesi, üniversiteler ve sektör düzenleyici kurumlarından geçici görevlendirmeler yapması ve dış kaynaklı API ve kod denetimleri için sürekli ihale modelleri geliştirmesi önerilmektedir. Ayrıca, Bilgi Teknolojileri ve İletişim Kurumu (BTK), Kişisel Verileri Koruma Kurumu (KVKK) ve gerektiğinde Merkez Bankası ile birlikte, teknik asgari standartları belirleyen bir "düzenleyici tasarım kurulu/komisyonu" kurulması, birlikte işlerlik, veri erişimi ve ölçüm çerçevelerinde kurumsal tutarlılığı sağlayacaktır.

Beşinci olarak, uyum raporlamasının teknik olarak ölçülebilir çıktılara dayandırılması gerektiği vurgulanmaktadır. İlgili kurumlarca istenecek uyum raporlarının yalnızca anlatı temelli değil, belirli performans göstergelerine bağlanması gerekmektedir. Varsayılan seçeneklerin etkileri, kullanıcı geçiş oranları,

uygulama mağazalarındaki ret oranları, uygulama programlama arayüzü erişim süreleri, reklam gelirlerinin şeffaflığı gibi metrikler, platformların gerçek davranış biçimlerini ortaya koymak açısından kullanılabilir. Bu verilerin makine tarafından okunabilir formatta talep edilmesi ve gerektiğinde bağımsız denetimlere başvurulması, denetim sürecinin hedef odaklı yürütülmesini sağlayacaktır.

Altıncı olarak, Türkiye'ye özgü veri koruma rejimi nedeniyle, veri ve gizlilik politikalarının rekabet düzenlemesiyle uyumlu hale getirilmesi önemlidir. Özellikle veri paylaşımı ya da birlikte işlerlik yükümlülükleri, "gizliliğin tasarımla gözetilmesi" ve "güvenliğin tasarımla entegre edilmesi" ilkelerine göre kurgulanmalıdır. Bu kapsamda, veri odaları, anonimleştirilmiş temiz veri alanları ve gizlilik artırıcı teknolojiler gibi araçların teşvik edilmesi, hassas veri transferi olmaksızın rekabetçi etkilerin korunmasına imkân tanıyacaktır. Tek seferlik veri entegrasyonları yerine uygulama programlama arayüzü temelli, belgelendirilmiş ve denetlenebilir sistemlerin tercih edilmesi, bilgi güvenliği düzeylerinin düşmesini engelleyecektir.

Son olarak, yaptırım stratejisinin kademeli ve net ölçütlere dayalı biçimde tanımlanması gerektiği ifade edilmektedir. Önleyici bir sistemde davranışsal yükümlülükler çoğu zaman yeterli olacaksa da, tekrar eden uyumsuzluk durumlarında yapısal müdahalelere geçiş kriterlerinin baştan açıkça ortaya konması gerekir. Bu geçişin gerekçesi, davranışsal önlemlerin etkisiz kaldığı ve pazarda makul kamu maliyetiyle rekabetçiliğin yeniden tesis edilemeyeceği yönünde teknik bir analizle desteklenmeli ve yargısal denetime uygun şekilde yapılandırılmalıdır.

Bu tez, Dijital Piyasalar Yasası'nın, dijital rekabet düzenlemesi alanında nasıl bir model işlevi gördüğünü ve bu modelin Türkiye'de önerilen rekabet hukuku reformlarını nasıl etkilediğini ve etkilemekte olduğunu analiz etmeyi amaçlamıştır. Bu çerçevede, DMA'nın yalnızca Avrupa'da değil, küresel ölçekte de öncü ve referans alınan bir düzenleyici çerçeveye dönüştüğü, bununla birlikte, bahse konu normatif etkinin otomatik olarak regülasyon alanında bir başarıyı garanti etmediği; uygulama kapasitesi, teknik esneklik ve yerel bağlama duyarlılık gibi unsurların sonuçlar üzerinde belirleyici olduğu değerlendirilmiştir.

Türkiye'nin rekabet hukuku yaklaşımının, genel olarak Avrupa Birliği modelinden önemli ölçüde esinlendiği, ancak doğrudan bir kopyadan ziyade, ulusal ihtiyaçlara göre uyarlanmış hibrit bir çerçeveye evrildiği gözlemlenmektedir. Özellikle Taslak Düzenleme'nin, geçit bekçisi tanımında ve yükümlülüklerin belirlenmesinde Rekabet Kurumuna geniş takdir yetkileri tanıması, Türkiye'nin Dijital Piyasalar Yasası ilkelerini benimserken aynı zamanda kendi kurumsal ve piyasa gerçekliklerine göre şekillendirilmiş bir model geliştirmeye çalıştığını göstermektedir. Bu yaklaşım, düzenleyici esnekliği korurken aynı zamanda ex ante müdahalenin temel gerekçesi olan yapısal piyasa gücüyle mücadele amacını da paylaşmaktadır.

Sonuç olarak, Dijital Piyasalar Yasası, Türkiye için önemli bir yön gösterici olmuştur; ancak Türkiye'nin yaklaşımı, yerel bağlama göre yeniden yorumlanmış ve özgün özelliklerle zenginleştirilmiştir. Bu durum, gelecekte Türkiye'de özellikle dijital piyasalarda rekabet hukukunun ne ölçüde Avrupa Birliği ile yakınsama veya ayrışma göstereceği sorusunu daha da kritik hale getirmektedir. Daha derin bir düzenleyici uyum, dijital platformlar açısından öngörülebilirlik ve istikrar sağlayarak hem iç pazarda hem uluslararası düzeyde olumlu etkiler yaratabilir. Öte yandan, Türkiye'nin belirli alanlarda kendi piyasa dinamiklerine ve kurumsal ihtiyaçlarına uygun farklılıkları koruması da rasyonel ve meşru bir tercihtir. Bu çerçevede, Türkiye'nin atacağı politika adımları, yalnızca ulusal rekabet hukukunun etkinliğini değil, hukuki uyum yükümlülüğüne rağmen Avrupa Birliği ile düzenleyici yakınlaşma düzeyini ve dijital yönetişimdeki konumunu da belirleyecektir.

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